

Discrimination and the Roma Community



IN DEPTH _____

Analysis of discrimination in access to housing

Presentation of 334 cases of discrimination
Progress, best practice and case law
Cases of strategic litigation by FSG

FSG 2019 Annual Report

Discrimination and the Roma Community



IN DEPTH

Analysis of discrimination in access to housing

Presentation of 334 cases of discrimination
Progress, best practice and case law
Cases of strategic litigation by FSG

Written and published by:

Fundación Secretariado Gitano

C/ Ahijones, s/n – 28018 Madrid

Tel.: 91 422 09 60

Fax: 91 422 09 61

E-mail: fsg@gitanos.org

Web: www.gitanos.org

Technical coordination and preparation:

FSG Department of Equality and Fight Against Discrimination

Sara Giménez

Cristina de la Serna

M^a Carmen Cortés

Javier Sáez

Eduarne de la Hera

FSG Communications Department

Collaboration:

FSG would like to thank the following contributors:

Rafael Saavedra (FSG International Department)

Mikel Mazkarian

Rafael Cid

Sonia Olea

Maite Andrés (FSG Social Inclusion Department)

Design and printing:

CREIN SL

© **Fundación Secretariado Gitano (FSG)**

Madrid 2019

Technical Books Series No. 128

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



CONSEJO PARA LA ELIMINACIÓN
DE LA DISCRIMINACIÓN
RACIAL O ÉTNICA

Contents

| | |
|---|----|
| Introduction | 7 |
| Conclusions and proposals to improve the response to discrimination. | 11 |
| Cases of discrimination | 15 |
| 1. Summary of cases of discrimination recorded in 2018 | 17 |
| 2. Cases of anti-Gypsyism in Europe | 19 |
| 3. Presentation of disaggregated data | 25 |
| Strategic litigation undertaken in cases of discrimination, hate crime and anti-Gypsyism | 31 |
| In depth: Analysis of discrimination in access to housing | 41 |
| 1. Housing and the Roma Community: a human rights issue. <i>María del Carmen Cortés Amador, Cristina de la Serna and Rafael Saavedra Rodríguez</i> | 43 |
| 2. The human right to adequate housing, a shipwreck lost at sea. <i>Sonia Olea Ferreras</i> | 47 |
| 3. Evictions in Cañada Real are a serious violation of human rights. <i>Rafael Cid Rico</i> | 53 |
| 4. Doors slamming shut. Discrimination in access to housing. <i>Mikel Mazkarian</i> | 57 |
| Best practice, progress and case law | 61 |
| 1. Best practice and progress | 63 |
| 2. ECHR case law on discrimination | 76 |



Introduction



Introduction

For the fifteenth consecutive year, Fundación Secretariado Gitano (FSG) has published its annual report on discrimination and the Roma community, containing data on cases of discrimination and anti-Gypsyism documented and handled by the organisation throughout 2018. Akin to previous years' reports, this one has been prepared within the scope of the FSG's work on promoting the equal treatment of the Roma community. This is an area in which we have spent many years striving to make improvements in the fight against discrimination and to definitively end the blight that has historically prevented Roma people from effectively exercising their human rights.

Throughout 2018, FSG, with the leadership and coordination of the Department for Equal Treatment and the Fight against Discrimination – led by Sara Giménez until May 2019 until her replacement by Cristina de la Serna – has compiled, investigated and handled 334 cases of anti-Gypsyism, a considerable rise on the 232 cases documented in last year's report. We believe that this is, on the one hand, down to the hard work of equality officers and many other colleagues working to raise cases. On the other hand, we believe that it is the result of empowering many Roma people to exercise their rights when they find themselves victims of discrimination – an area in which FSG has been working for many years.

In any case, even if there has been a considerable rise in documented cases, underreporting is still rife among victims of discrimination; therefore, these 334 cases are not representative of the extent of discrimination and anti-Gypsyism that Roma people in our country continue to face. However, they do represent a good sample of what this scourge really means in the day-to-day life of many Roma people, and shows once again the need for a comprehensive equality and anti-discrimination law to regulate all discriminatory behaviour.

An area where such a law is particularly needed is in the right to housing, which is precisely the issue on which we have decided to focus this XI Annual Report. If there is a type of discrimination that, sadly, has been recurrent since we began publishing reports on discrimination and the Roma community 15 years ago, it is the refusal by private individuals to rent their homes to Roma people merely because of their ethnic origin. It is one of the inci-

dents of discrimination that is currently not covered by Spanish legislation. It is often the case that victims lack the effective legal channels to report and find recourse in such cases. In the chapter "In Depth" you may find more information about cases of this kind of discrimination, both towards the Roma community (see the article written by FSG) and towards other groups that suffer ethnic or racial discrimination (see the article by Mikel Mazkarian).

All the barriers to access to housing faced by Roma people are a violation of human rights; as expert lawyer Sonia Olea explains in her article in this chapter, housing is a human right and is a necessary stepping stone to the exercise of many other rights.

Another problem related to access to housing relates to violations of rights that can often be seen in areas with a high Roma population, such as evictions that fail to observe the principle of legality. In 2018, we had the opportunity to take one of these evictions all the way to court, on behalf of a Roma family in Cañada Real Galiana. We were successful in securing a court ruling declaring that the fundamental rights of the family and their three small children had been violated. This case is also detailed in the chapter "In Depth" in an article written by Rafael Cid, the legal counsel advising FSG in this case.

The case shows the importance of using strategic litigation as a tool to defend the rights of Roma people and the principle of non-discrimination, and is one of 20 cases in which we have pursued legal actions in 2018. A new feature in the report this year is a chapter on strategic litigation undertaken in cases of discrimination, hate crime and anti-Gypsyism, describing cases and lessons learned.

As in other years, we have chosen the most serious cases of discrimination against the Roma community and of anti-Gypsyism in 2018 in other European countries, and have shared best practice, progress and national and European case law that has helped in the fight against ethnic discrimination this year.

