FSG Annual Report 2020

Discrimination and the Roma Community

IN DEPTH:
DISCRIMINATION IN ACCESS TO EMPLOYMENT

425 cases of discrimination
Best practice and case law
Strategic litigation

Fundación Secretariado Gitano

FSG Annual Report 2020

Discrimination and the Roma Community

IN DEPTH:
DISCRIMINATION IN ACCESS TO EMPLOYMENT

425 cases of discrimination
Best practice and case law
Strategic litigation

Fundación Secretariado Gitano

Written and published by:

Fundación Secretariado Gitano

C/ Ahijones, s/n - 28018 Madrid

Tel.: 91 422 09 60

E-mail: fsg@gitanos.org

Web: www.gitanos.org

Technical coordination and preparation:

Department of Equality and Fight Against Discrimination - FSG

Cristina de la Serna

María Carmen Cortés

Javier Sáez

Edurne de la Hera

Communications Department - FSG

Officers of the programme "Calí. For equality of Roma women"

Collaboration:

FSG would like to thank the following contributors:

Mónica Johana Amaya López

Natalia Pérez Fernández

Arantxa Zaguirre

Maria Lourdes Arastey Sahún

Rubén Herranz González

Design, layout and printing:

Coral Cano Domínguez

© **Fundación Secretariado Gitano (FSG)**

Madrid 2020

Serie Cuadernos Técnicos nº 133

"This material is free of charge and its sale is strictly prohibited"

Fundación Secretariado Gitano

GOBIERNO DE ESPAÑA MINISTERIO DE IGUALDAD

GOBIERNO DE ESPAÑA MINISTERIO DE SANIDAD, CONSUMO Y BIENESTAR SOCIAL

POR SOLIDARIDAD OTROS FINES DE INTERÉS SOCIAL

CONSEJO PARA LA ELIMINACIÓN DE LA DISCRIMINACIÓN RACIAL O ÉTNICA

Table of Contents

1- Introduction 5

2 - Conclusions and summary of cases of discrimination 9

Presentation of disaggregated data 21

3 - Strategic litigation undertaken in cases of discrimination, hate crime and anti-Gypsyism 25

4 - In Depth: Analysis of discrimination in access to employment 41

1- Employment and the Roma Community. Right to employment free of discrimination: the key to a dignified life 42

María del Carmen Cortés Amador y Cristina de la Serna

2- Employment and the social safeguarding of workers belonging to the Roma population: ethnic discrimination with added gender discrimination 47

Mª Lourdes Arastey Sahún

3- Employment discrimination: we do we start? 52

Arantxa Zaguirre

4- The fight against employment discrimination. The role of trade unions 55

Rubén Herranz González

5 - Best practices and case law 59

1- Best practices 60

2- ECHR case law on anti-Gypsyism 69

6 - Appendices 71

I. Current legislation on equal treatment and non-discrimination 72

II. European bodies and institutions that work in the field of equality, non-discrimination and the Roma community 75

III. Legal texts and documents adopted by European and international institutions on anti-Gypsyism and papers on anti-Gypsyism. 77

Chapter 1

Introduction

Introduction

As it has done every year since 2005, Fundación Secretariado Gitano (FSG) presents its XVI Annual Report "Discrimination and the Roma Community", to shine a continued light on discrimination, anti-Gypsyism and violations of the right to equal treatment that Roma people in our country still face. This year, the report focuses on discrimination in employment, to coincide with the 20th anniversary of the Acceder programme that FSG is celebrating this year. The programme, recognised by the European Commission as best practice, was launched in 2000 with the aim of boosting Roma people's access to the employment market.

For FSG it makes great sense to couple Acceder with the fight against discrimination, because our focus on it can be sourced back to the launch of the programme 20 years ago. It is no coincidence that the programme was initially financed by the European Social Fund's Operational Programme to Combat Discrimination. For us, employment is and continues to be one of the best vehicles to achieve real equality of opportunities and the Roma community's effective enjoyment of human rights free of discrimination. We have been testament to this, having seen the impact that the programme has had on the 31,981 people who have secured a job up to 2019, not just on their lives but on those of their families.

However, if employment is a fundamental vehicle to transform people's lives and guarantee equal treatment, discrimination continues to be a barrier to many Roma people securing work. The Department for Equality and Fight against Discrimination at FSG has been witness to this, as we explain in the chapter "In Depth", in which we report a significant number of cases in which companies, employers and co-workers have treated Roma people less than favourably, essentially due to their ethnicity. It is a scourge that needs fighting, with the help of resources from the appropriate institutions. Every policy designed to improve Roma people's employability must include effective measures to combat discrimination in the world of work.

In this year's report we have been lucky enough to receive contributions from three experts who shine a light on how to effectively combat discrimination in this area: Maria Lourdes Arastey Sahún, Judge of the Supreme Court Social Branch; Arantxa Zaguirre, expert employment lawyer specialising in combating discrimination; and Rubén Herranz González, Social Policy Deputy of the trade union Comisiones Obreras. We are deeply grateful to them for offering their knowledge and experience both to the report and to our mission to fight discrimination and anti-Gypsyism.

As we have done in every annual report, this year we have collated all the cases we handled in 2019 in which, following our expert intervention and legal examination, we could confirm that a discriminatory or anti-Gypsy hate incident had taken place. This year, you can find a summary of the cases in the printed version of the report, and a detailed recounting of the events, our intervention and the outcome, on our website www.gitanos.org. What's more, in the coming months we will be launching an online database with the information included in the 16 Discrimination and the Roma Community annual reports that FSG has published.

The total number of cases in this edition is 425, compared with the 334 cases we reported last year. It is important to note that this rise is partly caused by a methodological change, because for the first time we have decided to include anti-Gypsy hate messages found on social media and reported in the European Commission's Code of Conduct monitoring round on hate speech online (an area in which FSG is considered a trusted flagger), which is a privileged social media reporting channel. On the other hand, this year we have reported far fewer cases in the media than last year, which shows the significant progress made by mainstream media outlets in 2019. However, at the same time, there has been a major rise in cases of direct victims in other areas, such as access to goods and services, which doubtless shows that our participants are becoming better equipped at identifying situations of discrimination and reporting them.

It is in this area where the role that our Equality Officers (mostly Roma women) have been playing in many areas since 2016 is essential, as part of the programme Calí, for the equality of Roma women. The inclusion of this professional profile has contributed to an improvement not just in the care for victims of discrimination and anti-Gypsyism, but in Roma people's awareness of their rights when faced with discrimination. In addition, their intersectional focus allows us to offer even more specialist attention where the discrimination occurs not only due to ethnicity but due to the victims being women or girls, as has been the case this year in areas such as anti-Gypsy and gendered hate speech, harassment of women in shopping centres or bullying at school and other forms of discrimination specifically suffered by Roma girls.

This year we have continued to pursue the litigation strategy as a way of securing favourable court rulings for victims of discrimination and anti-Gypsyism, improving the response from the courts and their case law in these cases, and raising awareness among the authorities and society as a whole of the human impact of discrimination and the importance of tackling it. We delve into this in the chapter on Strategic Litigation, reporting the failures and successes and cases in which, even if a conviction was not secured, we were satisfied to have got the perpetrators of discrimination in the dock. Our approach to litigation is that it is a marathon, not a sprint — slow on occasions, but still a highly powerful tool that is gradually forcing important change.

Although this report covers cases in 2019, we cannot ignore the COVID-10 pandemic we are currently entrenched in, and the impact that it is having on discrimination and anti-Gypsyism. We are greatly concerned that the health, economic and social crisis is causing new forms of discrimination, stigmatisation and hate speech against the Roma community. We are also growing increasingly concerned that the crisis is making people who are suffering from discrimination reluctant to exercise their rights.

The current situation highlights more than ever that our legal system desperately needs a comprehensive equality and anti-discrimination law to allow us to respond properly to the various forms of discrimination and anti-Gypsyism and, above all, to give victims an effective resource to turn to when their rights are violated because of their ethnic origin. Our country cannot continue to tolerate the gaping hole in our legislation.

Lastly, we are hugely grateful to the institutions who have helped us in preparing this report. We are grateful to the Ministry for Social Rights and the 2030 Agenda, for its economic support in the publication and dissemination of the report (through the 2019 income tax return option — for charity, other social interest purposes), as well as the Ministry of Equality and the Council for the Elimination of Racial or Ethnic Discrimination, which have also contributed to FSG's work to tackle the discrimination suffered by Roma people.

As always, it goes without saying that our greatest thanks goes to each of the victims of discrimination and anti-Gypsyism for their bravery in reporting these cases

Pedro Puente

President of Fundación Secretariado Gitano

Chapter 2

Conclusions and summary of cases of discrimination

General summary of cases reported in 2019 and key conclusions

Fundación Secretariado Gitano (FSG) has collected the cases of discrimination and anti-Gypsyism that appear in this report and has attended to victims mainly by means of two programmes. On the one hand, since 2013 we have been the coordinating organisation of the support network of the Assistance and Guidance Service for Victims or Racial or Ethnic Discrimination, of the Council for the Eradication of Racial or Ethnic Discrimination (an organisation of the Spanish Ministry for Equality), for which we are also board member (for further information on the service, please see "Best Practices" of the report, Chapter 5). In addition, in 2016 we launched the programme Calí, for the Equality of Roma Women, in the context of the European Social Fund's Operational Programme. This allowed us to introduce Equality Officers who specialise in gender equality and equal treatment in many locations.

In 2019, FSG received and responded to 425 cases of discrimination, which is an increase on last year. This is owing to, on the one hand, a change in the way we collect cases: this year we began to collect data on hate speech identified on social media in the EU Code of Conduct monitoring rounds; and, on the other, an increase in cases in certain areas, as is the case of access to goods and services.

In this chapter we summarise the cases we have documented, and further details can be found in the digital version of the report. We have also included a series of recommendations for the authorities to ensure an effective response to discrimination against the Roma community and incidents of anti-Gypsy hate in each area.

1. General observations: the absence of an appropriate regulatory framework, the scourge of underreporting and the need to address intersectional discrimination

As we have mentioned, throughout 2019 we collated a total of 425 cases of discrimination against the Roma community and anti-Gypsyism in the different areas detailed below. Before focusing on each of these areas, we must make a general observation about the problem we have been stressing in numerous reports on Discrimination and the Roma Community: the lack of an effective legal response. Very often, when the discrimination is not a criminal offence (which is often true in the cases we handle), we must resort to channels that are not really designed for the reporting of discrimination, and which are rarely effective. We have also ascertained that when cases are reported that do reach the courts, there is not always an effective investigation of the reported incident, nor is there a response from the courts that takes into consideration the discrimination or hate elements of the illegal act.

Another common pattern we have seen when dealing with victims of discrimination is that Roma people often do not report incidents to the authorities (police, prosecution service, etc.). In other words, even if the assistance services advise these people of the possibility of pursuing such kinds of complaints, many people decide not to. This may be because they fear retaliation or believe that there is no point and it will come to nothing, they have had negative experiences with the police, or they are discouraged by a lengthy and costly proceeding that may cause them to feel victimised all over again. This underreporting reality means that legal mechanisms and policies to combat discrimination are not very effective, since the majority of cases do not reach the courts or even the police.

Lastly, it is important to emphasise that sometimes, the discrimination we have identified is intersectional, i.e. they are cases in which in addition to the ethnic origin of the persons involved, other factors are at play such as gender. All this takes place in a context in which, as shown in our recently published *Study comparing the situation of Roma people in Spain in respect of employment and poverty*[1], Roma women are more strongly affected by early school leaving and academic failure, as well as unemployment and poverty. We have also set out that, partly thanks to the specialist accompaniment measures

[1] Available here: : https://www.gitanos.org/centro_documentacion/publicaciones/fichas/129378.html.es

provided by the Calí programme's equality officers in ensuring the equality of Roma women, many of these women feel more empowered and able to respond to these practices, making complaints and claiming their rights, or reporting their case to FSG or the authorities

This is why we are appealing to the Spanish authorities to take the following steps to improve the response to discrimination and anti-Gypsyism, with an intersectional focus:

- **Passing of a comprehensive equality and discrimination law** that includes all international and European standards, specifically referring to anti-Gypsyism and intersectional discrimination, including the creation of an independent state authority to issue reports, handle cases of discrimination and represent victims before the courts in symbolic cases.
- **Training in anti-discrimination law and the Victim's Statute for all key stakeholders in this area:** judicial powers, public prosecutors, lawyers and the State security forces.
- **The consolidation of the work of the Spanish Council to Eradicate Racial or Ethnic Discrimination**, both in respect of the preparation of reports and issuance of recommendations, and the Assistance Service for Victims of Discrimination.
- The **provisioning of sufficient resources for all institutions engaged in the fight against racial or ethnic discrimination** at all levels: Directorate General for Equality and Ethnic-Racial Diversity, public prosecutors specialising in hate crimes and anti-discrimination, specific units of diversity or hate crimes of the various police forces, municipal offices to combat discrimination, etc. All these public bodies are essential to drive forward policies against the various forms of racism, xenophobia and anti-Gypsyism, and to offer an effective response for victims of this scourge, but often they are unable to act effectively due to lack of resources.
- The establishment and sufficient provision of resources for specialist **programmes providing comprehensive support for Roma woman**, above all the most vulnerable, with the aim to empower them to exercise their rights in the face of intersection discrimination and gender violence, improve education and professional training, join the workforce, improve their self-esteem and self-assurance, and overcome traditional gender roles.

2. Bad reporting practices and other cases of discrimination and anti-Gypsyism documented in the media

In 2019, we collated a total of 68 cases in the **media.** Discrimination in this area takes place a number of forms. A very common practice among certain media outlets is to systematically mention the alleged Roma ethnic origin of persons who are the subject of a news item, particularly when concerning violence and crime. The practice of citing the ethnicity of persons involved severely damages the public image of the Roma community, because its continual repetition in the media consolidates the already prevalent preconceptions surrounding this community and crime. This association then triggers discriminatory acts or hostility against Roma people. Moreover, mentioning ethnicity is a violation of the media's code of ethics: when writing news articles it is recommended that the ethnicity or race of the persons involved is not mentioned unless doing so is particularly important in the understanding of the news event. In the cases we have reported, the mention of ethnicity added nothing to the news item. If a person commits a crime, their nationality, race and ethnicity are usually irrelevant.

Another kind of discrimination occurs when readers of online news articles leave comments. It is very often the case that where an article is posted about an alleged Roma ethnicity person, highly aggressive and extreme anti-Gypsy hate speech is left in the comments, violating the dignity of Roma people and even inciting violence against them. Our usual response is to write to the editor of the outlet or the online version to ask them to remove the comments, since the media have a responsibility to moderate and remove these kinds of messages. Unfortunately, the reaction is not always positive; sometimes, we do not receive a response at all. We respond in the same way for the mention of ethnicity: we send letters of complaint to the media, explaining that this is bad practice and asking that it be removed, at least from online versions.

An instance of effective intervention with a positive outcome is when RTVE published a report on crime mentioning the Roma community. A letter of complaint was sent to RTVE, with a positive outcome. The programme RTVE RESPONDE issued a recorded response with the remarks of the FSG officer, explaining the bad practices.

Reference:

http://www.rtve.es/alacarta/videos/rtve-responde/rtve-responde-29-12-19/5474344/ (minute 24)

In order to improve the social image of the Roma community and prevent another kind of discrimination that Roma people suffer, we appeal to:

- **The media to make a greater commitment to journalistic codes of ethics, to stop the proliferation of stereotypes or the mention of ethnicity in news items when it is not relevant,** and for greater awareness of the impact that this media coverage has on the collective image of Roma people — a negative image that can trigger hostile attitudes or discrimination against Roma.

- The **authorities** at all levels to **promote awareness campaigns** showing a diverse, not stereotyped image of the Roma community, thus offering a counter-narrative to prejudice and hate speech.

3. Anti-Gypsy, stigmatising hate speech posted on social media and online platforms: we must keep pushing forward

For the first time this year we have isolated social media cases (115) in a standalone chapter, as they deserve special attention. For the past five years, Fundación Secretariado Gitano has participated in the European Commission's monitoring rounds on the Code of Conduct that internet companies signed in relation to managing hate speech on social media. These companies (Facebook, Twitter and YouTube-Google) made a commitment to remove unlawful hate speech within 48 hours of it being reported by users. To check compliance with this code, the Commission organises annual monitoring rounds with Member States, public administrations and NGOs engaged in fighting racism, which include Fundación Secretariado Gitano.

As a result of this annual five-week monitoring round, these companies have begun to improve their removal of hate content year after year, but there is certainly room for further improvement. We have included 105 cases reported by FSG in this monitoring round, and some other cases that we identified during the year on leading social media outlets and other platforms (such as online forums) that have not signed the Commission's Code of Conduct. Every case without fail concerns very extreme messages that directly incite violence or the extermination of Roma people, or that dehumanise them

by comparing them to animals, illnesses, etc. We have also found examples of intersectional hate messages against Roma women, featuring stereotypical references to their physical appearance.

We therefore appeal to:

- **The leading social media platforms** to continue to engage and to **improve their response to anti-Gypsy hate speech**, automatically removing hate content.
- **Online forums to engage in the fight against anti-Gypsy hate speech**, moderating comments and removing the most serious hate messages.

4. Discrimination and anti-Gypsyism in access to goods and services: unfair treatment as the everyday reality of Roma people

In the section of **access to goods and services** we found numerous cases of discrimination this year (*75*, compared with the *57* that we reported in last year's report) in accessing swimming pools, restaurants, bars and night clubs and other leisure venues, where Roma people were unable to enter simply due to their ethnicity. This is serious discrimination and gravely harms the dignity of Roma people, who feel rejected by society daily. The high number of cases this year shows the widespread nature of the problem; FSG only collects a small proportion of actual cases because of the high degree of underreporting of cases of discrimination.

A particularly important kind of case is that of intersectional discrimination, namely the excessive surveillance of Roma women in shopping centres or supermarkets, where security guards closely watch women for the entire time they are in the store, and sometimes ask them to empty their bags, provide identification, accuse them of having swapped tags or have stolen items, etc. Here, the gender factor is significant, since we have seen that these cases above all involve Roma woman.

For cases of access to goods and services, the Foundation undertakes a number of different strategies: we submit formal complaints to the offices of consumer affairs or we encourage victims to ask for an official complaint form. In other cases, we mediate with the manager of the premises, night club, bar, etc., to help them to recognise their mistake and stop refusing these persons entry. In some cases, we try to pursue judicial channels, which are rarely successful since it is very tricky to secure evidence in this kind of proceedings.

We managed to secure a positive outcome in a case in Ciudad Real where a woman attended the Traffic Directorate with her husband, both Roma, to submit some forms that she had filled in with her son at home. When arriving at the counter, the public officer who served her told her, very aggressively according to the woman, that: "it's not my fault you don't know how to read and write, you're grown-ups and you can go back to school." The woman responded that she had been working since she was a child and had no time to go to school. The officer answered that that was not his problem and told them to leave. The woman and her husband left, feeling humiliated and convinced that they had been treated like that because they were Roma.