We hope that this report can offer some visibility of discrimination against the Roma community and anti-Gypsyism, which sadly continues to occur in Spain and throughout Europe, and will also improve the response in laws and institutions to these violations of rights.

Lastly, we are hugely grateful to the persons and institutions who have helped us in preparing this report. We would like to thank the Spanish Ministry of Health, Consumer Affairs and Social Welfare for offering their financial support, as well as the Ministry of the Office of the Prime Minister, Parliamentary Relations and Equality, which has also contributed to our work combating the discrimination suffered by Roma people. We would also like to thank all the staff members at FSG who have documented the cases and dealt with victims, as well as the authors of the articles featured in the "In Depth" chapter.

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

The background features two stylized human figures. The figure on the left is orange, and the figure on the right is grey. Both figures have a circular head and a rounded, rectangular body. The text is overlaid on these figures.

Conclusions and proposals to improve the response to discrimination



Conclusions and proposals to improve the response to discrimination

Analysis of recorded cases of discrimination against the Roma community and anti-Gypsyism throughout 2018 has allowed us to reach the following conclusions:

1. Underreporting and the absence of an adequate legal and institutional response to many cases of discrimination, a real barrier to effectively combating this scourge

One of the major hurdles we encounter when trying to intervene in cases of discrimination and anti-Gypsyism against the Roma population is the absence 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 before the courts or other institutions, 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 reported crimes.

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 people of the possibility of pursuing those kinds of complaints, many decide not to: they fear retaliation or believe that there is no point and it will come to nothing; they have had negative experiences with the police, they are discouraged by lengthy and costly proceedings 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.

As such, we implore the authorities to improve the legislative and institutional response to discrimination:

European Union institutions:

- Improved 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 of Directive 2000/43/EC, to broaden the scopes of prohibited discrimination and to expressly include the terms anti-Gypsyism and intersectional discrimination.
- Inclusion in the post-2020 European framework for national inclusion strategies for the Roma population of measures to combat discrimination and anti-Gypsyism against the Roma population, both specifically and transversally in each of the areas of social inclusions (housing, health, poverty, social services and education).

Spanish authorities:

- Approval of a comprehensive equality and anti-discrimination law that includes all international and European standards, specifically referring to anti-Gypsyism and discrimination against Roma people, including the creation of an independent state authority to issue reports, handle cases of discrimination and represent victims before the courts in emblematic cases.
- Training in anti-discrimination law and the victim's statute for all key stakeholders: judicial powers, prosecutor's office, state attorneys and state security forces.
- The consolidation of the work of the Spanish Council to Eradicate Racial or Ethnic Discrimination in respect of the preparation of reports and issuance of recommendations, and its Assistance Service for Victims of Discrimination.

2. Empowerment of Roma women, a key element in the effective exercise of rights and reporting discrimination

Once again this year we have found that Roma women suffer specific forms of discrimination due to the intersection of their ethnic origin and their gender (known as intersectional discrimination), such as cases of excessive surveillance and disproportionate and unfair searching of many Roma women in supermarkets and shopping centres by security guards. Such discriminatory behaviour criminalises Roma women, is humiliating and disruptive, at times violates the right to privacy and physical integrity, and violates the principle of equality..



We have also set out that, partly thanks to the specialist accompaniment measures provided by the *Call 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 the case to FSG or the authorities.

In addition, of the 408 victims of discrimination identified in 2018, 238 – nearly 60% – were women. This shows the higher incidence of discrimination among women in the cases we have collated. Although this Report is not a statistical study to try to reflect the reality of discrimination against Roma people on the whole, that figure is of quite some relevance.

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 overtly affected by early school leaving and academic failure, as well as unemployment and poverty.

In view of the above, we invite all public authorities to:

- Enhance and properly resource **specialist programmes offering comprehensive support to Roma women**, above all the most vulnerable, to empower them to exercise their rights when faced with discrimination and gender violence, to improve their academic and professional training, to join the labour market, to improve their self-esteem and to overcome traditional gender roles.

3. Mentioning ethnicity in the news and social media comments: two problems that perpetuate stereotypes surrounding Roma people

Of the 334 cases of discrimination and anti-Gypsyism highlighted in 2018, one third were found in the media, principally in two contexts: firstly, newspapers and other media outlets that mention the ethnicity of protagonist of news items relating to crime, violence and drug trafficking (casting a negative image on the whole Roma community); secondly, cases of hate comments made *online* by certain readers to news articles featuring Roma people, or on social media.

FSG has written numerous letters of complaint to the media, explaining the damage that this type of journalism causes (since ethnicity is irrelevant in the understanding of the story), and asking extreme hate comments against Roma people to be removed, since the media have a responsibility to monitor and filter reader comments published on their *online* editions. In some cases we have received a positive response and the *online* version of the article has been changed, but certain media outlets have failed to respond to our complaints or have stood by their decision to systematically mention ethnicity in this type of articles about crime and violence. Sometimes, we have even witnessed media publications publish our letters in an attempt to mock them.

Although we recognise that the response to anti-Roma hate speech online and on social media has improved dramatically (for instance, thanks to the invention of *trusted flaggers*), the internet continues to be a platform for spreading the dehumanising of Roma people and even for inciting violence against them. We believe that there are hundreds of cases that should be identified and removed directly by print and social media, and that it should not be left to individuals or an NGO. We also find it concerning that, while the main social media platforms (Facebook, Twitter, YouTube, etc.) are making decent progress in this area, online forums are doing nothing about it. It is precisely in those kinds of websites where, lately, we have been finding the most worrying and hateful content.

FSG believes that this is a major problem, and so we are calling for the following:

- **That the media**, show a greater commitment to journalistic codes of ethics to stop the proliferation of stereotypes or the mention of ethnicity in new items when it is not relevant, and 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.
- **For the leading social media platforms**, to continue to engage and **to improve their response to anti-Roma hate speech**, automatically removing hate content.
- **For online forums**, to **get involved in the fight against anti-Roma hate speech**, moderating comments and removing the most serious comments.
- **For the authorities** at all levels to **promote awareness campaigns** showing a diverse, not stereotyped image of the Roma community, and thus offering a counter-narrative to prejudice and hate speech.

¹ Available here (in Spanish): https://www.gitanos.org/centro_documentacion/publicaciones/fichas/129378.html



4. Discrimination in access to housing, a major problem and difficult to overcome with current legislation

In 2018, we identified 28 cases of discrimination in access to housing. Underlying many cases is an instruction to discriminate (landlords who instruct an estate agent not to rent to Roma people), or direct discrimination by property owners who refuse to rent or sell a home to an individual or family because they are Roma. These are clear examples of discrimination that affect as important a right as is access to housing. We are also concerned by the existence of slums and substandard housing, which, although residual in nature, does persist and with little prospect of improvement in certain towns. We are concerned about the digital barriers preventing Roma families from accessing housing assistance, and that in certain segregated zones there is a high concentration of Roma people whose rights are being violated or are being subject to unlawful evictions. For more on this problem, and the focus we have taken on human rights in this area, see the “In Depth” chapter below.

In order to ensure that Roma people effectively enjoy their right to housing, we urge the authorities to act as follows:

- Approve action plans to eradicate slums and substandard housing, as part of the National Housing Plan, providing the necessary resources and applying methodologies for the service of stable and definitive solutions combining rehousing and other accompaniment and social support measures for families throughout the process.
- Eradicate the digital barriers that often prevent Roma families from pursuing social housing applications.
- Increase the amount of social housing and establish housing alternatives, both short-term and long-term, for Roma families who have suffered evictions as a result of mortgage foreclosure or non-payment of rent.
- Respect for statutory procedures in evictions and rehousing carried out by local authorities.

5. Greater visibility is needed of barriers to access to the world of work

This year alone we have identified 55 employment-related cases. Many took place in the context of hiring, when some companies identify candidates as Roma and decline to interview them or decide not to hire them, even though they have suitable skills for the position. Other cases took place in work, with negative or stereotyped comments, or bullying and harassment stemming from anti-Roma attitudes from colleagues or management. These examples are just a sample of the impact that discrimination has on access to fundamental rights, such as the right to work. It can be the case that discrimination and anti-Gypsyism are a profound barrier preventing many qualified Roma young people from entering the world of work.

That is why we are calling for:

- Employers to pay better attention to ethnic diversity and to instigate awareness initiatives to eradicate those stereotypes and enable equality in the world of work.
- Labour inspectorates to investigate and, where appropriate, sanction incidents of labour discrimination and anti-Gypsyism in the field of work.

6. Discriminatory harassment in schools and segregation: a reality of Roma childhood

This year we have documented 31 cases in the area of education – nearly double the number of the previous year. Considering how difficult it is to document these kinds of cases, because of the highly vulnerable nature of the victims (Roma children and teenagers), this is a striking and alarming figure. Very often these are cases in which a Roma pupil has been a victim of anti-Gypsyist harassment in school because of their ethnic origin, which has a particularly serious impact on the right to education, dignity and the wellbeing of Roma children. Moreover, we must note that this kind of incidents take place in the context of segregation of Roma and migrant pupils, which is a prohibited form of discrimination under European human rights standards.



We urge national and regional education authorities, and the education community as a whole, to take action to:

- Evaluate the high concentration of Roma pupils to prepare a map with reliable data, with the aim of eradicating segregation in schools.
- Investigate, sanction and appropriately respond to harassment of Roma children and teenagers in schools because of their ethnicity.

7. Discriminatory police conduct and ethnic profiling

This year we have handled 12 cases of discrimination and anti-Gypsyism involving discrimination by a member of the security forces. However, that figure is by no means representative of the issue, due to the extensive underreporting due to fear of retaliation. Studies available² show that Roma people are disproportionately controlled by the police due to their ethnic profile. This type of police controls are not just discriminatory but in no way effective at uncovering crime, instead creating distrust by those they target towards the police and public institutions.

We urge the authorities to take action in respect of the security forces to:

- Introduce stop-forms and independent institutions to oversee police actions to prevent ethnic profiling.
- Establish mechanisms for dialogue between the security forces and communities affected by discriminatory controls, to overcome stereotypes and improve relations.
- Encourage the recruitment of Roma officers so that the police force is more representative of the diverse society they serve.
- Improve practical training for officers on the principle of non-discrimination and effective, unbiased police treatment.

² Human Rights Institute of the University of Valencia (2013), *Police identification using ethnic profiling in Spain. Report on experiences and attitudes in relation to police activities*, available (in Spanish) at: https://www.uv.es/garciaj/pub/2013_perfil_etnico.pdf



Cases of discrimination



1. Summary of cases of discrimination collated by Fundación Secretariado Gitano in 2018

Below is a short summary of cases handled by Fundación Secretariado Gitano. For more detail on the events documented, FSG's activities and outcomes, please see the full version in Spanish, available at: https://gitanos.org/centro_documentacion/publicaciones/fichas/129965.html

Traditional media and social media

Of the 334 cases of discrimination and anti-Gypsyism documented in 2018, one third (121) were found in the media, principally in two contexts: firstly, newspapers and other media outlets that mention the ethnicity of protagonist of news items relating to crime, violence and drug trafficking (casting a negative image on the whole Roma community); secondly, cases of hate comments made online by certain readers to news articles featuring Roma people, or on social media.

FSG has written numerous letters of complaint to the media, explaining the damage that this type of journalism causes (since ethnicity is irrelevant in the understanding of the story), and asking extreme hate comments against Roma people to be removed, since the media have a responsibility to monitor and filter reader comments published on their online editions. In some cases we have received a positive response and the online version of the article has been changed, but certain media outlets have failed to respond to our complaints or have stood by their decision to systematically mention ethnicity in this type of articles about crime and violence. Sometimes, we have even witnessed media publications publish our letters in an attempt to mock them.