FSG advised them of how to react in such situation, and told that they could submit a complaint. We arranged a meeting with the Deputy Director and explained our concerns about behaviours

or attitudes that could cause inequality and threatened people's dignity. The woman was advised about making a complaint to the Ombudsman. We were informed from the Ombudsman that the complaint had been accepted and that the appropriate actions were taking place with the General Traffic Directorate of the Ministry of the Interior. As we have already mentioned, a comprehensive equality law is desperately needed to effectively respond to this kind of discrimination, including a sanctions regime to regulate discriminatory treatment in businesses, shops and other public and private spaces where goods and services are provided. We also appeal to:

- **The local heads of consumer affairs offices,** to provide a swift and appropriate response when discriminatory treatment is reported.
- **Businesses and public providers of goods and services** to ensure that their staff treat the public equally and do not discriminate.

5. Discrimination and anti-Gypsyism in education: particularly vulnerable victims who deserve preferential attention

We detected 37 cases in **education** in 2019. These are different instances of discrimination towards Roma pupils that we find particularly concerning because of the special vulnerability of victims: Roma children who suffer barriers to accessing their right to education due to their ethnicity. Some situations have been identified in which non-Roma parents do not want Roma pupils in the school, and refuse to allow their children to share a classroom with Roma classmates.

Other cases include remarks from teachers about the Roma community: negative comments, stereotypes, generalisations, etc. Some comments were specifically directed a Roma girls — assuming that they will marry young and leave school, which is intersectional discrimination. The impact of these comments is very serious: on the one hand, the Roma pupil feels it is an indignity, and on the other, these comments reinforce any potential negative stereotypes that non-Roma children may have about their Roma classmates. All this has a severely negative effect in schools. Another type of case is bullying among pupils, namely non-Roma pupils insulting or assaulting Roma children due to the ethnicity. Although we have collected only a few cases of this type, due to the chronic underreporting from this group, they are serious cases of school bullying caused by racism, where the intervention of the education authorities is essential. Lastly, we are facing a generalised phenomenon of segregation of Roma pupils in the schools system, i.e. schools where the vast majority of pupils (if not all) are Roma or migrants, and where the quality of education is lower. This is a serious violation of fundamental rights that we have been reporting in a number of forums for quite some time.

A positive outcome of our intervention in this kind of discrimination took place in Castellón. A child under the age of five had a developmental disability that had caused her to suffer serious health problems. One day per week the child did not attend school in order to go to a rehabilitation centre in another province. The mother sent the schools all the reports, and the school's management told her that was fine. However, the girl's teacher constantly asked for proof of her whereabouts, with certain suspicion. The mother was certain that the teacher's treatment of them was because they were Roma. Eventually, FSG contacted the school to inform them of this concern. The situation then improved greatly and no more suspicious questions were asked of the family.

In order to prevent this kind of anti-Gypsy situations in schools, we appeal to the national and regional education authorities, and the education community as a whole, to take steps to:

- **Evaluate the high concentration of Roma pupils** for the purpose of reliable mapping **to eradicate school segregation**.
- Investigate, punish and respond **to the bullying of Roma children and teenagers** in school because of their ethnicity.

6. Discrimination in employment: barriers to achieving equal opportunities

We identified numerous cases of discrimination (53 in 2019) in **employment**, manifesting in various ways. A common practice by certain companies is to refuse to accept CVs from Roma candidates, or refusing them interviews once they realise their ethnicity. It goes without saying that to do so is a severe case of ethnic discrimination, but it is often difficult to prove it due to lack of reliable evidence. Another kind of discrimination takes place in the workplace when Roma people secure work, but the business owner or manager discovers their ethnicity and begins to mistreat them, harass them or even fire them purely down to their ethnicity. Discrimination also takes place between co-workers, where Roma people working in a business receive insults, are subjected to stereotypes or negative remarks about the Roma community, which is discriminatory, offensive and tantamount to workplace bullying. Other cases that we have identified concern working practices that the Foundation manages in the context of the Acceder programme or other work integration support programmes. In these cases, employment councillors approach businesses to offer candidates for internships. Occasionally, when the business recognises the name of Fundación Secretariado Gitano and realises that the candidates are Roma ethnicity, they refuse to accept them, even if they are sufficiently qualified.

FSG intervened with a positive outcome in a case in Caceres, where a Roma woman overheard anti-Gypsy and xenophobic remarks from her co-workers, but said nothing for fear of being fired. The remarks continued and one of the co-workers began to harass the woman by interfering in her work. The woman informed her manager, who ignored her complaint but told her that he wanted a good working environment. A few days later, the manager called the FSG employment placement officer and told them to send someone else who was not Roma because they "already had enough of them".

FSG offered the manager some information, and continued to send Roma candidates to them, with a positive outcome. The woman did not receive any more remarks, and since then, Roma women in the company feel more comfortable at work. The manager committed to continuing to hire Roma women.

All these discriminatory practices pose an enormous barrier to Roma people entering the workforce and exercising their right to work. As we will examine in greater depth in our article in the "In depth" section, discrimination is not just an attack of people's dignity but prevents the exercise of other fundamental rights such as the right to employment, which is key to securing a dignified life and to personal and social development. For this reason, we appeal to:

- **Businesses** to focus more on ethnic diversity and to pursue awareness-raising initiatives to eradicate these stereotypes and enable fair access to the world of work.
- **Labour inspectorates** to investigate and, where appropriate, penalise discriminatory and anti-Gypsy incidents that take place in the realm of employment.

7. Discrimination in healthcare: when discrimination comes from those providing care

In **healthcare**, fortunately we detected few cases in 2019 (11 cases); however, discriminatory situations continue to occur in healthcare centres and hospitals. The most common cases are unpleasant or hostile treatment of patients by medical staff, nurses and porters, such as negative remarks about Roma people, generalisations, stereotypes and poor-quality treatment or rudeness towards Roma people. In each instance we have filed complaints, receiving an uneven response, which sometimes has been positive.

An example of a positive outcome comes from a case in Madrid: a Roma woman attended a health centre with her daughter. Once there, the nurse told her rudely: "I don't think you have an appointment, first you need to find out who your nurse is and which room you need to go to. Well, do you want immunising or not?" The woman left without having her daughter immunised, due to the fear and humiliation she had experienced at the hands of the nurse. She was certain that she was treated like that because she was Roma. FSG advised the woman of her rights and non-discrimination. With the support of FSG, the woman filed a complaint with the health centre, setting out what had happened and asking for a change of nurse, with a positive outcome: the woman received a letter of apology from the healthcare centre and was allocated a new nurse.

For this reason, we appeal to the national and regional healthcare authorities to **improve intercultural skills of healthcare professionals, to avoid bias or prejudice when attending to Roma people**, who are entitled to health and dignified and fair treatment like anyone else. In addition, poor treatment by these professionals can make Roma people hesitant or reluctant to attend healthcare centres when nurses are present, which could be aggravating to any medical conditions they may have.

8. Use of ethnic profiling and other discrimination in policing

In **policing**, fortunately we have identified few cases (9). Some of them related to stopping Roma people in the street, which is known as "ethnic profiling," i.e. stopping and demanding identification or searching someone purely because of their ethnic appearance, physical traits or skin colour. This is a practice endured by many Roma people, according to all reports available. It is a discriminatory and illegal practice that affects the dignity of Roma people and creates mistrust among the community and police services. Furthermore, numerous studies have shown that ethnic profiling is not an effective way of tackling crime; stopping many Roma, black or Maghrebi people does not help to uncover more crime; on the contrary, it undermines harmonious coexistence and trust in the system.

Other cases that we have identified relate to the expression of stereotypes and negative remarks from certain officers about Roma people. One of these cases was particularly striking because the stereotyped remarks we directed at two women who wanted to report a case of gender violence that one of them had experienced, which is intersectional discrimination motivated by gender and ethnic origin.

We cite a case in Burgos as an example of a good outcome: a young Roma man with a highly visible ethnic profile told FSG that the police had stopped him repeatedly, approximately three times a week, asking for his documents. At times he was searched and told to empty his pockets. FSG advised the young man and arranged a meeting with the national police commissioner and expressed their concern for the bad practice of ethnic profiling when stopping the young man. The young man also left a statement for a report on bias against the Roma community in the penal system, by Rights International Spain. The outcome of FSG's intervention was positive. Since the meeting with the commissioner, the police have not stopped the young man.

For that reason, we urge the authorities to take steps within the security forces, to:

- Introduce identification forms and independent bodies to enable **supervision of police activities** to prevent stops motivated by ethnic profiling.
- Establish **dialogue** mechanisms among the security forces and communities affected by discriminatory stops to overcome stereotypes and improve relations.
- Encourage the **recruitment of Roma ethnicity officers** to make the police forces more representative of the society they serve.
- Improve **practical training** for officers on the principle of non-discrimination and effective, unbiased police action.

9. Discrimination in access to housing: a major problem and difficult to overcome with current legislation

In **housing**, which was the focus of last year's annual report, we continue to identify quite a few cases of discrimination (25). These have taken place in various ways. The most common cases relate to some estate agents' or property owners' refusal to rent or sell a flat when they discover that the person or family wishing to buy or rent it is Roma. This is a major barrier to access to housing, which is a fundamental right, because many of these families and people are deprived of dignified housing due to discriminatory anti-Gypsy prejudice. Another kind of cases arises in relations between neighbours, i.e. non-Roma neighbours who are hostile to the fact that there are Roma neighbours in the building or who unfairly report Roma families to the police to harass them. The housing problem continues to be one of the major blights for the Roma community, as we saw in last year's report, with a dedicated chapter on this issue featuring a number of specialist articles. We are seeing once again that the discrimination is not just illegal and a violation of people's dignity but impedes the exercise of other rights such as, in this case, the right to a dignified home.

A typical example in this area took place in Cadiz. A couple went to view a home to purchase and the owner approached the man and said: "I'm not going to sell you this house because you're Roma and you'll make too much noise." FSG informed the couple of the actions they could pursue, even in spite of the legal vacuum that exists when it comes to an individual discriminating in access to housing. The couple were aware of their rights and how to exercise them, and the importance of law being passed to protect them from such situations.

The current Spanish discrimination law does not properly cover such cases, and so a comprehensive equality law is desperately needed to correct and punish such practices by estate agents and private landlords. Moreover, in order to guarantee the effective exercise of Roma people's right to housing, we urge the authorities to take the following steps:

- **Approving action plans to eradicate slum living and substandard housing** as part of the State Housing Plan, equipped with the necessary resources and applying methodologies to pave the way to stable and definitive solutions, combining rehousing measures with other accompaniment and support measures for families throughout the process.

- **Breaking down digital barriers** that often prevent Roma families from making social housing applications.
- More **social housing and the establishment of alternative short and long-term accommodation** for Roma families who suffer evictions as a result of mortgage foreclosure or non-payment of rent.
- **Respect for legally established procedures** in evictions and rehoming carried out by local authorities.

10. Cases of discrimination and hate crimes in other areas

We have grouped other kinds of discrimination cases into a final section, where they do not fit into a specific area (32 cases). They include hate crimes, such as assaults or violent threats to Roma people, and also threatening and anti-Gypsy painting on buildings and in public spaces, which are examples of anti-Gypsy hate speech. There have been cases of public gatherings for the purpose of pushing out Roma families: once such case occurred in El Pozo, Madrid. Following the murder of a non-Roma person by a Roma person, a neighbourhood movement formed against various Roma families indirectly connected with the assailant. This created a great deal of tension, after which the Police Management Unit intervened very positively, explaining to the neighbours that it made no sense to assault or want to get rid of various families just because one person committed a crime. Lastly, we have encountered cases in which a Roma woman was stripped of custody of her children, in a decision steeped in anti-Gypsy stereotypes and prejudice.

An example of positive intervention took place in Madrid. An FSG officer saw some graffiti that read: "Drug dealing gypsy" on the front of the Palomeras Bajas school in Vallecas, which has a heavy Roma population. We took a photo of the graffiti and contacted the Diversity Management Unit of the Madrid Municipal Police to report our concern about the graffiti. We noticed that the graffiti had been removed less than a day later.

Many of these cases, which took place in Madrid, show the usefulness of having a **specific unit in the police to manage diversity** in the application of the appropriate protocols when incidents and anti-Gypsy hate crimes occur. As such, **we appeal to other police forces of all levels to create similar units**, drawing inspiration from the best practice implemented by certain local polices forces such as that of Madrid, Fuenlabrada or Burgos.

11. The European dimension in discrimination against the Roma community and anti-Gypsyism

Lastly, we have reserved a section for **the situation of anti-Gypsyism in Europe.** We have collated a few cases that exemplify the gravely serious situation of assaults, hostility and hate crimes suffered by Roma people across Europe. We have picked cases in **Bulgaria** of anti-Gypsy hate speech, which are widespread across the country, including from political representatives and government. Another section is dedicated to cases in the **Czech Republic**, where a report has been published on cases of anti-Gypsy discrimination in many areas. Another case is that of **Ukraine**, where there have been serious cases of hate crime involving physical assaults, arson of camp sites and violent evictions against Roma families by far-right organised groups. There is also a reported case in **Italy**, where serious cases of discrimination continue against Roma people.

As we said, the selected cases are just a small sample of the difficult situation experienced by Roma people in many European countries, which is why we also work at European level; Fundación Secretariado Gitano collaborates with other Roma and non-Roma organisations to combat anti-Gypsy racism and also with European institutions such as the European Commission, the ECRI (Council of Europe), the European Union Fundamental Rights Agency, the OSCE, etc.

We must stress the absolutely fundamental role of European Union institutions in establishing a regulatory framework to combat discrimination and combat anti-Gypsyism. This is why we are appealing to institutions to effectively apply the commitments recently made in Commission Communication "A Union of equality: EU anti-racism action plan 2020-2025", and that they, therefore:

- **Improve oversight and monitoring of the effective implementation of Council Directive** 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin in all Member States.
- **Review Directive 2000/43/EC,** to broaden the scopes of banned discrimination and expressly include the terms anti-Gypsyism and intersectional discrimination.
- Include in the post-2020 European framework for national inclusion strategies for the Roma population **measures to combat discrimination against the Roma population and anti-Gypsyism,** both specifically and transversally in each area of social inclusion (housing, health, poverty, social services and education).

Presentation of disaggregated data

In this secton will present diaggregated data for the 425 cases collected by FSG during 2019.

Definitions of categorisation of cases:

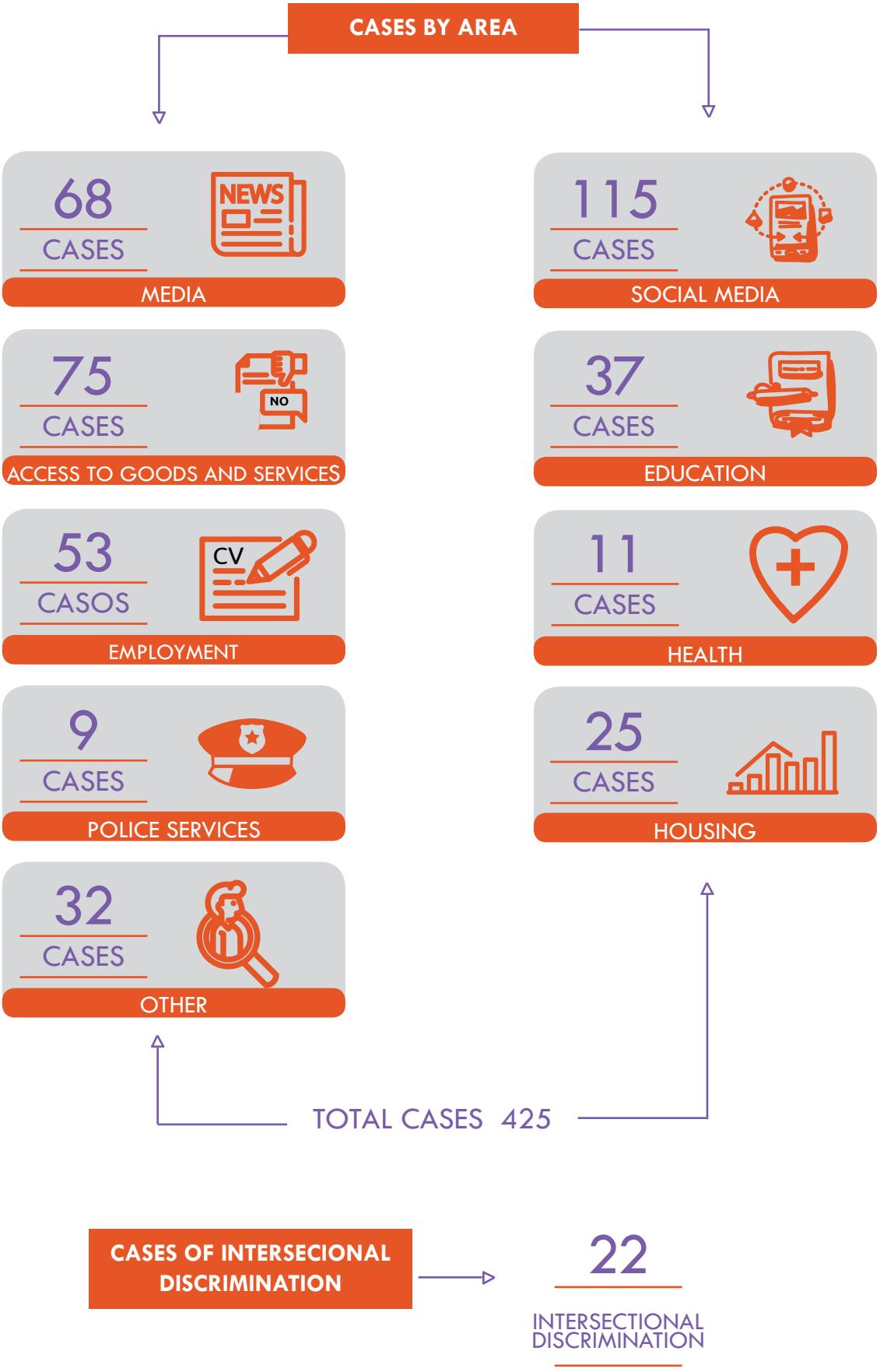
1) Individual Cases: When the discrimination or hate crime is exercised on a specific, identified person.

2) Collective Cases, three sub-categories:

- Roma community in general: Cases affecting the image of the whole Roma community, or that encourages hate towards the Roma community (e.g. poor journalistic practice where ethnicity is cited in a news article, or anti-Gypsy hate phrases are posted on social media: "All gypsies are... ").

- Case with indeterminate victims: Indeterminate group case: cases that affect a specific number of Roma people, but where the exact number is unknown (e.g. a group of young people are refused entry to a nightclub due to their Roma ethnicity, but we do not know who they are or how many they are).

- Case with identified victims: Case where a group of Roma people are discriminated against, and we know how many and who they are (e.g. five Roma boys are refused entry to a nightclub).