Social media platforms and internet forums continue to be a means of propagating ideas that dehumanise Roma people and even incite violence against this group. It is precisely this kind of internet forums (Forocoques, Burbuja.info etc.) where we have seen the most serious hate content recently.

Access to goods and services

This year we have documented 57 cases of discrimination in access to goods and services. Many of these cases feature intersectional discrimination, i.e. they particularly affect Roma women, due to their situation as women and Roma. These are cases in which supermarket or shopping mall security guards overtly follow or watch Roma women when they shop, ask them to open their bags to prove they have not stolen anything or subject them to searches and even frisking, humiliating and disturbing them, based on an assumption that all Roma women are thieves.

Other common cases involve Roma young people attempting to enter a night club or swimming pool. They are refused access simply because they are Roma – a discriminatory and unlawful practice.

Education

We have documented a total of 31 cases in education – nearly double the number last year. These are often cases of a Roma pupil being a victim of anti-Gypsyist harassment in school caused by their ethnic origin, which has a particularly serious impact on the right to education, dignity and wellbeing of Roma children. In other cases, schools impose obstacles, barriers or excuses to prevent children from enrolling and attending.

Employment

This year we have documented 56 employment-related cases. Many took place in the context of hiring, when some companies identify candidates as Roma and decline to interview them or decide not to hire them, even though they have suitable skills for the position. Other cases took place in work, with negative or stereotyped comments, or bullying and harassment stemming from anti-Roma attitude from colleagues or management. These examples are just a sample of the



impact that discrimination has on access to fundamental rights, such as the right to work. It can be the case that discrimination and anti-Gypsyism are a profound barrier preventing many qualified Roma young people from entering the world of work.

Health

We have received 10 cases relating to health and healthcare. The majority concern cases in which healthcare professionals (doctors, nurses, porters) treat Roma people and families with contempt or hostility, or perpetuate stereotypes when dealing with them. Other cases have indicated that the patient's ethnicity has been noted in medical records, despite being prohibited by law.

Police

This year we have handled 12 cases of discrimination and anti-Gypsyism featuring a member of the security forces.

The majority of cases concern police stops and identification of Roma people purely due to their ethnicity, known as ethnic profiling. Aside from being discriminatory, this kind of practice is not effective at discovering crime, and generates distrust towards the police and public institutions among those targeted.

Housing

This year we have documented 25 housing-related cases. The most common cases of anti-Gypsyism we encounter concern the refusal by landlords to rent to Roma people when they discover their ethnicity. In other cases, estate agents or landlords directly ask potential tenants their ethnicity, and automatically refuse to rent to those people. In other cases, the discrimination is based on an association with the potential tenant's surname or the neighbourhood in which they live.

We have also seen cases of harassment and anti-Gypsyism from neighbours associations where Roma people live, which is another barrier to their equal access to housing. We have also handled cases in some neighbourhoods where Roma people have been harassed and bullied (and leaflets have been handed out) to try to force them out of their homes.

It may be the cases that the estate agent is behind the discriminatory actions: we have found cases where Roma landlords have been refused service for no other reason than their ethnicity. At times, estate agents have insisted that there are no properties available (falsely, since a check by a non-Roma person has shown that there have been properties available), and on other oc-

casions they have tried to evade responsibility by arguing that they have been given instructions not to rent to Roma people. We have heard cases where estate agents have persuaded Roma people not to choose a certain neighbourhood, and instead to opt for a "typically Roma" area.

Other

We have documented a further 22 cases that cannot be categorised, mostly concerning anti-Roma comments in public spaces, bars, leisure and entertainment settings and the workplace, or comments made generally or against specific Roma people. We have seen examples of hate speech, such as graffiti on buildings and doors, or threatening letters against the Roma community.

2. Cases of anti-Gypsyism in Europe

1. CZECH REPUBLIC. Case of anti-Roma discourse from the President.

In September 2018 at a public meeting in Kojetin, the President of the Czech Republic, Miloš Zeman, made a series of declarations about the Roma citizens of his country. Speaking of the Czech unemployed, he identified Roma people as those who did not work, and remembered the Communist era when "Romani people had to work" and were imprisoned if they refused: "Most of them worked as ditch-diggers, and if they refused to work, they were designated as work-shy and went to prison." He went on to say that in the Romani labour platoons, if one man refused to work, the "slapped him around. It's a very humane method that worked most of the time".

It was by no means the first time that he has made such derogatory comments about Roma people. His contempt for Roma people in the Czech Republic is notorious: a few months previously, he commented that 90% of "inadaptable citizens" in the Czech Republic were Roma. His outrageous xenophobic and intolerant statements have drawn a great amount of international criticism, including from the United Nations High Commissioner for Human Rights and the European Commission against Racism and Intolerance (ECRI).

2. BULGARIA. Roma child shot to death by man.

On 9 October 2018, a Roma child was shot multiple times in Montana, Bulgaria. The boy, aged 17, was collecting firewood with his grandfather when he was shot at multiple times by the man. The boy died shortly after from his injuries.

"I heard a gunshot and the boy fell into the cart", his grandfather recounted. "The horse bolted but I stopped him...I saw the shooter, he was aiming at me too. I'd seen him before in the woods and he had threatened us. A while ago, he also threatened to kill someone else".

A 38-year-old man was arrested by police. The suspect was the owner of the property where the child and his grandfather were collecting firewood. The police retrieved an illegal, unlicensed firearm in the man's car. Other illegal firearms and munitions were found during subsequent searches.

It is not the first time that Roma people have been shot at or murdered while collecting wood or hay. Just last year, a 24-year-old Roma man was gunned down in Breaza, Romania, by police officers while collecting firewood in the woods. This has become a very common occurrence in recent years.