CASES BY AREA
68
CASES
NEWS
MEDIA
115
CASES
SOCIAL MEDIA
75
CASES
NO
ACCESS TO GOODS AND SERVICES
37
CASES
EDUCATION
53
CASOS
CV
EMPLOYMENT
11
CASES
HEALTH
9
CASES
POLICE SERVICES
25
CASES
HOUSING
32
CASES
OTHER
TOTAL CASES 425
CASES OF INTERSECIONAL DISCRIMINATION
22
INTERSECTIONAL DISCRIMINATION

ANALYSIS OF CASES

INDIVIDUAL AND COLLECTIVE DATA

192
INDIVIDUAL CASES

233
COLLECTIVE CASES

233 COLLECTIVE CASES

193
CASES ROMA COMMUNITY IN GENERAL

31
COLLECTIVE CASES WITH IDENTIFIED VICTIMS

9
COLLECTIVE CASES WITH UNDETERMINED VICTIMS

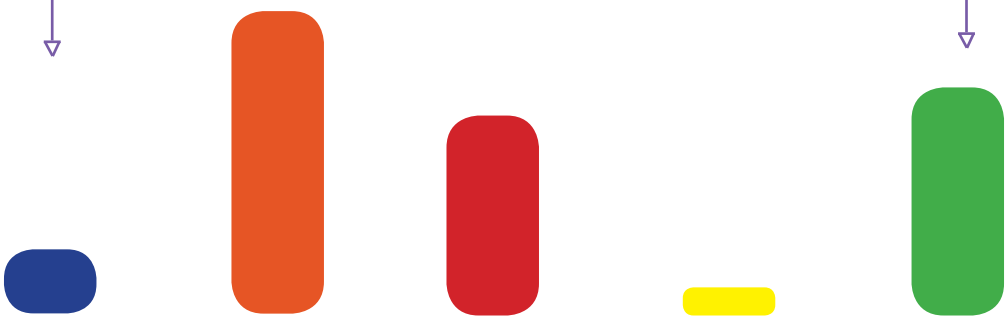
ANALYSIS OF VICTIMS

DATA BY GENDER
PERSONS IDENTIFIED 321

222
WOMAN

99
MEN

AGES OF THE VICTIMS IDENTIFIED



25
FROM 0 TO 15 YEARS

118
FROM 16 TO 30 YEARS

78
FROM 31 TO 45 YEARS

11
FROM 46 TO 65 YEARS

89
UNKNOWN

TOTAL No. OF VICTIMS IDENTIFIED 321

Chapter 3

Strategic litigation undertaken in cases of discrimination, hate crime and anti-Gypsyism

Introduction

Once again this year, at FSG we have chosen the most emblematic cases of discrimination and anti-Gypsy hate crime, on account of their context and the situation of the persons affected, in which we have pursued a strategic litigation. In all instances we have pursued court proceedings either in the Provincial Public Prosecutors for Hate Crime and Discrimination or in the corresponding courts in various judicial channels.

Many of these proceedings have been opened with the support of FSG by reporting and then exhaustively assessing, considering the testimony of the victim, the evidence and facts. We have selected the cases that are the most strategic to represent in court using expert human rights lawyers (specialising in discrimination) and in the legal matter corresponding to the particular nature of the case.

Once again, we must stress that this work would be unthinkable without the collaboration of our national teams, above all the Equality Officers specialising in equality of treatment and gender — more than 30 professionals, mostly Roman women, who are part of the *Cali Programme, for the equality of the Roma woman,* and are beacons for attention and advice, accompanying victims of discrimination and anti-Gypsy hate in an informed and empathetic way.

We must also highlight the firm commitment and work behind each case of discrimination and anti-Gypsyism, which is the driver behind the strategic litigation going further than the courts and entering forums and spaces in which these issues have previously been absent in public debate, public opinion and political agendas. This is all for the purpose of changing mentalities in society, where a great many

stereotypes and prejudices persist about the Roma population. It is important to publicly raise awareness and shine a light on situations of anti-Gypsyism, so that society as a whole can respond to and condemn them, thus generating the social change needed to see the principle of equal treatment, human rights and social justice realised.

Strategic litigation also opens up the possibility of applying national legislation and international standards on human rights, European case law, especially that of the European Court of Human Rights, highlights the legal gaps that persist and even has an impact on passing new legislation to make the right to equality and non-discrimination real and effective. This is not only with respect to the principle of equal treatment and non-discrimination; we are also working to achieve an intersectional focus in case law, fundamentally in cases specifically affecting Roma women, who receive specific aggravated responses to the type of discrimination (in the meaning of the Supreme Court Judgment in the case of Beauty Solomon[1], in which Spain was condemned for violence related to the discrimination of a black woman).

Finally, we must stress that strategic litigation would not be possible without the bravery and persistence of the people we support to report anti-Gypsyism; they face lengthy procedures that are not always successful, and they do it not just to defend their own rights but to defend those of people who may have suffered similar discrimination and violation of their rights. Effectively, when asked, "What would you like to happen?", most Roma people affected by discrimination tend to respond in the same way: "I don't want this to happen to anyone else just because they are Roma".

[1] See judgment at: http://hudoc.echr.coe.int/sites/fra-press/pages/search.aspx?i=003-4029409-4701569

Summary of strategic litigation cases brought in 2019 and follow-up of those pursued in previous years

In 2019 we advised and supported 17 cases through the courts, 10 of which were opened that year and the other seven being cases opened in previous years, one of which resulted in a successful conviction. FSG has also represented itself in court in seven cases, of which six are still ongoing, with the other case ending in the acquittal of the defendants.

We have summarised all the cases below.

A. CASES REPORTED THROUGHOUT 2019

1. Case of an aggravated racist attack against a Roma woman in Ontur (Albacete)

This is a case of an assault against a woman by her neighbours in Ontur, on the basis of her being Roma. The incident took place on 16 March 2019 during the town's local celebrations. When the woman went home after church, she was stopped by three neighbours, who pushed her and told her: **"You're not coming in here, fucking Gypsy"**, **"Fuck all your race, Gypsy"**, and hit her multiple times and threw her on the ground. The woman, convinced that what had happened to her was down to her ethnicity, reported it to the Guardia Civil, submitting a statement of her injuries. FSG advised the woman and supported her to extend the nature of her complaint to include anti-Gypsy hate crime within the assault. On 4 April 2019 a complaint was made to the **Albacete Provincial Public Prosecutor for an assault under section 147.1 of the Spanish Criminal Code, aggravated by racism under section 22.4 of the Criminal Code.** Due to the seriousness of the incident, the context and the documentary evidence gathered (photos and medical report), we decided to represent the case in court. We are currently awaiting a ruling and the opening of the oral hearing stage.

2. Case of violation of fundamental rights of Roma families in the northern district of Granada[2]

This concerned the violation of fundamental rights of families living in the neighbourhoods of northern Granada, through continued power cuts since the beginning of January 2019. Certain Roma families we were supporting in the neighbours on the north side of the city explained to us that their children were missing numerous days of school, the healthcare centre suffered power cuts, some people's breathing equipment they had at home had stopped working, and the streets were unsafe particularly for women and children, etc.

Given the electrical company Endesa's lack of a solution, **on 15 May 2019 a number of social organisations, parishes and families affected, with the collaboration of FSG, filed a Claim for the Protection of Fundamental Rights** with the Granada Court of First Instance. Although we were not cited as a party in the claim, FSG supported and advised families and was actively involved in

[2] This case received widespread media coverage, as can be seen below:
https://www.lavanguardia.com/vida/20190606/462705452998/demandan-a-endesa-por-la-media-de-6-apagones-al-dia-en-zona-norte-de-granada.html
https://www.ideal.es/granada/demandan-endesa-apagones-20190606140219-nt.html
http://www.elindependientedegranada.es/ciudadania/vecinos-vecinas-zona-norte-plantan-cara-juzgados-endesa-cortes-luz
https://www.cope.es/emisoras/andalucia/granada-provincia/granada/noticias/defensor-del-ciudadano-lamenta-indiferencia-endesa-ante-los-cortes-luz-20191120_555669

all coordination meetings with the lawyer arguing the case and the social organisations and persons affected. We also submitted an expert report to the case, written by an electrical engineer, setting out alternatives to the power cuts. **On 25 November 2019, the Claim was admitted for processing and the parties were ordered to appear in a preliminary hearing on 12 December 2019.**

In parallel to the court proceedings, social organisations took part in rallies, sit-ins, public statements, press conferences and letters to the company and to city hall. Before the court case, FSG wrote to Endesa on 24 April 2019 expressing our concern about the situation, to which Endesa responded blaming users for the power cuts due to not correctly maintaining the installations.

3. Case of ethnic bias in the case of a Roma mother in Jaén losing custody of her three children to be put up for adoption

This is a case of abandonment and subsequent fostering for adoption of three minors, aged seven, four and 18 months, from a Roma woman who was a victim of gender violence, in a **procedure that suffered serious irregularities and clear indications of discrimination.**

The Andalusian Government's child protection service decided on 25 May 2018 to declare abandonment on an interim basis. The mother sought intervention to recover her children, but was denied it. In addition to the mother, other members of the extended family made fostering applications, which were also denied. Less than a year later, on **2 May 2019, a guardianship procedure for eventual adoption was opened, with no consideration of the mother's efforts** to improve her personal and employment situation, or of the reports from social workers advising that the maternal grandparents were a good alternative to prevent the children being separated from their family.

FSG and experts in childhood and child protection studied the administrative case for the declaration of abandonment, confirmed that should the children be returned to their mother they would not be vulnerable, and ascertained that the irregularities in the procedure could constitute unfair or discriminatory treatment by the authorities.

Following this study, the case was deemed to be a strategic litigation case given the seriousness of the rights violated: the right of the mother and her children to be protected as victims of gender violence[3], the children's right to cultural and ethnic identity, which would be lost if they were placed with families not from their background, and to live with their original family and the right to equality and non-discrimination[4].

FSG is representing the mother through a specialist family and human rights lawyer. A number of different actions have been pursued:

- A complaint before the Jaen Family Court for the guardianship with eventual adoption of the three children to be revoked.
- An application to the Andalusian Government's child protection service to resume visitation between the mother and the three children, which has been suspended since the beginning of the guardianship with eventual adoption procedure.

[3] See sections 18. 19 and 20 of Spanish Basic Law 1/2004, of 28 December, on Comprehensive Measures to Protect from Gender Violence

[4] See Judgment of the ECHR in D.H. and others vs. the Czech Republic, of 13 November 2007

- Accompanying the mother and the family in court. A court hearing was held and a ruling was issued dismissed both the mother's application and the maternal grandparents' application, who also submitted a challenge to the denial of temporary fostering, through a lawyer.
- We have filed an appeal before the Jaen Provincial Court of Appeal.
- Application to the Andalusian Government to re-evaluate the mother given her change of circumstances since the declaration of abandonment.

We are currently awaiting a ruling on all the ongoing proceedings.

4. Case of harassment of a group of Romanian Roma women in Madrid's Plaza Mayor[5]

The events took place on 2 October 2019 in Madrid's Plaza Mayor, where a group of Belgian football fans supporting Club Brugge were involved in a series of incidents humiliating and harassing a group of Romanian Roma women. **FSG filed a complaint of hate crime and discrimination, under section 510.2 a) of the Criminal Code,** against the Romanian Roma women, involving multiple factors of discrimination that aggravated the situation.

On **14 August 2020, we received notice from the Court dated 21 July 2020 of the Order of Provisional Dismissal and Shelving** of the actions due to lack of proof of the perpetration of any criminal offence, and considering the events to have no criminal character.

In parallel to this, FSG published a press release[6], and sent a letter of complaint to the Sports Council and a letter to the Belgian embassy informing them of what happened and expressing concern at the harassment and degrading behaviour towards the women. The Sports Council responded by declaring its solidarity and profound rejection of the behaviour, and stated that it was taking steps to ensure that such an incident was not repeated, and to identify the perpetrators and take the corresponding sanctions.

5. Case of anti-Gypsy neighbourhood rallies in El Pozo, Madrid[7]

This is a case of anti-Gypsy harassment in El Pozo, Madrid, on 17 and 18 March 2019, following the death of a local person who was stabbed to death by a Roma young person. Some Roma families living in El Pozo contacted FSG and expressed their fear and certain discrimination they were experiencing when going to supermarkets, pharmacies, etc. FSG advised them and supported the families to prepare a statement of concern about the daily rallies of certain neighbours holding anti-Gypsy signs. Various meetings were called by the District Councillor to mediate and solve the situation. **On 20 March 2019, a complaint of threats and anti-Gypsy hate speech was filed, under section 510.1 of the Spanish Criminal Code,** principally for protection to be provided to Roma families living in the neighbourhood whose safety was under threat. The local police passed on the complaint to the public prosecutor for hate crime, who shelved the proceeding on the understanding that the main crime of murder was already being examined. **The local police are monitoring the situation in the neighbourhood and have told us that the situation is improving.**

---

[5] In 2016, fans of PSV Einhoven (Netherlands) were involved in a similar incident, which was reported by Fundación Secretariado Gitano and other organisations, leading to the Dutch authorities fining the perpetrators and banning them from the stadium for two years. Recently, a Judgment has found them guilty of hate crimes.

[6] https://www.gitanos.org/actualidad/prensa/comunicados/129510.html

[7] This case was widely reported in the media, such as: http://www.telemadrid.es/programas/telenoticias-2/Tension-vecinal-Vallecas-muerte-Paco-2-2104609589--20190318092821.html https://www.periodistadigital.com/politica/sucesos/201 9/03/1 9/una-absurda-reyerta-por-las-cacas-de-perro-acabo-con-la-vida-de-paco- acuchillado-por-un-vecino-gitano.shtml
https://www.periodistadigital.com/politica /sucesos/201 9/03/1 8/matan-a-hombre-de-64-anos-de-un-navajazo-en-el-cuello-en-una-reyerta- en-vallecas.shtml
http://www.telemadrid.es/programas/telenoticias-2/Incendian-Visita-Pozo-Tio-Raimundo-2-2104909567--20190319094034.html
http://www.telemadrid.es/programas/madrid-directo/nueva-concentracion-Vallecas-muerte-Paco-2-2104909559--20190319075846.html

6. Case of anti-Gypsy harassment and threats against a Roma family in Cuenca

This is a case of harassment of a girl and her mother by the family of the girl's boyfriend, and his suffering from insults, harassment and threats from the family for being in a relationship with the girl, because she was Roma. Both the girl and her mother and the girl's boyfriend received messages such as: **"We don't want Gypsies in the family. If your uncle and your brother find out it'll kill them. They don't want a Gypsy in the family," "fucking Gypsy", "he has no place being with your daughter, the day I see you I'll kill you both."**

El 5 de diciembre de 2019 se interpuso un escrito a la Fiscalía provincial informando de los hechos, que consideramos constitutivos de un delito del art. 169 del código penal con la agravante de racismo del art. 22.4 del Código penal. En fecha 26 de diciembre de 2019 se notificó a la FSG el Decreto de apertura diligencias y archivo del caso que estaba judicializado en el Juzgado de Instrucción nº2 de Cuenca, notificándonos el número de Diligencias y tramitándose como un delito leve de amenazas, sin contemplar la agravante de racismo. En fecha 22 de enero de 2020 se dictó Auto por el Juzgado de Instrucción en el que se notificaba el **Archivo de la causa con fecha 12 de noviembre de 2019**.

La mujer nos trasladó su sensación de impunidad y a pesar de que se valoró la posibilidad de recurrir la Sentencia, finalmente se decidió no interponer recurso por falta de probabilidades de obtener una Sentencia condenatoria.

7. Case of denying 12 young people access to an establishment in Jerez because they were Roma[8]

The incident took place on 13 July 2019 when a group of 14 young people went to the nightclub "Banana" to celebrate a stag party. When entering, they showed the booking they had made three days before. The doorman told them: "you can't come in because you're not our type". One of the guys asked how they were not the right type and the doorman insisted: "Just that – you're not the right type". The guy asked if that meant "because we are Roma" and the doorman responded: "Yeah, we don't want that kind of clientele in here".

FSG phoned the owner of the nightclub, who said that he was unaware of such an incident occurring. He was also sent a letter asking him to acknowledge the incident and apologise to the boys, and take the appropriate steps to make sure it never happened again. However, the owner continued to deny that it had happened or recognise that there had been any discrimination.

Accordingly, FSG filed a complaint with the Jerez Provincial Public Prosecutor for refusal to access goods and services in the private sphere, under article 512 of the Criminal Code.

We are currently awaiting notification from the Public Prosecutor.

8. Case of violation of a Roma girl's rights, having been prosecuted for a theft she did not commit in a shopping centre in Madrid[9]

The case concerned a young Roma girl who went to Carrefour with her sister-in-law and her baby. When leaving, she was stopped by the security guard who was convinced that the toy that her baby

---

[8] Media coverage:
https://cadenaser.com/emisora/2019/07/15/radio_jerez/1563187162_904253.htmlhttps://elmira.es/14/07/2019/prohiben-la-entrada-a-un-grupo-de-jerezanos-en-una-discoteca-de-el-puerto-por-ser-gitanos/

[9] Media coverage:
https://www.efe.com/efe/america/destacada/ser-gitano-sentirte-una-persona-menor/20000065-4266004
https://www.rtve.es/alacarta/videos/informe-semanal/informe-semanal-racismo-invisible/5632223/ (a partir del minuto 2:45)

was holding, with a value of 6.90 euros, was stolen. The girl assured the security guard they she had not even been to the toys section of Carrefour that day, and that the toy was a free gift she received when a toy shop had opened. However, the girl heard the security guard tell his colleague: **"They're Roma, of course they stole it"**.

In spite of the girl's explanation, the security guard detained her for more than an hour and a half, with her baby, in the cold and without being able to feed her or change her nappy, until the police arrived. When the police officers, they booked the complaint, solely on the basis of the security guard's testimony and without considering the girl's explanations, who asked for the security footage to be consulted as evidence that she had not been in the toys section. She left with a citation to appear in court for a speedy trial for one count of petty theft.

The next day the speedy trial took place, in which the girl asked the judge to call the toy shop assistant as a witness and to view the security cameras. However, the judge only considered the security guard's version of events, sentencing the girl to a fine of 26 euros for petty theft, plus a criminal record.

FSG assessed the case as strategic litigation, in which once again a Roman woman had been accused of a crime that she did not commit, based on prejudices about Roma women in shopping centres. The investigation was conclusive: FSG spoke to witnesses; we requested the recording of the trial in which the girl was sentenced and saw that the presumption of innocence had not been respected, in spite of applying to all persons in our criminal justice system. In this case, the sentence has no rational basis beyond the testimony of the security guard.

We filed an **appeal before the Provincial Court of Appeal on the basis of violation of fundamental rights, such as the right to effective judicial protection under article 24 of the Constitution, due to the girl being deprived of a fair trial due to her ethnicity and the right to equality under article 14 of the Constitution**, which in this case is clear since the girl's version of events, which is consistent, coherent and persistent, is not taken into account.

In the appeal we called for the trial to be void and repeated with all appropriate guarantees, and also for the girl to be acquitted. The appeal was dismissed, in a ruling from the Court of Appeal that fails to address any of the fundamental grounds of the violation of the principle of equality and non-discrimination.

9. Case of harassment and aggravated racist threats against a Roma woman in Valencia

The case concerns the harassment and threats for more than two years that a neighbour directed at a Roma woman and her family, her child under legal age and her very elderly parents, with her father being disabled and needing care.