Last year, a Roma father in Bohot was battered to death by the police while he and his son were collecting firewood. Although there are agreements in place in many areas of Bulgaria that allow people to collect firewood in forests, that seldom prevents someone from opening fire on Roma people collecting wood. An excessive number of Roma people seem to die in Bulgarian forests, generally at the hands of the police, forest rangers or local landowners resorting violence against Roma people collecting wood, whether they are doing so lawfully or otherwise.

Reference: <http://www.errc.org/news/bulgaria-roma-murdered-in-racist-attack>

3. BULGARIA. Anti-Roma hate crime against two Roma persons.

In a racist terror act, two Roma brothers were attacked by a man brandishing a knife, shouting that he had come from "Arabia to burn mosques and kill Gypsies". On Saturday 12 May 2018, Mitko Boyanov, aged 28, died at hospital from knife wounds.



The brother of the victim, Nasko, aged 32, explained that they were sitting on a bench in the Grivitsa neighbourhood, and had done nothing to provoke the attacker, who demanded that they stop talking "Romanian or Turkish". The attacker stabbed Mitko Boyanov with a large knife, and Nasko hit the attacker over the head with a brick in self-defence. The murderer immediately hid the knife under a car and fled from the scene.

His catalogue of racist and "patriotic" posts published online, inciting violence against Roma people, clearly shows that the murder was a premeditated hate crime and a racist terrorist act.

This latest murder took place in a highly complex political context in which the situation of Roma people and other minorities in Bulgaria is continually deteriorating; the debate has become increasingly disagreeable, with politicians frequently resorting to racist hate speech and inciting violence against Roma, migrants and Muslims.

1. UKRAINE. Numerous anti-Roma pogroms against Roma families.

In 2018, three anti-Roma pogroms in a month marked a worrying rise in racist violence from neo-fascist militia in Ukraine. As reported by the European Roma Rights Centre, in the attack of 22 May, a group of armed masked men forced Romanian families living near the village of Velyka Berezovytsia Ternopil to escape to the forest, and set fire to their improvised homes. The attackers fired multiple shots and three people were injured in the attack. Seven adults and 30 children lost all their belongings and documents in the attack. Medical staff at the local hospital were forced to call the police when the injured Romanians were subjected to further attacks while being taken for treatment.

Barely a week before, in the village of Rudne in the Lviv region, a group of 30 masked men descended upon the huts of the Roma people at 2 am, ripped people from their beds, beat them and set fire to their homes, destroying their belongings and forcing them to flee. The police and ambulance staff attended the scene, but no arrests were made. The whereabouts of the victims is not known.

The attack took place barely 10 days since members of the neo-Nazi paramilitary group C14 were filmed carrying out a pogrom in the Lysa Hora nature reserve near Kiev, where 15 Roma families were forced out of their homes. According to a report by the ERRC on 21 April, a group of C14 carrying weapons attacked the Romanians. A video posted a few days later showed whole families with small children running terrorised from the masked men, who were throwing rocks and showering them with gas canisters, before setting light to their tents.

After the first attack, prominent member of C14 Serhiy Mazur openly bragged on his Facebook page about the "successful" operation, as a result of collaboration between C14 and the Holsiyiv district authorities.

Initially, the police failed to act at all, stating that they had not received any complaints of violence or attacks, and that local representatives and firefighters present throughout the clean-up operations were burning rubbish left by the Roma. The video of 25 April, witness statements and media coverage forced the police to announce that a criminal investigation had been opened.

In respect of the 10 May attack in the village of Rudne, the Kharkiv Human Rights Protection Group reported that a number of unknown people visited the camp days before the attack, telling the Roma to leave. On 10 May, the district administration news service announced that municipal workers, police and security "conducted an explanatory operation" with the Roma, after which they left the area. Witnesses from the nearby village suggested that police were actively involved in the attack. After being ordered to investigate by the Human Rights Commissioner, the National Police of Lviv region opened a criminal case of vandalism.

On the same day that Freedom House published a new report warning of the dangers posed by increasingly active extremist groups in Ukraine, news came in of a fourth pogrom-style attack on Roma carried out on 8 June by members of the National Druzhyna militia, who first posted threats on Facebook, then broadcast the attack and destruction of the camp on Facebook live (<https://bit.ly/2MaTbV>). The police have stated that the camp was empty when the militia arrived, so there were no victims and no arrests, and they will not open any criminal proceedings related to this incident.



1. SLOVAKIA. A man fires shots at various Roma gardeners and hangs a Nazi flag from balcony.

In June 2018, a man fired shots at Roma people employed by a gardening company to mow the lawn in an apartment complex. The attacker hung a Nazi flag from the window after discharging the weapon. He was subsequently arrested by the police.

The racial hatred motivation formed part of the police investigation. "I felt a stabbing pain in my right arm. I thought that my co-worker's mower had hit a rock, but the machines were switched off because we had finished. I looked up at the apartment block and on the eighth floor there was a woman and two men shooting at us, Vladimír Janata told Slovakian newspaper Pravda.

Janata and another four men were cutting the grass in the development in Sásová, where they had been employed by a local landscaping company. When police officers arrived at the scene, the attackers once again fired shots from the balcony.

"Then they took out the Nazi swastika flag", said Janata. One of the men filmed the incident on his mobile phone.

The video shows a man standing on a balcony with a Nazi flag and an air rifle. "The men shouted something at us before that, but we ignored them. They wanted to kill one of the Roma men", said Zlatko Vörös, who recorded the incident.

The police are investigation the motivation behind the crime. The Nazi flag indicates that the act was racially motivated. "The detective from the anti-extremist unit NAKA has begun prosecution in this matter for the offence of displaying sympathy for a movement aimed at suppressing fundamental rights and freedoms," said police spokesman Michal Slivka.