The woman filed a complaint on 8 August 2019, but the harassment incidents from the neighbour continued. On one occasion, the woman found notes in her letterbox that read: **"GYPSIES, JUST DIE"**, with a Nazi swastika drawn on it, and the word "VOX". They also sometimes heard the neighbour shouting: **"If Hitler was alive there wouldn't be Gypsies", "Gypsies should be burned, if Hitler was alive there wouldn't be Gypsies, dead Gypsies", "Gypsies are rats and cockroaches"**. When the neighbour encountered her, he would make threatening gestures, dragging his finger across his throat. Once, she heard him say that he had two hitmen who were going to go to their house as "not care if there were children or animals".

FSG advised the woman, who filed an extension on the complaint, and in parallel we filed a writ with the **Valencia Provincial Public Prosecutor to be cited in the proceeding for the offence of threats under section 169 of the Criminal Code, aggravated by racism under section 22.4 of**

the Criminal Code, and a crime of harassment of the Roma ethnicity under section 510.2 of the Criminal Code.

On the day of the trial, FSG accompanied the woman and kept her informed of any developments throughout the criminal procedure. Sadly, the court heard the case as a minor offence of threats, without including the aggravating racist factor, and the neighbour was acquitted, because the court found there to be contradictory versions that did not prove that a crime had been committed.

The woman told us of her feeling of the neighbour's impunity, and although she considered the possibility of appealing the judgment, in the end she decided not to, as she was unlikely to achieve a conviction.

10. Case of threats to Fundación Secretariado Gitano through two messages sent to its offices in Granada

On 15 July 2019, our office in Granada received two written messages that read: "Gypsies fucking scoundrels I shit on your ancestors fucking bastards eat shit fucking thieves fuck all your race and all your ancestors let's see if you show your face fucking scum cock suckers", "Fucking Gypsies cock suckers bloody thieves I shit on your ancestors fucking bastards cock suckers if you come near me I'll cut your dicks off faggots I shit on your race and on your whore mother fucking bastards".

In view of the seriousness of the messages sent directly to our office, we filed a complaint with the Granada Public Prosecutor on 18 July 2019, for threats against the Roma people under section 170.1 of the Criminal Code and section 510.2 of the Criminal Code for damaging the dignity of Roma people. Having received no news from the Public Prosecutor, we assume that the case has been shelved.

B. FOLLOW-UP OF CASES REPORTED BY FSG IN PREVIOUS YEARS[10]

11. Case of an aggravated racist attack against a Roma teenager in Castellón

This is case of a continuation of the proceeding opened by the complaint that FSG made with the Public Prosecutor in 2016 for an aggravated racist assault, under section 147.1 and section 22.4 of the Criminal Code, where a Roma child was assaults with a **broken bottle, accompanied by shouts of anti-Gypsy comments such as "the Roma race should be exterminated" or "get out of this town"**. Given that it was such a serious anti-Gypsy hate crime, FSG provided legal defence through the court representation of the victim of the racist assault. On 14 March 2018, the Provincial Court of Appeal issued an order dismissing the appeal filed by the defendants, which we challenged as a private prosecution. On 8 August 2018, FSG filed a petition for classification as private prosecution. On 9 April 2019, the Public Prosecutor issued its provisional classification as a count of aggravated racist assault, and **on 12 April 2019, an order was issued to open the oral hearing stage**, to refer the actions to the Castellón Criminal Court, which in turn referred to the Castellón Senior Criminal Court. The oral hearing has been scheduled for 12 November 2020. When it is held, a total of four years will have passed since the incident was reported, which is an undue delay that undermines the victims' right to justice.

[10] In this section we will remark on certain cases that we reported in our 2017, 2018 and 2019 annual reports. We will update on the latest developments of proceedings brought by FSG.

12. Case of denying three Roma ethnicity young people access to a nightclub in Puertollano[11]

FSG reported this case on 5 December 2016 before the Ciudad Real Provincial Public Prosecutor, for denial of access to goods and services on the grounds of discrimination (set out in section 512 of the Criminal Code). This is a case of three young people who went to a night club in Puertollano. When attempting to enter, a doorman told them: **"I can't let you in because my boss goes mad if we let in Gypsies".**

The trial was held on 16 January 2020 and the three defendants were acquitted (the two doormen and the nightclub owner)[12] due to contradictory versions and disputes in the versions of events. **FSG filed an appeal against the Court's ruling on 19 February.** We are currently awaiting a ruling on the appeal.

13. Case of denying two Roma ethnicity boys access to a bar in Valladolid[13]

The case concerns and young man with three boys, all Roma, who entered a bar and were told by the waitress: "**we don't let minors in, and my boss doesn't allow Roma either, so you have to leave".** The waitress gestured to their friend who was inside the bar, also of Roma ethnicity and said: **"you've got to leave because my boss doesn't allow Roma, he doesn't want to lose customers".** FSG filed a complaint with the Valladolid Provincial Prosecutor for the offence of refusing access to goods and services under article 512 of the Criminal Code, and we pursued a private prosecution. The examining criminal court issued a provisional acquittal, on the basis that: "the commission of the crime does not appear to be duly justified...". The Provincial Court of Appeal partially held up our appeal, preventing the case from being closed. FSG and the Public Prosecutor both filed statements of prosecution and the application

14. Case of an aggravated racist attack against a Roma girl by her landlord

This is a case of an aggravated racist attack upon a Roma ethnicity girl by her landlord; when he discovered she was Roma he hid the household utensils and told her, ***"your boyfriend is Moroccan and you're Roma, I don't trust your type"***, until one day he threatened them with a knife, injuring the girl's hand. FSG filed a complaint on 26 July 2018 with the Granada Provincial Public Prosecutor's office for hate crime and discrimination, for assault under article 147.1 of the Criminal Code, aggravated on the basis of racism under section 22.4 of the Criminal Code. The Public Prosecutor notified FSG on 20 September 2018 of the opening of the investigation stage and referral to the court. **On 13 November 2019, we accompanied the girl to Court for the oral hearing, in which the girl was a prosecution witness. The proceeding was eventually shelved by the Court.**

---

[11] This case was reported widely in the media, for example:
https://www.eldiario.es/castilla-la-mancha/denuncian-discriminacion-personas-discoteca-puertollano_1_1076773.html
https://www.lanzadigital.com/provincia/ciudad-real/denuncian-discriminacion-racial-en-tres-discotecas-de-puertollano-mi-jefe-no-quiere-gitanos/#ringtone/gallery/post_img_gallery/2

[12] See FSG press release: https://www.gitanos.org/actualidad/prensa/comunicados/130703.html

[13] Media coverage:
https://www.eldiadevalladolid.com/Noticia/ZAECF554A-972A-6239-9B39ABBCAE56EC06/201910/Juzgan-al-dueno-de-un-bar-por-impedir-la-entrada-a-gitanos
https://www.elnortedecastilla.es/valladolid/dueno-camarera-valladolid-20191023111552-nt.html
https://www.abc.es/espana/castilla-leon/abci-dueno-y-camarera-valladolid-juicio-impedir-entrada-jovenes-gitanos-201910231154_noticia.html
https://www.tribunavalladolid.com/noticias/absueltos-el-dueno-y-la-camarera-de-un-bar-que-estaban-acusados-de-no-dejar-entrar-a-personas-de-etnia-gitana/1573246691

15. Case of denying three Roma ethnicity young people access to a nightclub in Valencia

This is a case of discrimination on ethnic grounds through refusing three Roma boys access to a nightclub; when they approached the establishment, the doorman indicated that they could not enter: **"I've been told by my boss not to let Roma in". FSG filed a complaint with the Valencia Public Prosecutor for hate crime and discrimination on 16 April 2018** for refusal of access to goods and services in the private sphere, under section 512 of the Criminal Code. An investigation was opened and the boys were ordered to give testimony. They recently took part in an identity parade. **We are currently awaiting a ruling, which we are hoping will open the oral hearing stage.**

Parallel to this, a claim was filed with the Office for Consumer Affairs for denial of access on anti-Gypsy grounds. We were notified of the referral from City Hall to the Security Directorate General for competence reasons. The administrative claim is currently paused until a ruling is given by the courts.

16. Case of anti-Gypsy hate speech on online forum Burbuja.info

FSG filed a complaint with the Santiago de Compostela public prosecutor for a series of remarks constituting extreme hate speech against Roma people on the internet forum Burbuja.info, such as, **"that garbage are screaming to be exterminated", "they're asking for extermination, it's what they need" "....we known what that scum is, they're subhuman and we all know what they deserve. It's just a matter of time.... Are you listening you subhuman scum, come after us, we are going to end you anyway..."**. The Santiago Court recused itself in favour of the Ourense Court, where the author of the comments was located. **We were cited in the proceeding and pursued a private prosecution for a crime under article 510.1 of the Criminal Code,** due to severity of the comments, the evidence obtained and the location of the perpetrator. The suspect was interviewed and one of the preliminary applications made by FSG was upheld, with the website being asked to provide information about the perpetrator.

We have **recently filed our submissions and we are awaiting a date for trial.**

17. Case of hate speech on social media on a website[14]

FSG reported the case to the specialist provincial public prosecutor on 5 December 2012 for a crime of hate speech on a website dehumanising and inciting hate against Roma people.

The website contained a series of comments, including: ***"Everyone knows what a Gypsy is. It's a semi-human race (or not human, you might say)". Why do we hate gypsies so much? Honestly, because they deserve it"***. *"But gypsies, for as long as the world has existed, have stolen, treated others like shit, marginalised themselves and blamed others...we don't have to put up with it. They are the cause of this plague, and we don't want any more of their flamenco shit, their slum neighbourhoods and all the rest. For our own good, we hope they don't stick around for long, or else Spain will carry on being a third world countries for centuries to come".*

The proceeding was brought by the Barcelona Public Prosecutor, which, following a series of preliminary investigations, discovered that the author was located in Málaga, and referred the actions to the courts in that area. On 29 August 2019 we received a citation from the Málaga Criminal Court to give evidence as witnesses in the oral hearing, which took place on 16 September 2019.

[14] See FSG press release: https://www.gitanos.org/actualidad/prensa/comunicados/129289.html

On 24 October 2019, we were notified that a judgment was issued to convict the defendant for an offence of hate and discrimination, sentencing him to six months in prison and a special disqualification from passive suffrage and four months of daily financial penalty of 10 euros.

Conclusions

1. The strategic litigation cases that FSG has undertaken have achieved major progress:

- The possibility of passing the standards of international human rights organisations in the fight against discrimination and racism to national case law, as well as case law of the European Court of Human Rights.
- Practice and experience in the years that FSG has been litigating has equipped us with tools and coordination networks with key players in the justice administration (specialist public prosecutors, judges and lawyers) and we have established synergies and alliances with organisations that work to tackle racism and discrimination.
- An importance achievement is to reach people who have suffered discrimination and hate and are not in a position to pursue litigation themselves, either due to fear of retaliation, lack of knowledge of the courts system or the high cost of legal representation. That is one of our main goals – to provide support in long and complex situations that are difficult for an individual to manage.
- When attackers respond in court, even when the eventual ruling is not in favour of the victim (frequently, through application of the principle of minimum intervention of criminal law), Roma people feel less of a sense of impunity, have greater trust in institutions, and the rate of reporting goes up.
- We shine a light on cases that perpetually arise, such as denial of access to goods and services or intersectional discrimination suffered by Roma women in shopping centres. These are cases that are repeated year after year, and we continue to denounce them.
- Roma people who we accompany and represent in court tell us that they feel empowered to be claiming and exercising their rights, as holders of these rights. Litigation empowers and gives a voice to Roma men and women who decide to report their case in exercise of their rights and that of their community.

2. A series of procedural difficulties arise when pursuing strategic litigation in cases of discrimination, hate crime and anti-Gypsyism:

- Lack of response on many occasions, creating impunity, in spite of the creation of the figure of Provincial Public Prosecutors for Discrimination and Hate Crimes, which was a major step forward to guarantee specialist knowledge in this kind of crimes. However, there is no such specialty in the justice administration.
- We must emphasise that the complexity of these discrimination and anti-Gypsy hate crimes necessitates a comprehensive approach, with a focus on human rights, diversity and gender that is currently practically non-existent.
- Anti-Gypsy prejudice in the judiciary and police persists, as well as a lack of empathy with victims and continued ethnic bias, sometimes aggravated by gender prejudice.

- In criminal proceedings it is very difficult to offer evidence, since this boils down to the testimonies of the assailants and the victims. In such cases, the proceeding is often shelved due to "the presence of contradictory versions". Since it is not possible to reverse the evidentiary burden, it is difficult for criminal proceedings to succeed in cases of discrimination.

- The slowness of trials, taking up to seven years to reach oral hearing stage (see the cases of Málaga and Castellón), which are also undue delays and therefore violate the right to a fair trial, give a sensation of impunity and the system's failure to grant justice. It also takes an emotional toll on victims.

- The low rate of convictions of perpetrators of discrimination and racism in general, and anti-Gypsyism in particular. Likewise, there are cases in which a conviction is secured but without the aggravating factor.

3. Moreover, from the victim's perspective, there are other barrier to access to justice:

- Deadlines can be disadvantageous to the victims: they need time to absorb what has happened to them and to take the decision to file a complaint, but statutory deadlines in many proceedings do not allow them to take that time.

- On the other hand, many proceedings are excessively drawn out, preventing victims from achieving swift and effective justice.

- The delay in holding oral hearings is detrimental to victims, who are not able to recall the events in detail or fail to recognise the perpetrator in an identity parade, leading to an acquittal.

- Sometimes, opening a court proceeding raises expectations that are not fulfilled, due to difficulties indicated above preventing a satisfactory outcome for victims.

4. Taking into account the above circumstances, it would be helpful to continue to make progress in the response by police and the courts to cases of hate crime and discrimination:

- A training plan is needed for the national security forces. In spite of the progress that the creation of specialist hate crime units within the national security forces has made in combating hate crime and discrimination, many officers still lack sufficient training to address this kind of crime, and strong prejudice and stereotypes against the Roma community persist.

- Awareness and training for key officers in the court setting (judges, prosecutors, duty attorneys), helping to combat prejudice, coming into play when addressing cases and questioning the credibility of victim testimony, and exploring the intersectional focus and knowledge of national and international regulations and standards that apply in cases of hate crimes, discrimination and anti-Gypsyism.

- The creation of provincial prosecutors that specialise in hate crimes and discrimination was a huge step forward in the fight against all forms of racism, including anti-Gypsyism, which we have seen in many of the cases we have brought before the courts. However, it is important that more resources are poured in, and to continue to push coordination with the organisations we work with in the fight against discrimination and hate crime, to enable the continued tracking of reported cases.

- In order to place greater focus on hate crimes, discrimination and anti-Gypsyism affecting Roma people, the statistical reports of the Public Prosecutor's Office and the Judicial Power Council should include a category on anti-Gypsyism, as is planned for 2020 in the annual reports of the Ministry of the Interior, and in the monitoring rounds on hate speech published by the European Commission.

Chapter 4

In depth:
Analysis of discrimination in access to employment

Employment and the Roma Community. The right to employment free of discrimination: a fundamental pillar to achieve a dignified life

María del Carmen Cortés Amador y Cristina de la Serna

Department of Equality and Fight Against Discrimination, Fundación Secretariado Gitano

1. Introduction: the human right to employment and the situation of the Roma community

The Spanish Constitution of 1978 recognises the right to work (section 35.1, Chapter II, Section 2 on the rights and duties of citizens). The fact that the right to work is included in Chapter II, and therefore after Chapter I on fundamental rights should not mislead major legal operators about the importance of guaranteeing, protecting and developing it, not just due to the interdependence of the right to work with other fundamental rights, but because of its condition as a human right in numerous international instruments that Spain has signed.

Article 23.1 of the Universal Declaration of Human Rights of 10 December 1948 reads: "Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment." However, as we will see in what follows, if we define a human right as something essential to ensure that the existence and development of people is dignified, we soon realise that the Roma community is one of population groups with the least opportunities to access these rights.

On more than one occasion, the International Labour Organization has stressed the importance of applying the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Spain has been a member of the ILO since 8 November 1985.

This Convention 111 is important because: a) it is the first international instrument that bans general discrimination in the world of work, preceding those adopted by the United Nations; b) it does not just concern discrimination in working conditions, but also entry to employment and access to professional training, both in terms of employment and self-employment; c) although some of the conception of equality fits into the idea of equal treatment and opportunities, it lays the foundation to go beyond it and leaves the door open for States to establish positive actions; d) it shines a light on indirect discrimination; e) although it sets out the classic catalogue of causes of discrimination to combat (race, colour, sex, religion, political opinion, nationality or social origin), it invites national legislators to add others.

At European level, Directive 2000/43/EC and Directive 2000/43/EC, both of which have been transposed into our law, also oblige States to ensure that the right to employment is guaranteed in equal conditions free of discrimination for a series of circumstances, including ethnic origin.

Regardless of these laws have said historically, the Roma population in Spain and Europe has been one of the most rejected and discriminated against population groups. In spite of the achievements in Spain to improve the Roma population's living conditions; in spite of the numerous plans and programmes developed by the public authorities; and in spite of the preparation of national and European strategies for the inclusion of the Roma community, the Roma population in Spain remains one of the population groups that most struggles to enjoy rights, goods and services in equal opportunities as other citizens.

Considering the position of social disadvantage and inequality and that employment is one of the key elements to guaranteeing equal opportunities and the full development of citizenship, 20 years ago Fundación Secretariado Gitano launched the Acceder employment programme in the context of the European Social Fund's Operational Programme to Combat Discrimination. This is a programme for recruitment and improved employability, with the ultimate aim of effectively employing the Roma population. In the 20 years that it has been running, it has become a driving force to promote equal treatment and equal opportunities for Roma people in the realm of employment.

On the 20th anniversary of this transformational programme, which has had such an impact and has changed so many lives, the Department of Equality and Fight Against Discrimination at Fundación Secretariado Gitano wants to pay special particular tribute, by focusing our annual report on the issue of discrimination in employment.

In spite of the major progress made in the labour inclusion of Roma people, there is still huge inequality and social and labour disadvantage, which was recently confirmed in "Comparative study on the situation of Roma people in Spain in relation to employment and poverty 2018", published in 2019 by Fundación Secretariado Gitano.

According to the Study, there are still large gaps between the general population and the Roma population when it comes to employment, which are particularly large for Roma women, and this has an impact on the poverty rate. For instance, the unemployment rate among the Roma population is 52% — three times more than the unemployment rate in the general population, which is 14.5%. As we said, for women the differences are even greater: while the unemployment rate among Roma women in 60%, for non-Roma it is 16%.

However, there are other important indicators of the gap between the Roma community and the rest of society, even when the do manage to break into the labour market. Firstly, the low rate of salaried workers in the Roma community (53%) is alarming when compared with the rest of society (84%), meaning people working in jobs with more regulated and protected workers' rights. Moreover, the high percentage of Roma people engaged in unregulated and precarious work is also alarming: while the temporary work rate is 27% among the general population, for Roma people it rises to 73%. These figures paint a picture of exclusion from the work market, resulting in lower participation, poor protection of rights, precarious employment and few possibilities to make sufficient social security contributions to ensure a dignified pension in future.

The uneven situation in terms of the Roma community's access to the labour market is owing to numerous factors, according to the authors, "decisive to employment", such as gender, age, social situation and family responsibilities, with education being one of the most decisive factors to securing employment, in particular having successfully completed secondary education. However, these factors do not explain it all: even weighing up the data and giving the general population the same characteristics those of the Roma community in terms of these factors, the investigation showed that differences between the groups in accessing employment remained. The initial gap would reduce to just over half, but there would still be a difference due to other reasons. This "black hole", as the study calls it, could be owing to various elements not measured in the study, one of these being discrimination.

According to the Study, 53% of Roma men and 42% of Roma women say that they have felt discriminated against, particularly in areas related to work such as interviews or relationships with their managers. This percentage is similar to the figure documented in previous employment reports on employment and the Roma population published in 2005 and 2011: the percentage of people who said they felt discriminated against at work has held steady at around 45% in all three editions of the study. In addition, throughout the last 16 years that we have been assisting victims of discrimination, we have documented numerous cases in the realm of employment, meaning that there is no doubt that discrimination continues to be one of the barriers faced by Roma people when attempting to exercise their right to dignified employment in equal conditions.

II. Discrimination in access to and during employment of Roma people: the most common discriminatory practices

For the past 16 years, the Department of Equality and Fight Against Discrimination Fundación Secretariado Gitano has been identifying and recording **incidents of discrimination and anti-Gypsyism** in access to employment and training for employment, as well as other incidents taking place during the period in which the Roma person is employed.

FSG has published 16 annual reports on discrimination and the Roma community between 2004 and 2020. In that time, it has examined and

documented **a total of 434 cases** of discrimination in employment, **mainly in the private sector.** These cases are just a sample of the reality due to the widespread underreporting of cases of discrimination in access to employment.

Underreporting in this area occurs because the majority of Roma people who are victims of some kind of discrimination do not trust the institutions that are supposed to protect their rights; they have normalised or assimilated the discrimination, preventing them from any kind of reaction; they may fear retaliation from the employer; they may be uncertain due to the difficulty of proving racist motivation and the difficulty of gathering evidence.

Roma woman — like the majority women — suffer discrimination in employment. However, Roma women have added disadvantages simply due to being Roma, which no doubt contributes to a specific kind of discrimination: **intersectional discrimination.** This discrimination may have a greater impact on Roma women who have not had the opportunity to go to school or receive an education. In FSG's study of employment and the Roma population that we referred to above, it is clear to see how the gender role is a terrible hindrance to women, both in terms of opportunities to complete formal education and in terms of the possibility of gaining access to remunerated work, due to the burdens of family responsibilities.

From analysis of the 434 cases we have been able to identify that the most common discriminatory situations in access to employment continue to be the **refusal to offer opportunities because someone appears to be or is Roma**, particularly in recruitment processes. In these cases, the identification of certain surnames or addresses in certain neighbourhoods have been sufficient reason to not even interview candidates. The association and permanence of stereotypes and prejudices translate into a direct refusal to hire a Roma person or their lack of prospects. Many perpetrators of discrimination have openly shown their prejudice and have refused to hire Roma people, or have refused to all Roma people to carry out internships in their work centres or establishments. On occasions, we have seen how job offers have "disappeared" when the candidate is Roma, or where a Roma person has not been hired due to previous negative experiences with other Roma people.

One of the most remarkable characteristics of the Spain Roma population is their great diversity and heterogeneity. Since many Roma people do not meet the stereotype entrenched in the collective imagination about how they are supposed to be, discrimination in employment takes place when the worker identifies as Roma, when they are identified as such or when one of their own colleagues announces them as such. In such cases, the manager or employer refuses a renewal of contract or any promotion, particularly in customer-facing roles.

It also continues to occur that Roma workers are accused of any incident that takes place in the workplace (such as missing cash, when the Roma employee is automatically suspected), to the extent that the Roma person chooses to leave or stays quiet and does not report it in order to avoid being fired.

Our interventions in these 434 cases of discrimination and anti-Gypsyism took place fundamentally based on informing and advising victims on their rights, the workers statute and options such as filing a judicial claim, the labour inspectorate or sending a letter of complaint to the company or informing trade unions.

An important element to stress about our interventions (in-person or telephone interviews, in-person support, information on rights when faced with discrimination in employment, etc.) with victims is the assimilation or normalisation of discrimination as something natural and inevitable in life — a situation of resignation that is, particularly for the younger population, a major barrier to reporting and reclaiming their human rights in the public sphere and private sphere.

Although the majority of people affected have rejected any kind of intervention for fear of retaliation, particularly in small towns where there are limited employment sources, in some instances, Roma people have said they would like to report or pass on their experiences of discrimination to trade unions or provincial labour inspectorates. Empowering people by giving them tailored advice and accompaniment has a great impact on their situation.

For people who discriminate, mediating and liaising have been the main channels of communication

and contact, which we have combined with awareness and information about breaching legislation and the possibility of being prosecuted for discriminatory attitudes and behaviour towards Roma people. Although many companies continue to deny that discriminatory situations and behaviour take place towards Roma people, we have had some success stories, mostly thanks to the work of our employment scouts in our Acceder employment programme, achieving the right solution not just for victims of the discrimination but for other Roma people who have been hired after the change in attitude created by companies and managers.

When the strategy chosen has been to file complaints with the labour inspectorate, there have been very few occasions in which we have obtained an appropriate answer, and there are practically no cases of companies being prosecuted for anti-Gypsyism or discrimination against Roma people. We believe there is still much progress to be made, and these institutions need to investigate more thoroughly and better apply European standards (that are also transposed into labour regulations) in terms of the necessary investment in evidentiary burden when reporting discrimination.

Conclusions and recommendations. Proposals to tackle discrimination in employment

Employment is a human right on which the effective exercise of many other rights depends, such as the right to participation or the right to sufficient pay to satisfy their needs and those of their family, as well as other civil and political rights.

We have seen how, in spite of Spain being a country with development policies based on human rights and democratic principles such as equal treatment, it barely reaches the target set in article 9.2 of the Constitution, which establishes that, broadly speaking, the promotion of equal opportunities and the obligation of public powers to "remove any material barrier and guarantee equal opportunities in accessing dignified, quality employment".

To realise this human right of the right to work, States must establish the legal and administrative mechanisms to effectively apply any laws that will protect and defend the right to equal treatment and the right to non-discrimination in employment.

It is essential that we promote coordinated work to defend equal treatment and non-discrimination and, therefore, the application of anti-discriminatory employment laws with the main institutions and authorities involved such as regional labour and social security inspectorates, trade unions, including companies and employers. Fostering a company culture of awareness remains fundamental to their acknowledgement of the right to employment as a fundamental right, with protections and constitutional safeguards, and also that the right to work represents a link for every citizen with the society they belong to, and in which they are entitled to actively participate.. If opportunities are not created to make this link, Roma people will be automatically excluded.

If we want to achieve a fairer, more inclusive society capable of tackling and contemplating all diversity currently in the working environment, we cannot allow there to still be persons — citizens — who still have no ability to access to minimal levels of social welfare, which often is the gateway to dignified employment.

Encouraging active employment policies and access to education and training for employment are fundamental, and they must be adapted to the reality of the Roma community. If we want these policies to be truly effective and have positive outcomes, public powers and authorities must address the fight against discrimination as a chronic structural problem preventing the labour inclusion and promotion of Roma people.

For this reason, we believe it is vital to take steps and make proposals to properly address the discrimination suffered by Roma people in the realm of employment:

- Eradicate discrimination towards the Roma community, for which we need the approval of a **comprehensive equal treatment and non-discrimination law** that establishes sanctions for people and companies who discriminate against Roma people for any reason.

- It is also absolutely essential that the authority responsible for enforcing labour legislation, the

Labour Inspectorate, includes the prevention and eradication of discrimination against the Roma community among its core objectives.

- We need companies to recruit in a way that guarantees equal treatment during the recruitment process. It is vital that we break down stereotypes and prejudice regarding image or physical appearance, and hire according to skills and ability.

- We need companies to pursue training, skills and the hiring of Roma people as part of their corporate social responsibility.

- There must be oversight of labour relations to prevent and address labour discrimination and to foster intercultural values and respect for social and cultural diversity in relations among co-workers.

- We need victims of discrimination at work to begin to trust institutions and we need to encourage them to report, which is why it is essential that they see those mechanisms working properly.

- To guarantee a fairer presence of Roma women in the labour market, tailored active employment policies are needed for women.

- We need an intersectional focus and effective measures to alleviate the disadvantages and inequalities affecting Roma women in work and occupational training.

Employment and the social safeguarding of workers belonging to the Roma population: ethnic discrimination with added gender discrimination.

Mª Lourdes Arastey Sahún

Supreme Court Judge (Social Court)

Introduction

Although not an absolute and unconditional right, the right to work is recognised as a fundamental right in article 6 of the International Covenant on Economic, Social and Cultural Rights of 1966, which states everyone's right to have the opportunity to make a living through work they freely choose or accept, and will take the appropriate steps to guarantee this right.

Within European Union law, article 15.1 of the Charter of Fundamental Rights (CFREU) declares that everyone has the right to engage in work and to pursue a freely chosen or accepted occupation. Article 23 enshrines equality between women and men in all areas, including employment, work and pay.

It goes without saying that the differences in employment between men and women persist not just in Spain but throughout all EU Member States. This gap, which is far more than just a pay gap, becoming a separation in terms of spending power, to women's detriment, is exacerbated in the case of the Roma population. This is particularly serious because our legislation not only forbids unequal treatment on the basis of sex but also prohibits discrimination based on ethnic or racial origin.

We will briefly examine the scope of the protection given for the ethnicity of people in our legal system, particularly the situations that have generated a reaction from the courts in relation to people from the Roma community, both in our country and in Europe.

1.- The principle of equality and the prohibition of discrimination for specially protected personal factors: ethnic origin.

Article 14 of the Spanish Constitution reads: "Spaniards are equal before the law and may not in any way be discriminated against on account of birth, race, sex, religion, opinion or any other personal or social condition or circumstance."

As well as the Constitution, our domestic legislation must be interpreted according to the international treaties that Spain has ratified.

The provision in the Spanish Constitution is also in line with article 14 of the European Convention on Human Rights (ECHR), which reads: "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."

In addition, Spain's membership of the EU has meant that our legislation has accommodated the principles of EU law. EU legislation prohibits discrimination due to sex, race, colour, language, religion or conviction, political or other opinion, association with a national minority, property, birth, age or sexual orientation (article 21.1). That general principle is developed in Directive 2000/43, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, which, according to the Court of Justice of the EU (CJEU), in cannot be interpreted in a restrictive way (JCJEU Runevic-Vardyn and Wardyn, C-391/09).

Given that discrimination due to a person's ethnic origin constitutes racial discrimination, the

European Court of Human Rights (ECHR), which is the guarantor of the Charter of European Human Rights, has declared that it is a particularly hateful kind of discrimination that, due to its perilous consequences, requires special vigilance and a robust reaction from the authorities. For that reason, authorities must use all resources available to combat racism, bolstering the vision of a democratic society where diversity is not perceived as a threat but as a source of enrichment. Moreover, for the ECHR, no difference in treatment based on someone's ethnic origin can be objectively justified in a contemporary democratic society built on the principle of pluralism and respect for cultural differences (for instance, in judgments of 13 November 2007, DH v. Czech Republic, and of 29 January 2013, Horvath & Kiss v. Hungary, in relation to education policies for Roma ethnicity children).

It is interesting to see that EU legislation rejects the theories that try to establish the existence of human races. This express rejection of the idea of race as the way in which to catalogue human beings means that certain national legislations use other names to enshrine anti-discrimination, (for instance, "ethnic affiliation", "ethnic or national origin" or "ethnic association"). For instance, France uses the term "association" and "non-association" with an ethnicity, both real and alleged, including "physical appearance", and thus refuses to make it an objective way to differentiate a person. The lack of definition of what should be interpreted as race or racial or ethnic origin means that colour, language, nationality and belonging to a certain minority are all included in this characteristic.

The CJEU has resorted to the same conception of "ethnic origin" as has been developed in the ECHR, and is based on how a certain social group identifies itself due to be united by elements such as nationality, religious faith, language, cultural origin, traditions and life situation. Both courts have applied this without question for the Roma community, such as in ECHR judgment of 6 July 2005, Natchova and others v. Bulgaria; and 22 December 2009, Sejdic and Finbci v. Bosnia-Herzegovina; and judgment of 16 July 2015, CHEZ Razpredelenie Bulgaria AD).

Moreover, protection from discrimination applies for people who are not of Roma ethnicity but live with or identify with the group, when they are negatively affected by antidiscriminatory conduct directly at the Roma population. This happened to a Bulgarian citizen who was disadvantaged as were all her neighbours, and believed that to be down to the majority of the neighbourhood's residents being Roma (Judgment of the CJEU of 16 July 2015, CHTEZ Razpredelenie Bulgaria AD, referenced above). This is so called "discrimination by association", which means including people are protected by the principle of equal treatment even if they do not belong to the race or ethnicity in question, if they suffer from unfavourable treatment or a particular disadvantage for precisely that reason.

2.- Focal points of discrimination of the Roma population that the Courts have identified in social matters

In terms of Roma people, the CJEU has found that European societies have shown a longstanding rejection that means that their members often continue to live in very difficult conditions, frequently on the margin of societies in the country they live, and their participation in public life is extremely difficult (ECHR judgment DH v. Czech Republic, cited above). The vulnerability of citizens belonging to the Roma community means that special attention must be paid to their needs and way of life

(ECHR Judgment of 16 May 2010, Orsus and others v. Corada). We will examine below the specific circumstances that have led to court rulings on the discriminatory treatment of Roma people.

a) The incidence of discrimination in education and its consequences

Analysing the cases that have reached the ECHR regarding citizens from this group shows that discrimination is particularly rife in access to education (in addition to the Hungary and Czech Republic cases, see Judgments of the ECHR of 18 December 1996, Valsamis v. Greece; of 11 December 2012, Sampani v. Greece), which propagates future inequality of opportunities spreading to other areas (particularly in subsequent access to employment), and thus sows the seeds for indirect discrimination.

These countries coincide in having education policies that encourage segregation.

In the same vein, in discrimination and access to employment and the resulting economic security and protection that it entails, Directive 2000/43 is taken into account where it states that discrimination based on racial or ethnic origin may jeopardise the achievement of a high level of employment and social protection, a greater quality and standard of life, economic and social cohesion and solidarity.

b) The anti-discriminatory perspective for traditions relating to the home

The Court has outlined a protective framework of the characteristics of the Roma people that has included circumstances such as definition of home address. It found that traveller life was an integral part of Roma identity as it is embedded throughout the traveller tradition, including when, due to urban development and various policies, many members of this community no longer live an entirely nomadic life, but more and more frequently spend a long time in the same location in order to educate their children. As such, "Measures which affected the applicants' occupation of their caravan had therefore a wider impact than on the right to respect for home. They also affected their ability to maintain their identity as gypsies and to lead their private and family life in accordance with that tradition" (Judgment of the ECHR of 18 January 2001, Coster v. United Kingdom).

c) Acts that may have stigmatising effects

The matter of Nikolova v. CHEZ Razpredelenie Bulgaria AD, to which we have referred, examined the extended protection of those not of Roma origin but who live in a majority Roma community. The CJEU examined the conduct of the electrical supplier that placed electricity meters far higher than normal, at a height that consumers could not access. It so happened that doing so affected a majority Roma neighbourhood, in which the electricity meters had been placed among the overhead power lines, at a height of six or seven metres, while in other neighbourhoods the company had fitted the meters at 1.7 metres tall, usually in the customers' homes or on the front of homes or front fences.

In a case such as this, the discrimination is tangible if there is a clear and disproportionate prejudice against electricity users in that neighbourhood through difficulties being imposed on them regulating their electricity use, which is offensive and stigmatising because it was limited only to areas where the Roma population resided. The company would have had to provide evidence that it was the only possible way to prevent fraud and abuse, protect people from the rights that these acts pose to their life and health and guarantee the quality and safety of electricity distribution in the interest of all users.

Another case in which authorities' actions were based on stereotypes and anti-Gypsy prejudice was ruled on by the ECHR on 25 March 2010, Paraskeva Todorova v. Bulgaria, concerning the refusal to suspend criminal convictions because of the preconception that the Roma population had a culture of impunity.

e) Invoking a violated principle of non-discrimination in dismissals

Our country has seen very little employment-related litigation relating to discrimination against Roma people.

The judgment of the Andalusia High Court of Justice of 21 April 2016 (appeal 875/2015) dismissed an employee's assertion that they were dismissed for reasons relating to their Roma ethnicity. This is a case in which the employment contract was for the provision of services for a federation of Andalusian towns as the counsellor of the "Andalusia Roma Community Plan", managed through subsidies from the Andalusian Government. When the subsidies stopped, the employer decided to end her employment using a dismissal on economic grounds, under article 53c) of the Workers Statute. The employee challenged the dismissal and argued that her right to equality and non-discrimination had been violated because of her ethnicity, and that the dismissal should therefore be reversed.

When a fundamental right is invoked, such as in this case, Spanish law and EU regulations establish a mechanism to share the evidentiary burden, which means that the defendant has to prove that their decision was not discriminatory but based on other reasons. However, the

complainant must provide suspicions of conduct undermining equality in order for that inversion of the evidentiary burden to take place.

This mechanism means that in the case referred to, the annulment of the dismissal was denied because it was decided that there could not be any indications that the dismissal was

motivated by the employee's Roma ethnicity since she had been hired precisely for that reason, because of the nature of the project she was working on. In addition, all the employees in this programme had been dismissed. In the end, the company's economic grounds were upheld.

f) Refusing to consider ethnic origin as a disability

Curiously, this is a matter in which a Roma ethnicity Spanish citizen argued that their belonging to the group was considered a negative social factor when trying to secure recognition of disability for eligibility for a disability pension (judgment of the Labour Chamber of the Castilla y León High Court of Justice, Burgos, of 31 May 1999).

Rules on non-contributory benefits, which take into account not only any afflictions or illnesses or the applications but certain social factors, make no reference to belonging to a particular ethnic group but evaluation factors such as age, family situation, employment and professional status, education and culture, which is where the applicant fell at a disadvantage due to her environment. That is independent from ethnicity, because it will be the true environment in which it is analysed in equal conditions. To attempt otherwise would be discrimination prohibited by article 14 of the Spanish Constitution.

g) Survivor's pension and benefits following marriage by Roma ritual

There have been a number of occasions in which the Spanish social courts have had to rule on an application for recognition of a survivor's pension by someone who was married through Roma ritual and had not formalised a marriage for civil purposes with the deceased in order to entitle them to a survivor's pension.

In the first instance, the issue was determining the effects of the marriage ritual, since social security legislation grants eligibility for a survivor's pension only if they were married at the time of the death of the spouse in question. After the National Institute of Social Security refused to recognise eligibility and this decision was upheld by the courts, the ECHR issued a ruling on 8 December 2009, in the case of Muñoz Díaz v. Spain, which found that, since the Spanish authorities had recognised the couple as married in many other instances, it would be unlawful to deny them that same consideration for the pension of the surviving spouse.