"Some employees of our business are Romani people who are frequently targeted for assault. People have already thrown eggs at them, for example, or poured water on them," Ivan Šabo, director of the landscaping firm, explained to the media.

After a preliminary proceeding by a Specialist Criminal Court (STS) in Banská Bystrica, the judge remanded the shooter into custody.

2. ALBANIA. Albanian authorities are ordered to provide drinking water to Roma people following discrimination case.

A Romani community in Fushe Kruje, Albania, won a case before the Commissioner for the Protection against Discrimination, after challenging the local town authorities following their refusal to provide drinking water and sanitation. The Commissioner found that the town of Kruje had discriminated against Romani families living in the Kastriot neighbourhood due to their ethnicity and socio-economic status, and order the town to take immediate measures to correct the situation within 30 days or else face a fine.

The case was brought before the Commissioner by the Albanian Helsinki Committee, with the support of the ERRC, which provided evidence of systematic discrimination in providing ethnic minorities with clean water in Albania.

ERRC's lawyer Nicole Garbin said: "Lack of clean drinking water and sanitation is an issue that plagues Roma throughout Europe. It is one of the most severe, and most dangerous manifestations of anti-Gypsyism".

Garbin continued: "Our research shows that Roma routinely face discrimination in the supply of clean water, despite international bodies recognising and sanctioning it as a human right. This decision simply demands that authorities fulfil their obligation to provide a basic human need in access to water and sanitation".



Around 250 Romani families (1,200 people) live in the community, which has existed since the late 1990s and has long suffered from a lack of clean water. Water reached the area in 2005 thanks to a project led by a local Roma organisation, only to be cut off by the town authorities some time later. Since then, residents of Kastriot have had to rely on drilling private wells to access ground water. However, river water polluted by urban waste mixes with the well water and in 2014 resulted in an outbreak of Hepatitis A, especially amongst children. Although this made the news and authorities were aware of the health epidemic, no action was taken by state authorities.

The water supply and sewerage company contracted to provide water in the town argued that the supply line runs to the Romani community, but as no residents turned up to voice their interest at the point of connection, they had fulfilled their legal duty to provide water.

"The supply of drinking water is a human right, and in Albania it is a public service" said Rovena Vuksani from the Albanian Helsinki Committee. "The water company is charged by law to carry out this service and cannot arbitrarily refuse to supply water to an entire neighbourhood. This decision is an important step towards recognising and overcoming the institutional discrimination Roma face in Albania. We will be monitoring the actions of the municipality carefully in the next 30 days to ensure they carry out the urgent measures to restore clean water."

3. SLOVAKIA. Roma boy in a coma following brutal assault by skinheads.

A brutal racist assault by a gang of skinheads in the Slovakian city of Zilina, on 21 July 2018, left a young Roma man, Daniel Danis, with serious head injuries, and another non-Roma person who went to his aid with a broken leg. A police officer who arrived with the ambulance remarked: "The city centre isn't for Roma, it's for whites".

According to interviews that the ERRC carried out with the victims, Daniel Danis and six of his friends went to the Nosorozec pub in the centre of Zilina to celebrate Daniel's birthday. The group was unaware that the pub is a regular meeting spot for the skinheads.

Around 2 am, when the group of Young Roma were about to leave, they found themselves surrounded by a group of between 10 and 15 skinheads armed with sticks, who began throwing rocks at them. The group tried to escape, but Daniel was unable to, and was subjected to a vicious attack.

The young non-Roma guy who had earlier had a drink with the group, threw himself on Daniel in an attempt to protect his head from the attack. His leg was subsequently broken. Before and during the attack, the skinheads shouted at him, "We'll kill you, you Roma scum".

Daniel began to feel sick and his parents called an ambulance. He was admitted to hospital and is currently in a coma with serious brain damage, awaiting potential surgery.

When the police arrived on scene with medical professionals, an officer stated, "The city centre isn't for Roma, it's for whites", as some kind of explanation or mitigation. Witnesses state that medics downplayed the severity of Daniel's injuries and said that he was "fine".

Daniel's father filed criminal charges relating to the attack on Saturday morning. The fact that police, in its statement on the attack, fully ruled out racial motivation, is highly concerning, in a case of a cruel hate crime resulting in a young man's life being endangered, in which the victims clearly were attacked due to their ethnicity.

The police's attitude became clear when they refused to take another of the victims in a police car to file criminal charges against the attackers, instead telling him to make his way to the police station.

References: <http://www.errc.org/news/roma-resistance-end-ethnic-profiling--travel-bans-in-macedonia>

<http://www.errc.org/news/young-romani-girl-shot-dead-in-greece-where-is-the-public-outrage-why-is-the-international-media-silent>



These are just some examples of the many cases that took place in 2018 against Roma families and people in Europe.

We want to highlight two important features of these cases: the anti-Roma hate and racist component of them all, and the lack of an appropriate police response in many instances.

We consider these to be very serious cases of anti-Gypsyism, showing that Roma people continued to be victims of collective expressions of hate and discrimination in many countries.

We task European and national authorities and institutions to take these cases seriously, to investigate the perpetrators and to take action to prevent new cases of anti-Gypsyism in Europe.