Currently, under social security rules, common law marriages are eligible for survivor's pensions, therefore a legal marriage is not required. Those who meet the requirements for common law marriages (in terms of survivor's pensions) can receive it if their partnership has been formalised in a Roma ritual. However, the partnership does need to be registered in one of the specific registers in the residents' autonomous region or local council. As a result, a decision had to be made about whether the Roma ritual itself could be its own registration instrument to fulfil that requirement. The Supreme Court rejected that possibility in its judgment 4/Plenary of 25 April 2018 (2401/2016)[1].

3.- The gender perspective in employment and welfare

In 2011, the European Commission published the "EU Framework for National Roma Integration Strategies up to 2020" (COM(2011)), in which it urges Member States to develop specific national strategies to integrate the Roma population to improve their inclusion in education, employment, housing and health.

One of the main actions was education, and it used demographic information that highlighted that the Roma population is younger than average EU citizens. This means that the number of people of working age is also higher; however, the difficulties in securing a paid job mean that there is a substantial gap between Roma people and the rest of the population. The European Fundamental Rights Agency (FRA) has found that,

[1]The position of the author can be seen in the individual votes of the judgment.

while 62% of the Spanish population of working age are engaged in some kind of paid work (as an employee or self-employed, and permanent or casual), that percentage is lower for Roma people, and particularly low for Roma women (Second EU *Minorities and Discrimination Survey: Roma women in nine EU Member States, FRA 2019*).

In 2010, the World Bank studied certain European countries and found that the low employment rate among Roma people affected women above all women (Roma Inclusion: *An Economic Opportunity for Bulgaria, Czech Republic, Romania and Serbia, 2010*).

Returning to the results of the FRA survey, in Spain, 35% of Roma woman of working age asked responded that, in spite of their age, they were not seeking work because they had to care for children, elderly people or dependants in their family. In spite of that, there was a high degree of agreement that having a job is a clear way for a woman to gain independence. We must take note of those perceptions that deeper entrench stereotypes and the traditional allocation of roles for women because the disadvantages and consequences should be included in the realm of protection from gender discrimination.

The segregation of duties of women (carers) and men (breadwinners) is at the core of gender discrimination, leading to women having little economic power, with a knock-on effect on their autonomy, freedom and dignity. While women worldwide receive 10% of income from employment, they carried out two thirds of unpaid work worldwide. Moreover, the lower the pay, the less the social security contribution; and the less time they spend working, the smaller the contribution period. As a result, women's work pensions will always be less than men's for the same length of working life. In spite of their diversity, all reasons for the gender pay gap adhere to the same philosophy: the feminisation of the family role and the spreading of this stereotype to women's professional and working life, which materialises in three ways: a) discrimination when accessing employment (preference for men who will not be distracted by family responsibilities), with particularly opaque processes and difficulty in secure a job; b) discrimination in the workplace (direct discrimination, i.e. women being paid less while doing the same or job or a job of the same value, or indirect discrimination); and c) categorising work considered exclusively for women or more appropriate for women, compared with those for men[2] (e.g. 90% of work in the family home is carried out by women; 80% in health; 67% in education — interestingly, the higher the education level, the lower the presence of women: 97% at preschool; 80% at primary; 61% at secondary; and 45% at university level).

The European Parliament[3] has highlighted that the definition of the gender pay gap is affected by three kinds of factors that limit its interpretation: individual characteristics (such as level of qualification — if women with few qualifications do not join the workforce, the gender pay gap narrows, while if they do, for reasons of economic need, the gap broadens, because male employees with more qualifications earn more), industrial characteristics (such as the size of the company — employees in large companies tend to earn more than those in small companies) and institutional characteristics (minimum wage — a higher minimum wage reduces the gender pay gap, because many women work in poorly paid jobs).

In terms of the Roma population, in addition to this general reality, more women than men state that they feel discriminated against for being Roma in employment and in the use of public services (transport, retail, etc.). [4]

The result is that Roma women run the risk of experiencing what is known as multidiscrimination[5], due to the culmination of two factors requiring protection and the guarantee of equality: gender and ethnicity. Therefore, everything relevant to the issue of gender discrimination and equality can be extrapolated to Roma women, but it must be considered on what kind of antidiscriminatory platform that gender analysis is carried out, because the final outcome is the sum of the two circumstances.

---

[2] Global Wage Report 2016/17. ILO, Geneva 2017, page 86.

[3] European Parliament resolution of 8 October 2015 on the application of 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 http://www.europarl.europa.eu/doceo/document/TA-8-20 1 5- 0351_ES.pdf

[4] See Second EU Minorities and Discrimination Survey, referenced.

[5] The ECHR has recognised the convergence of multiple discriminatory factors in its judgment of 24 July 2012, in BS v. Spain; 1 July 2014, SAS v. France; and 25 July 2017, Carvalho Pinto de Sousa v. Portugal

Employment discrimination: where do we start?

Arantxa Zaguirre

Expert lawyer in employment law and discrimination

BUSINESSES

In Spain, discrimination due to racial or ethnic origin at work is directly proportional to the level of public visibility or interaction with the public required of the position. While in agriculture, construction and some of the poorest paid sectors of the industry, discrimination of this kind is less prolific, it rises in the services sector: employees in "public-facing" roles in shops, bars, restaurants, supermarkets, hospitals, etc., do not reflect the diversity of our society or its national or ethnic origins, or in relation to disability or age.

We cannot forget that level of qualifications is a fundamental in the segregation of different sectors of the job market, but we often find that the same images are repeated and cannot be explained away by mere qualifications.

The key element is customer service or the visibility of the job.

The thought process is simple yet perverse: I won't hire "diverse" employees for fear of causing upset or putting off customers. Therefore, I'll discriminate when hiring because I assume that most of my customers have such strong racial prejudice that they won't come back to my business. That is why the majority of "diverse" employees in Spain work in jobs with no contact with the public. But if they ask me, as an employer I'm not going to admit that I think most of customers are racist or full of prejudice. Instead, I'll say that "diverse" people do not have the right social skills or qualifications to serve at the cash desk or counter, or on the floor of the restaurant, which is why they are left for the kitchens, warehouses and cleaning jobs.

Attitudes such as this are perpetuating the exclusion of members of certain groups from the parts of the job market that offer better working conditions and more social prestige, thus delaying the normalisation and visibility of true diversity in society.

Ten years ago, the president of an association that worked on the social and labour integration of girls and boys at risk of exclusion told me an anecdote that perfectly illustrates these mechanisms. The association had taken over a restaurant that had closed down in Madrid, and employed all the girls and boys that had previously received training courses. The only employee not at risk from exclusion was the chef, a guy from Navarra, because already worked in the restaurant previously. The restaurant was excellent, with a welcoming atmosphere, great service and spectacular food. Precisely for that reason, a customer who was having dinner in the restaurant with some friends asked the president of the association, who was there at the time, to book a meal the following week for 30 people from a professional association (people of a certain social strata) because he had loved the place so much. At the end, he said: "But that day I don't want any blacks or browns in the restaurant". The president of the association, who obviously was committed to creating inclusive workplaces that respected diversity, told him that, unfortunately, he and his colleagues would not be able to have their event under those conditions.

The use of the "blind" CV[1], with no first name or surname, sex, age or photo, could be useful to reduce discrimination in hiring. In fact, the "blind" part of the process should extend to other stages of recruitment. Prejudice blocks immigrants or ethnic minorities from passing the first screening (selection of the CV, phone call and an invitation to interview).

At the end of recruitment process in which the age, disability, sex, colour and ethnic origin of the candidate has been concealed, the interviewer may arrive full of expectations and positive prejudice, because a professional's assessment should be based solely on a candidate's experience, qualifications and skills. Or not. Perhaps the force and irrational nature of some people's racist prejudice does not disappear because a CV is markedly better.

[1]In 2017, the Spanish Ministry of Health, Social Services and Equality signed a protocol with 78 companies to implement the "blind" CV.

The measures described cannot alone eradicate any threat of discrimination in access to employment; they must be in conjunction with many more, such as active employment policies, positive actions to facilitate the inclusion of groups at risk of exclusion and training and awareness for employers and recruiters on equal opportunities and discrimination.

RECRUITERS

Recruitment agents can play a decisive role in either perpetuating inequality and or guaranteeing fairness. On occasions, they are the first link in the chain I described above: I will not put forward this candidate because I assume that the company will not want to hire them, because the company assumes that its customers will be uncomfortable about them.

VICTIMS

Very often, victims do not question discriminatory practices (due to sheer exhaustion, habit or lack of self-esteem), but often they do not even realise that they can report them. If the victim is unaware of regulations or sanctions for discriminatory conduct in employment, they cannot report them.

Victims must fight against these practices with all means at their disposal. However, the means available to them are currently deficient. Independent specialist public bodies are needed to fight discrimination, where reporting can take place and victims can be supported. The NGOs and associations do what they can, but they cannot fulfil the needs, analyse the information, and accompany, report, inform and educate to the level needed.

JUDGES

As a last resort, when mediation with the company has failed or they deny the existence of any discriminatory practice, the courts offer a final recourse.

When pursuing employment discrimination claims, I encounter something not seen often in court: judges' uncertainty.

Before starting a hearing or court conciliation, judges may say:

- *"But Counsel, what do you want? Specify the grounds of the claim"*: The claim sought the termination of the employment contract by the employee due to the company's severe breaches and racial harassment, and additional compensation for the violation of fundamental rights. It was all set out clearly in the submissions.

- *"Let's see Counsel: have you filed this brief on the off chance, or do you know what you're doing?* That lack of respect forces me to explain to the judge why yes I did know what I was doing. There was also no uncertainty in a claim for a violation of fundamental rights due to discrimination against a Roma employee in access to employment, with additional compensation for violation of fundamental rights. It was all written down. In this case, the judge's changed attitude after we waived any compensation if the company (a privately managed public hospital) gave the Roma worker (who was not hired because a manager asked if she was Roma) the offer of a three-month temporary contract for which she had been initially selected.

Following any initial uncertainty or lack of confidence, this judge took the issues extremely seriously, and in the first case issued a judgment containing sentences such as: *"Xenophobic expressions, sexist and racist jokes and pranks that the claimant finds offensive become harassment because of the sex and foreign nationality of the claimant. In the best case scenario, this is a case of negligence on the part of their manager, but with the effect of having repeatedly and insidiously harmed their dignity, creating an intimidating, degrading or offensive environment."*

The second case was settled in court though the hospital agreeing to hire the Roma working (one year later she continued to work there), and the manager who blocker her hiring was dismissed. The judge told the parties something particularly poignant: *"In these cases, the company and the employee should be on the same side. It was very serious what happened here and the company should be the first to want to investigate and clean up these discriminatory behaviours"*.

Judges are not used to ruling in cases containing a racist element at their core, and logically they show certain reticence or uncertainty. The best way to make judges aware in these matters is to file claims when mediation processes fail. It is also the best way to inform lawyers.

CONCLUSIONS

Truly inclusive workplaces want to combat stereotypes and enable a fairer job market and, therefore, society. Companies must make better efforts to encourage working environments that do not penalise diversity but, instead, investigate and punish those who discriminate in the company. If companies fail to do so, the State will have to intervene and provide victims with the means to report discriminatory behaviour that is forbidden by law.

Discrimination in access to the job market perpetuates poverty, curtails careers that do not have the chance to even begin and discourages the training of young people from discriminated against groups, who suffer insurmountable invisible barriers between them and the best paid parts of the job market. The robustness of the superstructure upholding them dampens any heroic individual attempt to break them down. Why make such an effort if the outcome will always be exclusion, not getting there, being left outside?

The course of discriminatory practices does not lie in disability, sex, colour, nationality or ethnicity, but in others' preconceived ideas and prejudice about their origin, colour, religion, etc., and in the social standing of those practices even where they are banned by law. Therefore, while victims of discrimination need active employment policies and the positive actions, those who discriminate and have those prejudices that influence the performance of their work (employers, human resources, recruiters, lawyers and judges) urgently need appropriate training across all those involved in the chain of employment discrimination.

Discourse that is heavy with false information from certain politicians confirms unfounded racist prejudices from many citizens who, faced with their own vulnerability, have decided to encumber the groups most affected by the recession, such as immigrants or ethnic minorities, with the role of competitors with fewer rights when accessing certain good and services.

In the current context of economic crisis and growing populist discourse that excludes minorities, ambitious anti-discrimination policies are needed, or else workplaces in Spain will continue to try to convince us that we are all white, young and disability-free.

The fight against discrimination at work.

The role of trade unions

Rubén Herranz González

Doctor of Law

Social Policy Deputy at trade union CCOO

We can define discrimination as any unlawful difference in treatment (i.e. contrary to the law) due to conditions or circumstances such as birth, race, sex, religion, opinion or any other reason stated in law. In terms of employment, Convention 111 of the International Labour Organization defines it as "any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation".

It is no coincidence that we quote an international organisation when talking about discrimination. The origin of legal measures to combat discrimination can be found internationally, as part of the issues relating to the international safeguarding of human rights. After the First World War, around 100 years ago, population movements, the dissolution of empires and the birth or reconfiguration of States caused international concern for the situation of certain religious or ethnic minorities in Europe. The League of Nations, which was founded after that global conflict, tried to create mechanisms to protect minorities from suffering from discrimination in the new national configurations, since some had ended up in countries that previously had been considered enemies, particularly after the breaking up of the Austro-Hungarian Empire.

Treaties were signed in which States promised to apply a series of measures to protect these minorities, forcing them not to discriminate and to grant specific rights to preserve identity and ethnic, religious and linguistic integrity. States recognised that those covenants would become international obligations, although at the time it would technically be questionable to talk strictly about the international safeguarding of human rights.

Their specific transposition into employment laws did not really happen until after the Second World War, internationally through the ILO and nationally, in the 1060s, with huge efforts as part of the civil rights movement and combating segregation. Although the United States did not sign the ILO convention, it enacted the first anti-discrimination laws to avoid individual and collective exclusion in the workplace for reasons of race, sex, nationality and religion.

After that, nearly all States and transnational or multilateral organisations began to recognise the need to combat all kind of discrimination – particularly in employment – in various legal instruments. Clearly, this came in varying degrees of intensity and with various outcomes.

In Spain, we must cite article 14 of the Constitution, which prohibits discrimination due to race or ethnic origin in the strongest terms. In the area of employment, we highlight the antidiscrimination directives approved in 2000 (including 200/43/EC, specifically on racial or ethnic origin); in spite of this having a transposition in our country that could have been better, it was still a major step forward in combating discrimination at work.

However, there is a shockingly low number of rulings in Spain on racial or ethnic discrimination at work, which unfortunately does not signal a low rate of discrimination (as proven in these reports year after year) but proves the paucity of a regulatory framework to prevent, uncover and remedy such situations.

This is where trade unions can and must play a key role; their presence in the workplace must be geared towards fostering equal treatment, above all through oversight of workplace practices and through collective bargaining,

fostering anti-discrimination rules in its areas of influence through social dialogue and collective bargaining.

Under the Spanish Workers Statute, all workers have the right not to be discriminated against directly or indirectly, both when accessing employment and once they are employed, due to their racial or ethnic origin and, likewise have the right to respect of their privacy and due consideration of their dignity, including protection from harassment due to racial or ethnic origin (article 4.2). Any provision, covenant, agreement or decision of an employer that causes direct or indirect situations of negative discrimination for various reasons, including racial or ethnic origin, is rendered null and void.

Likewise, any orders to discriminate or employer decisions that cause the unfair treatment of workers in reaction to a claim made in the company or an administrative or court action to demand compliance with the principle of equal treatment and non-discrimination are rendered null. Any terminations or dismissals justified by any of the grounds of discrimination prohibited in the Constitution or by law, or that violate the employee's fundamental rights and public freedoms, would also be rendered null, including any discrimination against an individual for being Roma.

Trade unions must not only ensure that such violations of employee rights to not occur, but ensure that victims of such conduct are advised, supported and accompanied.

However, this is not easy and is not always the case. First of all, racist prejudice spreads throughout society, and no person or organisation is entirely free of them, including those who represent their colleagues. In addition, not all trade unions include combating discrimination in their governing principles. However, other organisations such as trade unions, have traditionally been called "working class", whose leading principles are to defend all workers and, vitally to the case at hand, call for better living conditions and all improvement in all aspects affecting the life of any potential and actual employee. For instance, they impose on themselves through their bylaws an active role in society to eradicate any form of discrimination, including those based on ethnic origin, and commit to fight racism and xenophobia, not just in the workplace but in society in general (Bylaws of the CCOO Trade Union Confederation).

Even when your vocation is eradicating discrimination, it is not an easy task. It may be relatively simply to identify direct discrimination, i.e. an act or rule that directly excludes Roma people. But in the case of indirect discrimination (also called concealed discrimination), i.e. that which is apparently neutral but causes a particular disadvantage to someone over other, where not in pursuit of a legitimate purpose, and where the means to achieve that purpose are not appropriate and necessary, it is not easy at all. As our Constitutional Court explains, indirect discrimination is "seemingly neutral or non-discriminatory that provides [...] an adverse impact on the person affected by the constitutional censurable conduct or practice where the action causing the adverse impact lack justification by not being based on an objective and necessary need to meet a legitimate objective, or not being suitable to reach it" (Supreme Court Judgment 69/2007, of 16 April. Other judgments of interest include 13/2001, of 29 January, and 253/2004, of 22 December).

An example would be a job offer with a requirement that is wholly unnecessary for the job or completely unrelated to it, which results in the exclusion of an individual or group. In addition, there may be harassment or instructions to discriminate based on anti-Gypsyism. Finally, there is interseccional discrimination, which is rarely identified as such, and to which Fundación Secretariado Gitano dedicated its 2018 report.

The vast majority of trade union representatives are employees in the company where they provide their services and, evidently, they often lack expertise in this area, whereas expert knowledge is what they need, and at times complex studies to demonstrate the existence, for instance, of the impact of this apparently neutral treatment that actually has discriminatory effects.

For that reasons, in order for trade unions to best fulfil their duties of vigilance, we need to make an effort to train workers representatives to combat this as a task we all need to share; the presence of trade unions in the workplace makes them a

privileged witness. All citizens would Benefit from that effort, and therefore it should be exercised in close collaboration with all organisations involved, particularly public authorities.

Also, the role of trade unions can be proactive, basically through proposals in the course of collective bargaining, which the Constitutions safeguards for workers representatives and employers in order to agree on the rules that will govern their mutual relationships, and specific issues such as working conditions or remuneration, to be recorded in a "collective bargaining agreement". For that reason, it is vital that trade unions act in collective bargaining processes to promote measures to stop discrimination or improve or even eradicate situations that could indirectly cause or foster discrimination in the workplace. Gender equality effort have already paved the way in this respect: all studies have shown the unquestionable value of collective bargaining agreements to reduce gender inequalities. There is still so much ground to cover with respect to other forms of discrimination, but it is worth looking back to previous efforts.