3. Presentation of disaggregated data

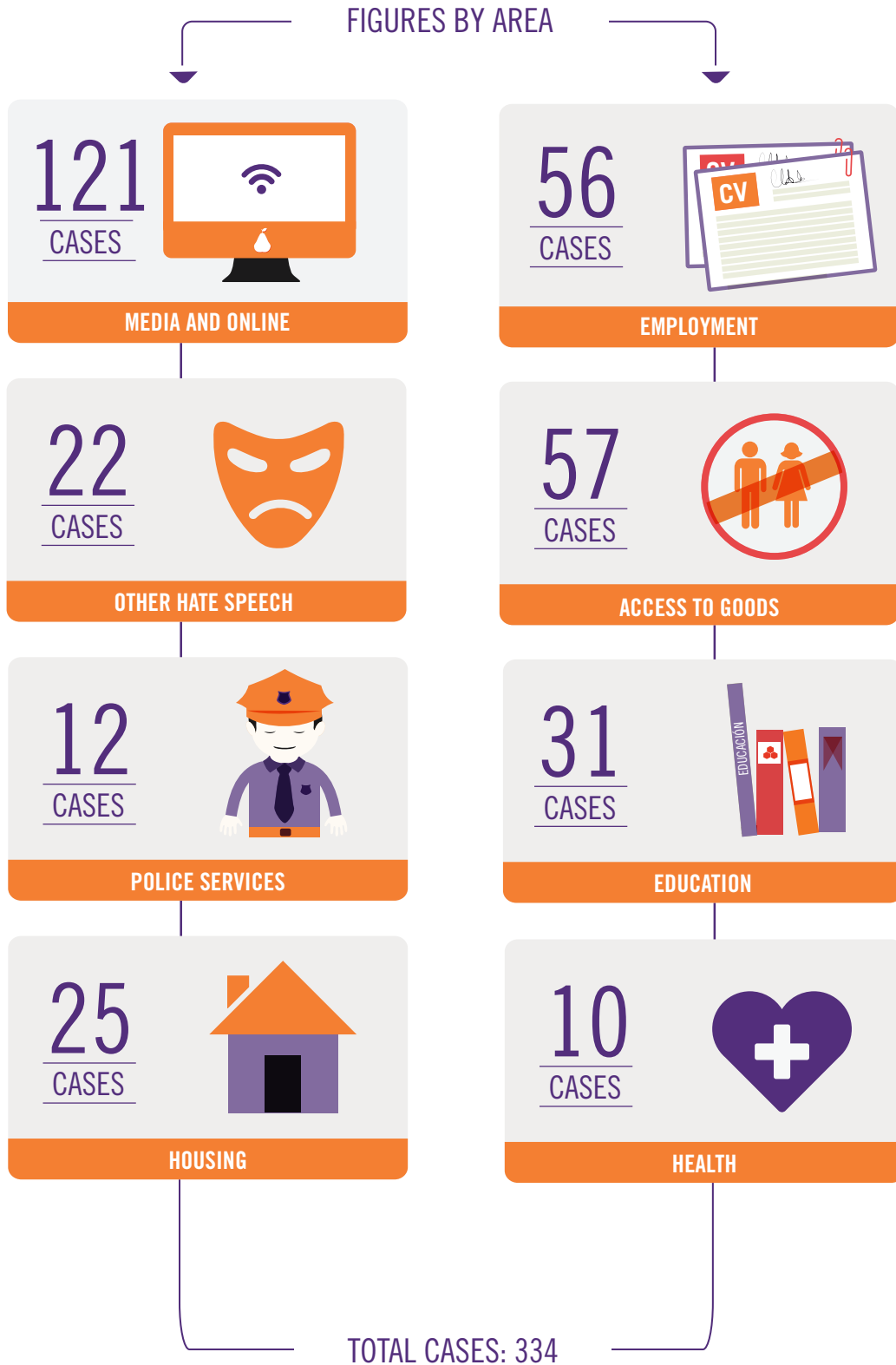
In this section we will present disaggregated data for the 334 cases collected by FSG during 2018.

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-Roma hate phrases are posted on social media: "All gypsies are...").
 - **Case with indeterminate victims:** 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).



ANALYSIS OF CASES



ANALYSIS OF CASES

INDIVIDUAL AND GROUP FIGURES



222 GROUP CASES



- Roma community in general
- Groups with identified victims
- Groups with indeterminate victims