We believe that it is important to mention the possibility of "positive actions" or "reasonable adjustments", i.e. measures to prevent or offset the disadvantages experiences by people with a specific racial or ethnic origin, provided for both in European and domestic law. The Workers Statute establishes that Government may grant subsidies, relief and other measures to encourage the employment of specific groups of workers that may struggle to secure jobs (article 17.3).

There is no doubt that this is one of the consequences of living in a social and democratic state governed by the rule of law, because we cannot pass off equality in just the formal sense of article 14 of the Constitution (prohibition of discrimination); we must interpret it in relation to article 9.2 (material equality), and therefore reject the clocking of measure to achieve real equality. Our Constitutional Court believes that the adoption of positive action, sometimes mislabelled "positive discrimination" are necessary under our Constitution, and are in in way discriminatory but rather fundamental to achieve and social and democratic State with the rule of law. They could even be considered necessary, as an essential instrument to achieve equal conditions, as advocated in article 9.2 of the Constitution (Supreme Court Judgment 128/1987, of 16 July; 216/1991, of 14 November; 28/1992, of 9 March or STC 16/1995, of 24 January, and more).

The involvement of the main trade unions (essentially, those with at least 10% of trade union vote share), as representatives of the workers, is not only recommendable, but also required by law (article 17.3 of the Workers Statute). Once again, I refer back to the journey undertaken for gender equality, where these kinds of measures are producing very positive results.

Therefore, trade unios are key stakeholders in the fight against racial and ethnic discrimination, and therefore against anti-Gypsyism, both by law and according to the major trade unions' anti-racist vocations.

To fully achieve our goal, which is an enormous challenge for trade unions (since, as we have seen, it is often far more complex than it may appear), trade unions structures need to be well resourced and well trained (a well-educated person is less likely to be weighed down by prejudice). They need to be able to detect conducts and know what to do about them, and also have a trade union structure with resources to respond to all sides of the problem (legal, psychological, etc.).

We could not end without remarking on the opportunity that organisations such as Fundación Secretariado Gitano offer by collaborating with parties involved in collective bargaining, trade unions and businesses, helping to better understand the discrimination suffered by Roma people. That is a vital step to make us all aware of the discrimination Dynamic and, essentially, to undertake the long journey to equality in the workplace.

Chapter 5

Best practices and case law

1. Best practices

In this section we will recognise some best practices, publications and legislative developments in 2019 in improving the defence of equal treatment and non-discrimination, both in Spain and Europe. This includes progress in the fight against anti-Gypsyism, and resolutions or initiative of difference governments and administrations that are of interest to stakeholders in this area.

European Parliament resolution of 12 February 2019 on the need for a strengthened post-2020 Strategic EU Framework for National Roma Inclusion Strategies and stepping up the fight against anti-Gypsyism

This important resolution is intended for both the Commission and Member States. It asks the Commission to propose a strategic framework for the EU on national inclusion strategies for Roma people for the post-2020 period with a wider set of priority areas, clear and binding targets, timelines and indicators for monitoring and addressing the specific challenges and reflecting the diversity of Roma communities, and allocating substantial public funds to this end. However, more importantly, it asks for it to **place the fight against anti-Gypsyism at the heart of the Strategic EU Framework, including by adding a specific anti-discrimination goal.**

It also calls on the Commission to include a **truth, recognition and reconciliation** process in the Strategic EU Framework for the sake of trust-building, and to highlight concrete cultural and structural measures and initiatives, supported by EU funds; This process would be a major step towards restorative justice for the history of discrimination and oppression that Roma people in Europe have faced.

In terms of recommendations for Member States, it asks that they **place the fight against anti-Gypsyism at the heart of their strategies, in addition to one of the manifestations of anti-Gypsyism, social and economic exclusion; to develop targeted strategies and concrete actions to fight anti-Gypsyism, such as investigating current and past racist attacks against Roma.** It also calls on them to ensure that **multiple and intersectional discrimination, gender mainstreaming and a child-sensitive approach are properly addressed in their strategies.** Another ask is that Member States utilise the available EU Structural Funds to improve the living conditions and life chances of Roma in a transparent and accountable manner. This is something that Spain has been doing for the past 20 years, with the help of the European Social Fund, which has made contributions to Fundación Secretariado Gitano's work.

The Resolution can be read here:

https://www.europarl.europa.eu/doceo/document/TA-8-2019-0075_ES.html

New book on anti-Gypsyism: Dimensions of Antigypsyism in Europe

What is anti-Gypsyism and what are the different dimensions of this specific kind of racism in Europe? How does it affect Roma society and European society more broadly in various aspects of life?

The book **"Dimensions of Antigypsyism in Europe"**, published in 2019 by the European Network against Racism (ENAR) and the Central Council of German Sinti and Roma People, and coordinated by Ismael Cortés and Markus End, combines academic and activist writing based on practical experiences, to shine a light on the multidimensional and complex phenomenon of anti-Gypsyism. It shows how radicalised discourse feeds into racist views, policies, practices and behaviour. It offers a number of case studies on structural discrimination against Roma people in Europe, with an added gender perspective.

Many Roma and other anti-racism organisations have spent decades fighting anti-Gypsyism. **Their struggle to give Roma people the rights they deserve offers critical expertise on how anti-Gypsyism affects access to fundamental rights,** and how to counteract exclusive and discriminatory discourse and political projects. The various strategies to tackle anti-Gypsyism that the book explores provide tools to combat discrimination against Roma people in Europe.

The book can be downloaded for free at:

https://www.enar-eu.org/Book-Dimensions-of-Antigypsyism-in-Europe

The Spanish Ministry of the Interior's new Action Plan to combat hate crime includes anti-Gypsyism

The Action Plan to combat hate crime was passed in January 2019, and represents an important step towards more effectively fighting hate crime in Spain. This plan offers a new focus and energy in the activities and response of the national security forces to hate crime and incidents. It is based around four key pillars: training the national security forces, prevention, attention for victims and response to this type of crime. It has also rolled out specific digital procedures and tools to counteract hate crime and hate speech on social media.

Fundación Secretariado Gitano was involved in drawing up the plan, asking for anti-Gypsyism to be included as a category of analysis, as demanded by a number of international organisations such as the ECRI and the FRA. This demand was well received by the Ministry of the Interior, as seen in section 4.2: "To publish annually the report on "hate crime", and to strive to publicise this as much as possible. A broader range of areas will be studies, including anti-Gypsyism as a specific area of racism, as the European Union Fundamental Rights Agency has been doing." This new development is a hugely significant step in giving greater visibility to the reality of anti-Gypsyism in our country, to better tackle such cases and to have accurate statistics on hate crime motivated by hostility against Roma people.

.http://www.interior.gob.es/documents/642012/3479677/Informe+sobre+la+evoluci%C3%B3n+de+delitos+-de+odio+en+Espa%C3%B1a%2C%20a%C3%B1o+2019/344089ef-15e6-4a7b-8925-f2b64c117a0a

Activities and outcomes of the Assistance and Guidance Service for Victims of Racial or Ethnic Discrimination in 2019.

The Assistance and Guidance Service for Victims of Racial or Ethnic Discrimination (the "Service") was established in the context of the activities of the Counsel for the Elimination of Racial or Ethnic Discrimination (the "Council"), which reports to the Directorate General of Equality and Ethnic-Racial Diversity, of the Ministry of the Interior.

Its objectives are:

1. To provide technical assistance to promote equal treatment and eradicate racial or ethnic discrimination, including direct assistance for people who suffer, have suffered or are aware of situations of discrimination based on racial or ethnic origin, and online or telephone assistance to victims of discrimination. That assistance may be individual or group for victims of discrimination or their relatives.

2. To develop information and awareness activities for key professional agents and potential victims of racial or ethnic discrimination, including the development of activities on information, awareness and impact of the Service, through collaboration with public and private agents in each autonomous region.

Between 1 January and 12 October 2019 (the contract end date), Fundación Secretariado Gitano coordinated the Service together with the seven organisations through a network of 87 offices (present in all autonomous regions and the autonomous city of Melilla). The presence of the assistance service in the various autonomous regions has enable assistance to be provided to victims of racial or ethnic discrimination nationwide, serving a total of 588 cases of racial or ethnic discrimination, of which 378 were individual cases and 210 were group cases. Of those, 255 women were identified and 160 men.

Some of the most striking features in these incidents were that in the individual cases, 725 of discriminatory incidents affected the population group below the age of 45.

These incidents most frequently took place in access to goods and services, employment, housing, media and online.

Some 81% of incidents were situations of direct discrimination.

In 49% of all recorded cases, the victims were Roma people.

During this period, and together with the development of 201 informative and awareness activities in order to provide further information about how to react to racial or ethnic discrimination, the service distributed some 15,000 pamphlets containing information about the 20 official offices of the Assistance Service and 15,000 pamphlets for potential victims of discrimination, as well as 500 posters.

More information:

https://asistenciavictimasdiscriminacion.org/
https://igualdadynodiscriminacion.igualdad.gob.es/home.do

CONSEJO PARA LA ELIMINACIÓN DE LA DISCRIMINACIÓN RACIAL O ÉTNICA

Publications from Oberaxe in 2019

In 2019, OBERAXE published the **Report of the Survey on Evolution of racism, xenophobia and other forms of intolerance in Spain**

The report analyses the results of the survey Attitudes towards Immigration X carried out by the Centro de Investigaciones Sociológicas (CIS) in 2017. The report shows that the positive trend in tolerance of Spaniards towards immigration has continued, although there has been some regression in certain variables compared with 2016. However, it is true that 2016 was an exceptional year that produced the best results since reporting began in 2007. In 2017, 54% of respondents expressed a positive view of immigration, which is the third best result since 2007 (58.7%) and 2016 (54.3%). Attitudes of the respondents are also sensitive to circumstances such as the economy, unprecedented events and media or political discourse. That is precisely why monitoring of attitudes toward immigration must continue, as must prevention, education and awareness activities to combat racism, xenophobia and other forms of intolerance.

In terms of relations with Roma people, the respondents showed the same behaviour around the acceptance or rejection of neighbourhood harmony, sharing studies or work and personal relationships with immigrants. However, for Roma people, the acceptance levels are significantly lower than the immigrant population in all areas examined. This shows that Spaniards **distinguish between immigrants and Roma people, and seem to me more predisposed to associate with the former than with the latter.** The evolution from 2016 to 2017 in the acceptance to live alongside Roma people seems to be following the same trend as with immigrants. In 2017, the percentage of people accepting living alongside Roma people was steady or slightly decreasing compared with 2016 in all areas, except for living in the same neighbourhood as Roma people and renting a flat to Roma people, both of which rose slightly (34.9% in 2016, 36.3% in 2017, living in the same neighbourhood) and 27.7% in 2016 and 29.5% in 2017, renting a flat to a Roma person). Living in the same building or neighbourhood is currently at around 35-36%. The percentage of respondents prepared to enter into a contractual relationship for housing purposes was below 30%. The percentage of respondents with attitudes more conducive to entering an employment, study or friendly relationship was 50-60%.

The figures show that anti-Gypsyism is still a reality, because the Roma community are still rejected or mistrusted at a fairly large scale, without much improvement between 2016 and 2017.

More information is available at:

http://www.inclusion.gob.es/oberaxe/es/publicaciones/documentos/documento_0121.htm

The European Commission publishes the results of the 4th monitoring round on online hate speech.

On 4 February 2019, the DG Justice Commissioner Vera Jourová reported the results of the 4th monitoring round of online hate speech, in which FSG took part as a specialist organisation and trusted flagger. The fourth evaluation of the Code of conduct to fight hate speech online and on social media **confirms the continued progress in the rapid elimination of illegal hate speech.** "While the fight against hate speech and toxic narratives online needs to be continued and further strengthened, the Code of conduct signed between the IT companies and the European Commission proves to be an effective tool to face the challenge", the Commissioner said.

A total of 39 organisations from 26 Member States took part in the monitoring exercise over a period of 6 weeks in November and December 2018. In Spain, cases were reported by Oberaxe (284 cases), FELGTB (98 cases) and FSG (109). **Some 69% of the cases reported by FSG were removed, which is a good impact index. However, overall in Spain, only 59.7% of cases were removed. Spain is the second highest reporter of cases (491), only behind Italy (632).**

For the first time, cases of anti-Gypsyism were itemised, thanks to a successful initiative by FSG to include this category, since we consider it fundamental to shine a spotlight on this specific kind of rejection of Roma people. Some 12.2% of cases reported cases in Europe (527) are illegal anti-Gypsy hate speech. Since they concern extreme hate speech, we can conclude that, sadly, anti-Gypsyism continue to be a reality.

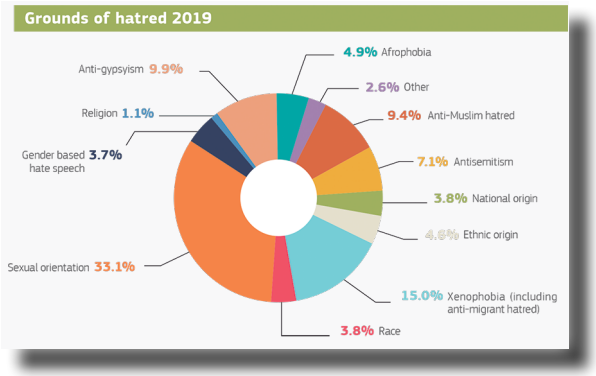
On average, internet and social media providers (Facebook, Twitter, YouTube, Instagram) are removing 72% of unlawful hate speech reported. This is considered a satisfactory figure, since some of the content reported by users may not be illegal. To protect freedom of speech, only content considered illegal should be deleted. Facebook, YouTube and Instagram are highlight responsive, having removed 82%, 85% and 70% of cases respectively. **Twitter, on the other hand, continues to be the platform with the lowest response, with only 42% of content removed,** even less than in the previous round in 2017. Bulgaria, Cyprus, Greece, Romania, Lithuania and Slovenia have managed a higher rate of removal, at between 90 and 100% of cases.

Xenophobia (including anti-immigrant hatred) is the most commonly reported hate speech (17%) followed content attacking the LGBT community (15.6%), anti-Muslim hatred (13%) and anti–Gypsyism hatred (12.2%). The figures confirm the trend showed in previous rounds, **although with the important new development that we now know how many of these hate messages are directed against employees (527 cases).**

At FSG we value the collaboration with DG Justice and the High Level Group against racism and xenophobia of the EU, which has allowed us to participate in these monitoring exercises and include the category of- anti-Gypsyism in their reports. We consider it key to give visibility to the reality of anti-Gypsyism hatred with reliable data, due to the serious effects it has on the persistence of stereotypes and prejudices, and for the damage it causes to the dignity of employees. Thanks to this report we now have a significant sample of the dimension of this problem, and its European dimension.

More information:

https://www.gitanos.org/upload/76/13/code_of_conduct_factsheet_3.pdf



Catalonia pushes through a pioneering law to combat anti-Gypsyism

The Government has approved the preliminary report of the **Bill to eradicate anti-Gypsyism.** Roma civil society has been calling for such a legislative initiative for years, and has recently been joined by the Catalonia Parliament, which wants to combat discrimination suffered by Roma people.

The legislation will be a precursor to specific public policy for this kind of discrimination, and will update and harmonise existing regulatory frameworks, contributing to better coordinated work among public administrations and Roma social organisations.

The Catalonia Government will become the first administration to create a comprehensive law to specifically respond to the issue of anti-Gypsyism, in conjunction with representative from the Roma community.

The new legislation will recognise anti-Gypsyism in law as a scourge to be eradicated and a phenomenon to consider in the application of public housing, education, work, health, leisure and communication policies.

The Bill includes measures such as the creation of a comprehensive support service and the regulation of a specific penalty framework.

Further information:

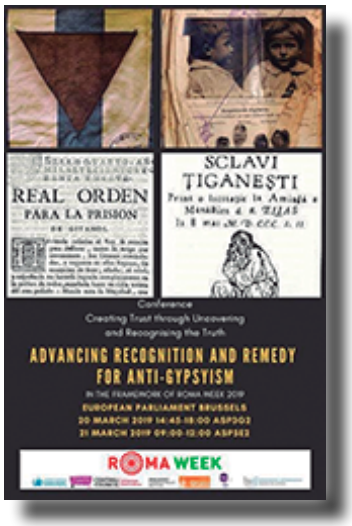
https://participa.gencat.cat/uploads/decidim/attachment/file/1596/ORIGINAL_ACORD_8-10-19_PEL_QUAL_S_APROVA_LA_MEM%C3%92RIA_PRELIMINAR_DE_L_AVANTPROJECTE.pdf

Generalitat de Catalunya

Roma Week 2019 held an important event on remedial justice for the Roma community.

The flagship event was the conference "Creating Trust through Uncovering and Recognising the Truth: Advancing Recognition and Remedy for Anti-Gypsyism", organised by Soraya Post, the Central Council of German Sinti and Roma, Fundación Secretariado Gitano (FSG), the UN Office for Human Rights in Europe, Open Society European Policy Institute and ERGO Network. The conference focused on discussing the current situation and efforts underway to combat anti-Gypsyism through truth, recognition, remedy, trust and reconciliation processes. It also gave survivors of anti-Gypsyism the chance to tell their stories, and emphasises the urgency of fighting back.

Members of the European Parliament from different political groups signed a commitment to continue working to achieve non-racist elections in the EU, a post-2020 EU framework for Roma people and a continued fight against anti-Gypsyism in the new legislative period. MEPs committed to creating a European society in which Roma people can enjoy their rights as set out in our treaties, reach their true potential, preventing the dehumanisation of Roma people, and creating a fair European society free of racism and anti-Gypsyism.



Comment by the Council of Europe›s Commissioner for Human Rights on ethnic profiling by the police

In 2019, the Council of Europe's Human Rights Commissioner Dunja Mijatovic published a comment urging states to stop the practice of ethnic profiling, on the basis that it is discriminatory and damaging to social cohesion and public confidence.

The Commissioner encourages States to pass laws that clearly define and prohibit discriminatory profiling and circumscribe the police's discretionary powers. Effective policing methods should relate to individual behaviour and concrete information. A reasonable suspicion standard should be applied in stop and search, and police should undergo continuous training in order to be able to apply it in their daily activities. Furthermore, law enforcement officials should be advised to explain the reasons for stopping a person, even without being asked, as this can help dispel perceptions of bias-based profiling and thereby boost public confidence in the police. Efforts to address discriminatory profiling should involve local communities at the grass-roots level. The police must engage with their communities to gain their trust and respect.

Moreover, in their communication with the media, the police should be careful not to spread and perpetuate prejudice by linking ethnicity, national origin or immigration status with criminal activity. The media, on its part, should avoid stereotyping persons belonging to minority groups, as well as migrants, refugees and asylum-seekers, as this can fuel racism and hatred and may contribute to the "normalisation" of discriminatory practices, including ethnic profiling. Instead, it should correctly reflect the positive contribution of minority groups to the communities in which they live and partner with schools, national human rights institutions and civil society to help build more inclusive and tolerant societies, including through human rights education programmes.

While the use of machine-learning algorithms to support police work is still at experimental stage, governments must establish a clear set of rules about trialling and applying any algorithm tool design to support police work. This should include a defined trial period, human rights impact assessments by an independent authority, and enhanced transparency and disclosure obligations, combined with **robust data protection legislation that addresses artificial intelligence-related concerns.** Machine-learning systems should benefit from a pre-certification of conformity, issued by independent competent authorities, able to demonstrate that measures were taken to prevent human rights violations at all stages of their lifecycle, from planning and design to verification and validation, deployment, operation and end of life.

Using solid and verified data in the process of developing algorithms for the law-enforcement authorities is vital. Feeding an algorithm with data that reproduces existing biases or originates from questionable sources will lead to biased and unreliable outcomes. For police services, the prediction of commission of crimes should not be only based on statistics established by a machine against an individual, but be corroborated by other elements revealing serious or concordant facts. Legislation should include clear safeguards to ensure the protection of a person's right to be informed, notably to receive information about personal data and how it can be collected, stored or used for processing.

The document can be read here:

https://www.coe.int/en/web/commissioner/-/ethnic-profiling-a-persisting-practice-in-europe

The European Commission against Racism and Intolerance (ECRI) concerned about hate and fear aroused by populist policies (annual report)

In 2019, the ECRI published its annual report on discrimination in Europe. One of its key concerns is that, in 2018, xenophobic populism and racist hate speech continued to leave their mark on the political climate in Europe.

Growing public concern for economic, geopolitical and technological changes were used to make migrants and minorities into scapegoats, particularly by populist politicians attempting to divide societies according to their ethnic or national religious lines. It was not just marginal politicians expressing these points of views; they are gaining ground among mainstream political parties and national governments.

"Ideologies based on assumed incompatibility between national/ethnic or religious groups present a danger to inclusive societies, as do those that advocate 'racial superiority'," the report says, warning against the threat of "us vs. them" approach in political and public discourse.

The ECRI also warned of the growing spread of "fake news", which often produces distorted images of vulnerable groups, and has asked politicians and religious and community leaders not only to avoid using hate speech but to proactively fight against it.

In more positive news, the Anti-racism Commission indicated that a growing number of countries have taken significant steps to adapt their legislation on combating hate speech to European and international regulations. A growing number of Member States have introduced special units within the police force in charge of liaising with vulnerable groups, which often bolsters trust between members of minority groups and the police. The ECRI called for this best practice to be circulated and for anti-hate legislation to be applied effectively.

The annual report can be read here:

https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/-/hate-speech-and-xenophobic-populism-remained-major-concerns-in-europe-in-2018

Open letter by Un experts on the rise in hate messages.

Thirty independent experts of the UN have joined forces to publish an open letter urging Governments and social media companies to act to stop the spread of hate speech.

They wrote, "We are alarmed by the recent increase in hateful messages and incitement to discrimination and hatred against migrants, minority groups..."

The experts warned that generalising and describing whole groups of people as dangerous or inferior was nothing new in the history of humanity and has led to catastrophic tragedies in the past.

"We urge States to promote and adopt policies of tolerance. States should actively work towards policies that guarantee the rights to equality and non-discrimination and freedom of expression, as well as the right to live a life free of violence through the promotion of tolerance, diversity and pluralistic views.

Traditional and social media companies should exercise due diligence to ensure that they do not provide platforms for hate speech and for incitement to hatred and violence."

The experts said that they had been receiving a growing number of reports on hate speech and inciting discrimination, hostility and violence, which brought them to publish the letter.

"Hate speech, both online and offline, has

exacerbated societal and racial tensions, inciting attacks with deadly consequences around the world. It has become mainstream in political systems worldwide and threatens democratic values, social stability and peace. Hate-fuelled ideas and advocacy coarsen public discourse and weaken the social fabric of countries."

The letter urges government officials to refrain from spreading fear in society of migrants of those seen as "other" for their own political gain.

They also expressed their concern about the abuse of hate speech as a term to was to undermine legitimate dissent and highlighted the importance of promoting freedom of speech.

The letter can be read here:

https://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Issues/Racism/IEE/Session6/Mr.SaiedAshshowwaf_7May2019.docx&action=default&DefaultItemOpen=1

2. Case law

This section contains judgments in 2019 from the European Court of Human Rights in cases of anti-Gypsyism.

Kovács v. Hungary

FACTS

The applicants were four Romani men who claimed that on the night of 3 September 2013, police officers in Hungary violently assaulted them while shouting racist abuse at them. They claimed that they were arrested at a petrol station for no reason and very badly beaten during the arrest, during the ride to the station, and at the station itself. They said the police racially abused them throughout the incident and threatened to kill them. A medical report they got after their release confirmed that they were injured. The Hungarian Government claimed that the applicants were arrested at the petrol station when the police recognised their car, based on a call about people involved in an altercation at a nightclub. The Government denied that police had subjected the applicants to ill-treatment or racial abuse.

Hungary's Independent Police Complaints Board investigated and found that the applicants should not have been handcuffed, and that they were detained for too long; but they did not find any other violations.

The applicants also filed criminal complaints against the police officers. Those complaints were dismissed for lack of evidence. The decision to dismiss the complaints was upheld by the Attorney General's Office.

THE EUROPEAN COURT'S JUDGMENT

On 29 January 2019, a three-judge committee of the European Court of Human Rights delivered a judgment finding that the applicants were subjected to degrading treatment by police, a violation of Article 3 of the Convention. The European Court found that Hungary did not furnish "any convincing or credible arguments which would provide a basis to explain or justify the degree of force used during the operation". The Court also noted that the police officers were not at all injured and had not alleged anything other than verbal aggression by the applicants. Such verbal aggression could not justify the kind of physical force the police used.

Instead, the European Court dismissed the complaint of discrimination as "manifestly ill-founded", saying there was no evidence for it, instead of looking at the evidence of institutional anti-Gypsyism in Hungarian policing, as the defence argued. The Court relied on the fact that the investigations carried out by the Hungarian authorities had addressed the issue and did not find that there was any indication of discrimination.

The Court awarded a total of €36,000 (€9,000 to each applicant) for violation of article 3 of the Convention.

Lingurar vs. Romania

FACTS

This case concerned a raid in 2011 by 85 police officers and gendarmes in the Roma community in Valcele (Romania). The family who made the complaint stated that they had been mistreated by the police, that their complaints had been poorly investigated and that the raid was motivated by racism.

The Court found that Article 3 had been violated (the right to be free from inhuman and degrading treatment) of the Convention through the mistreatment of the applicants during the raid, and **two violations of Article 14 (prohibition on discriminating)** of the Convention, together with Article 3 because the raid was racially motivated and the resulting investigation was inefficient. In particular, it found that there was no justification for the disproportionate use of force in the applicants' house, leaving them with injuries that required hospital treatment. It also indicated that the applicants were not armed and had never been accused of a violent crime, while the four gendarmes to had entered their home had received extensive training in rapid intervention.

The Court also found that the applicants were subject to attacks because the authorities had perceived the Roma community to be criminal in general. This was equivalent to ethnic profiling and was discriminatory.

Romania had to pay each applicant €11,700 (so a total of €46,800 to the four applicants).

Memet and others v. Romania

FACTS

This was a case in which the European Roma Rights Center represented ten Romani families living in Eforie Sud, Romania. They were evicted from their homes, which were demolished, in September 2013. The mayor used awful language at the time, **calling their homes an "infection" and called the families "dogs" — common tropes of anti-Gypsyism.** The families were then sheltered in an abandoned school. In July 2014, the applicants were evicted from the school and placed in small, uncomfortable modular containers. The families signed leases with the municipality to pay rent and utilities, but the amounts were clearly unaffordable and the families quickly ran up significant debts of hundreds of euros, despite having very low incomes. The authorities then decided to evict the families for failure to pay in March 2016.

THE CASE

ERRC supported the families to challenge the first eviction in court, and worked with the families to apply to the European Court of Human Rights to stop the third eviction. The European Court agreed to the request, granting a so-called "Rule 39" interim measure (like an injunction) to stop the eviction. Although the imminent risk of eviction stopped, as the authorities withdrew the eviction decision, the ERRC worked with the community to continue the case in the European Court about the third eviction, as there is still a threat of a future eviction.

In the meantime, while the case was pending before the European Court, the ERRC supported the applicants to bring a separate case before the Romanian courts about the first eviction.

They won that case, and the domestic courts awarded each family 500 euros and ordered the authorities to rehouse them.

Chapter 6

Appendices

Appendix I:

Current legislation on equal treatment and non-discrimination

Domestic

- Act 4/2015, of 27 April, on the Statute for victims of crime.
- Basic Act 1/2015, of 30 December, amending Basic Act 10/1995, of 23 November, on the Criminal Code.
- Act 19/2007, of 11 July, against violence, xenophobia, racism and intolerance in sport.
- Basic Act 3/2007, of 22 March, on effective gender equality.
- Act 62/2003, of December 30, on tax, administrative and social order measures. (Chapter III: "Measures to apply the principle of equality").
- Royal Legislative Decree 5/2000 of 4 August, approving the consolidated Act on Social Infractions and Sanctions.
- Basic Act 4/2000, of 11 January, on the rights and freedoms of foreign nationals in Spain and their social integration.
- Practical protocol for Security Forces when dealing with Hate Crime and Conduct that Violates Statutory Discrimination Rules. Official Bulletin of the Civil Guard, no. 1, section 1, page 51-108, 7 January 2015.
- Action plan to combat hate crime. Ministry of the Interior. 2019.

http://www.interior.gob.es/documents/642012/3479677/plan+de+accion+delitos+de+odio/d054f47a-70f3-4748-986b-264a93187521

European Union

- Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law.
- 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 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

- European Union Charter of Fundamental Rights. OJEC, C 364/1, 18 December 2000.

- Directive 2012/29/EE of the European Parliament and of the Council, of 25 October 2012, establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

International

- Instrument of Ratification of the Convention on the Rights of Persons with Disabilities, made in 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 the Framework Convention for the Protection of National Minorities (number 157 of the Council of Europe) made in Strasbourg on 1 February 1995. (Official State Gazette no. 20, of 23 January 1998).

- Resolution of 5 April 1999, Convention for the protection of human rights and fundamental freedoms, Official State Gazette A-1999-10148 (Council of Europe).

- Universal Declaration of Human Rights, adopted by the General Assembly in resolution 217 A (III) on 10 December 1948.

- International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966.

- International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966.

- Optional Protocol to the International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966.

- Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, adopted and proclaimed by General Assembly resolution 44/128 of 15 December 1989.

- International Convention on the Elimination of All Forms of Racial Discrimination, adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965 (CERD).

- Convention on the Elimination of All Forms of Discrimination against Women, Adopted and opened for signature, ratification and accession by General Assembly 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 General Assembly resolution 45/158 of 18 December 1990.

- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by General Assembly resolution 47/135 of 18 December 1992.

- Equal Remuneration Convention, adopted on 29 June 1951 by the General Conference of the International Labour Organisation at its thirty-fourth session.

- Convention concerning Discrimination in Respect of Employment and Occupation, adopted on 25 June 1958 by the General Conference of the International Labour Organisation in its forty-second session.
- Declaration on Race and Racial Prejudice, approved by the General Conference of the United Nations Educational, Scientific and Cultural Organisation on 28 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.
- World Conference against Racism, 2001 (Declaration and Programme of Action).
- Declaration on the human rights of individuals who are not nationals of the country in which they live, adopted by General Assembly resolution 40/144 of 13 December 1985.

Appendix II:

European bodies and institutions that work in the field of equality, non-discrimination and the Roma community

- Amnesty International

  https://www.amnesty.org/en/search/?q=Roma+people

- Council of Europe. Roma Unit.

  https://www.coe.int/en/web/roma-and-travellers

- Equinet

  http://www.equineteurope.org/

- ENAR

  http://www.enar-eu.org/

- ECRI

  https://www.coe.int/en/web/european-commission-against-racism-and-intolerance

- ERIO

  http://www.erionet.eu/

- EUROMA

  http://www.euromanet.eu/

- EU DG Justice

  http://ec.europa.eu/justice/discrimination/roma/index_en.htm

- European Roma and Travellers Forum

  http://www.ertf.org/

- European Roma Policy Coalition

  https://ergonetwork.org/2020/04/post-2020-european-roma-coalition/

- European Roma Rights Centre

  http://www.errc.org/

- Fundamental Rights Agency FRA

  http://fra.europa.eu/en/theme/roma

- International Roma Women Network

http://www.advocacynet.org/page/irwn

- Open Society Foundations

http://www.opensocietyfoundations.org/explainers/roma-and-open-society

- Osce-Odhir Roma and Sinti

http://www.osce.org/what/roma

- Policy Center

http://www.policycenter.eu/

- Roma Education Fund

http://www.romaeducationfund.hu/

- Roma Youth Action Plan

http://www.coe.int/t/dg4/youth/Training/Roma/2013_FEB_Roma_Youth_and_Council_of_Europe_en.asp

- Roma women

http://romawomen.org/

- Romed

http://coe-romed.org/

- Romea news

http://www.romea.cz/en/

- Romani language

http://romani.humanities.manchester.ac.uk/

- European Court of Human Rights

http://www.echr.coe.int/Documents/FS_Roma_ENG.pdf

- Heidelberg University Department of Anti-Gypsyism Studies.

https://www.uni-heidelberg.de/fakultaeten/philosophie/zegk/histsem/forschung/Forschungsstelle_Antiziganismus.html

- Romani Studies Program. Central European University.

https://romanistudies.ceu.edu/

APPENDIX III:

Legal texts and documents adopted by European and international institutions on anti-Gypsyism and papers on anti-Gypsyism.

Council of Europe:

Thematic report on combating anti-Gypsyism, hate speech and hate crime against Roma

Declaration of the Committee of Ministers on the Rise of Anti-Gypsyism and Racist Violence against Roma in Europe

ECRI:

Recommendation no. 3 on combating racism and intolerance against Roma people

Recommendation 13 on anti-Gypsyism:

http://rm.coe.int/ecri-general-policy-recommendation-no-13-on-combating-anti-gypsyism-an/16808b5aef

European Parliament

European Parliament resolution of 12 February 2019 on the need for a strengthened post-2020 Strategic EU Framework for National Roma Inclusion Strategies and stepping up the fight against anti-Gypsyism (2019/2509(RSP))

https://www.europarl.europa.eu/doceo/document/B-8-2019-0098_ES.html

A Union of Equality: EU Action Plan Against Racism 2020-2025

https://ec.europa.eu/info/sites/info/files/a_union_of_equality_eu_action_plan_against_racism_2020_-2025_es.pdf

European Parliament resolution of 17 September 2020 on the implementation of National Roma Integration Strategies: combating negative attitudes towards people with Romani background in Europe (2020/2011(INI))

http://www.europarl.europa.eu/doceo/document/TA-8-2019-0075_ES.html

European Parliament resolution of 25 October 2017 on fundamental rights aspects in Roma integration in the EU: fighting anti-Gypsyism (2017/2038(INI))

http://www.europarl.europa.eu/doceo/document/TA-8-2017-0413_ES.html

European Parliament resolution of 15 April 2015 on the occasion of International Roma Day — anti-Gypsyism in Europe and EU recognition of the memorial day of the Roma genocide during World War II (2015/2615(RSP))

http://www.europarl.europa.eu/doceo/document/TA-8-2015-0095_ES.html

United Nations:

CERD General Recommendation XXVII on Discrimination Against Roma

https://www.gitanos.org/upload/29/00/CERD_rec_XXVII_romanies.docx

Report of the Special Rapporteur on minority issues, Rita Izsák:

Comprehensive study of the human rights situation of Roma worldwide, with a particular focus on the phenomenon of anti-Gypsyism

https://www.ohchr.org/EN/Issues/Minorities/SRMinorities/Pages/GlobalStudyonRomaworldwide.aspx

Papers on Anti-Gypsyism:

Agafin, Timofey et al. *When Stereotype Meets Prejudice: Antiziganism in European Societies,* Ed. Ibidem, 2015.

Alliance against antigypsyism. *Reference paper.*

https://www.antigypsyism.eu/?page_id=17

Council of Europe. Human Rights of Roma and Travellers in Europe, 2012.

https://www.coe.int/t/commissioner/source/prems/prems79611_GBR_CouvHumanRightsOfRoma_WEB.pdf

Council of Europe. Mirrors- Manual on combating antigypsyism through human rights education, 2014.

Cortés. I., Ensayo sobre el antigitanismo. Viento Sur, 2019.

https://vientosur.info/spip.php?article14678

Cortés, i., and End M., Dimensions of Antigypsyism in Europe. ENAR, 2019.

https://www.enar-eu.org/Book-Dimensions-of-Antigypsyism-in-Europe

End, M., *Antigypsyism in the German Public Sphere,* Documentation and Cultural Centre of the German Sinti and Roma, 2015.

FAGA, *Guía de recursos contra el antigitanismo,* 2014.

https://www.plataformaong.org/recursos/156/guia-de-recursos-contra-el-antigitanismo

FRA: *A persisting concern: anti-Gypsyism as a barrier to Roma inclusion*. 2018.

https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-anti-gypsyism-barrier-roma-inclusion_en.pdf

FSG. Annual Report on Discrimination and the Roma Community 2016. Paper on Anti-Gypsyism.

https://www.gitanos.org/upload/85/61/interior_discriminacion_2016_web.pdf

Greens. *Countering antigypsyism in Europe*. 2017.

https://www.greens-efa.eu/files/doc/docs/1eab8137a17cb1d72a44bc4321ef3361.pdf

Hancock, I., *The roots of antigypsyism: to the Holocaust and after*. 1995.

Hancock, I., *The Pariah Syndrome. An account of Gypsy slavery and persecution*. 1987.

Kyuchukov, H., *Roma Identity and Antigypsyism in Europe,* LINCOM, 2013.

Kyuchukov, H., *New Faces of Antigypsyism in Modern Europe*. Praga, 2012.

http://jaroslavbalvin.eu/wp-content/uploads/2014/10/AG_04.pdf

European Parliament Scaling up Roma Inclusion Strategies; Truth, reconciliation and justice for addressing antigypsyism. 2019.

https://www.europarl.europa.eu/RegData/etudes/STUD/2019/608859/IPOL_STU(2019)608859_EN.pdf

Piasere, L., ¿Qué es el antigitanismo?, in (Re)visiones gitanas. Bellaterra, 2018, pp. 29 - 56.

Selling, J., End, M., *Antiziganism. What's in a word*. Cambridge, 2015.

Valeriu N., Towards a definition of anti-gypsyism. 2006 (published in Spanish in the 2016 Annual Report, p. 75-81).

http://ergonetwork.org/wp-content/uploads/2019/01/Valeriu-Nicholae_towards-a-definition-of-antigypsyism.pdf

Fundación Secretariado Gitano

C/ Ahijones, s/n - 28018 Madrid (Spain)
Tel.: (34) 91 422 09 60 - Fax: (34) 91 422 09 61
fsg@gitanos.org
www.gitanos.org

GOBIERNO DE ESPAÑA | MINISTERIO DE IGUALDAD

GOBIERNO DE ESPAÑA | MINISTERIO DE SANIDAD, CONSUMO Y BIENESTAR SOCIAL
POR SOLIDARIDAD
OTROS FINES DE INTERÉS SOCIAL

In Collaboration with:

Consejo para la Eliminación de la Discriminación Racial o Étnica