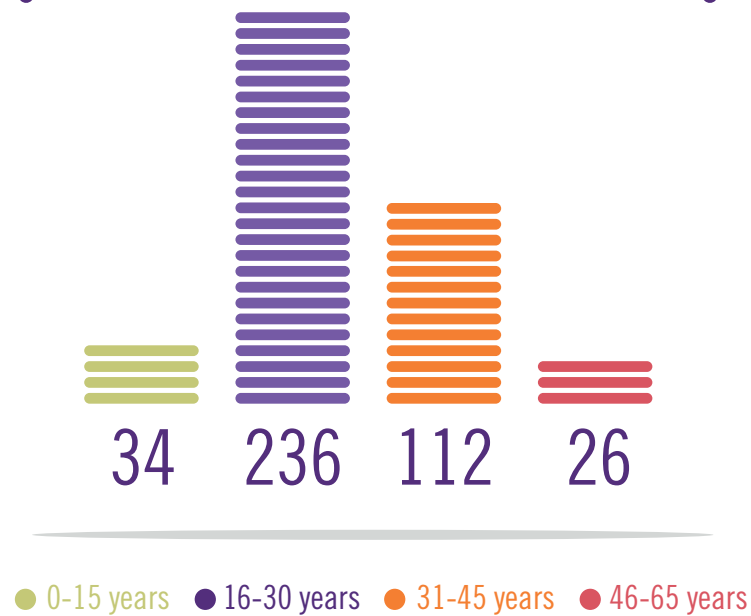


ANALYSIS OF VICTIMS

FIGURES BY SEX
408 PERSONS IDENTIFIED



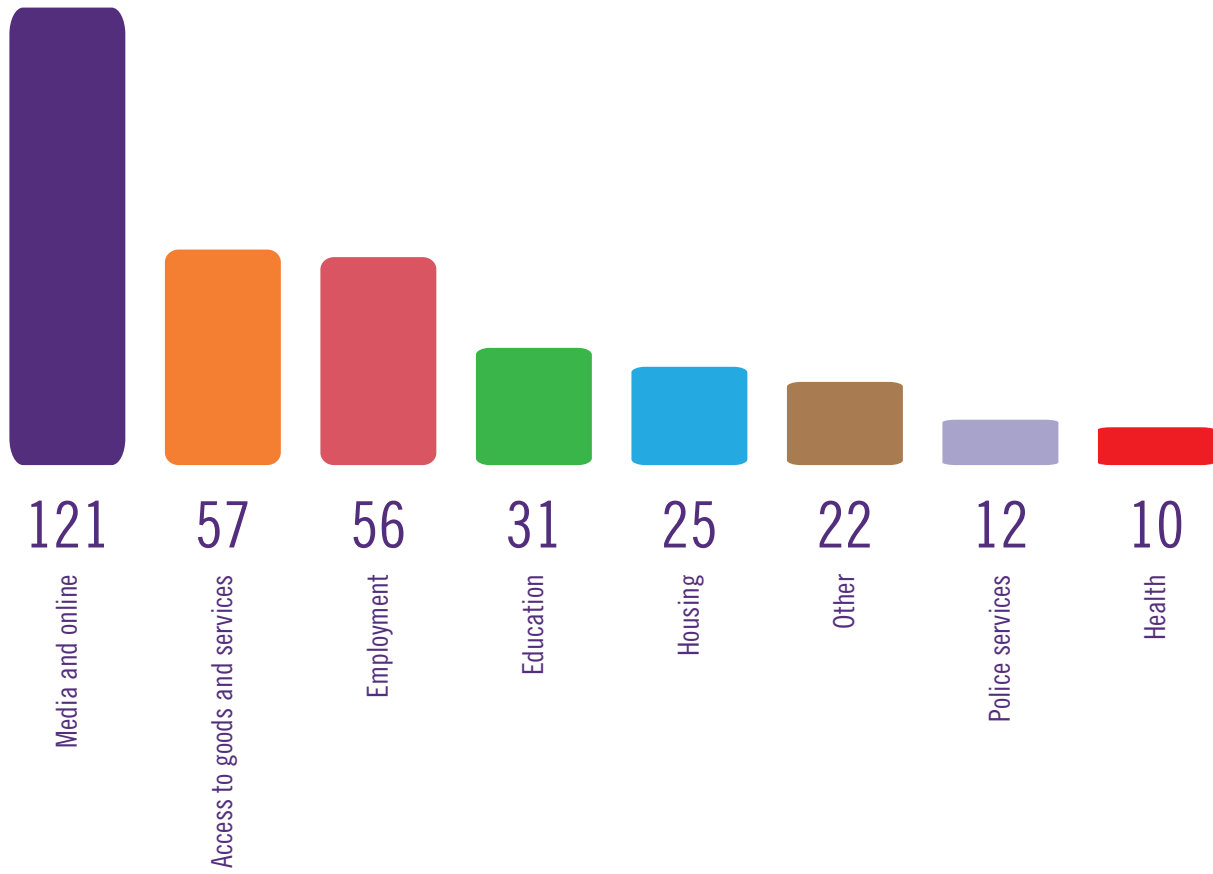
AGES OF THE VICTIMS IDENTIFIED

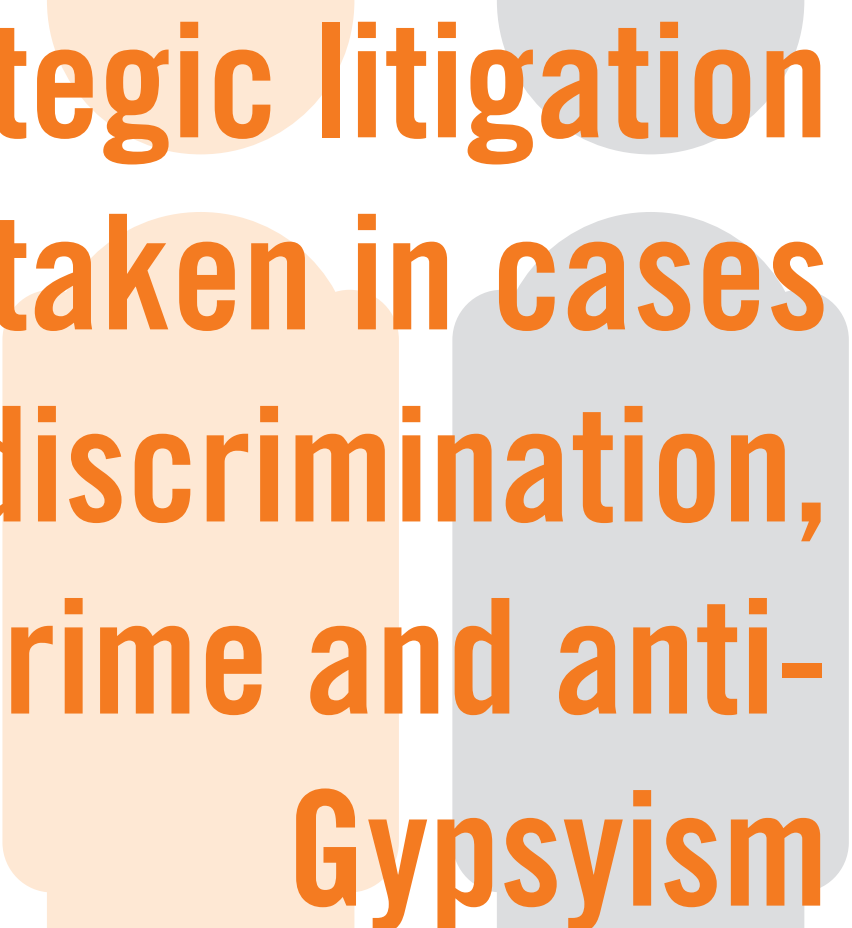


TOTAL VICTIMS: 408

ALL AGES: 124 (INDETERMINATE)

CASES BY AREA



The background features two stylized human figures. The figure on the left is orange, and the figure on the right is grey. Both figures have a circular head and a rounded, rectangular body. The text is overlaid on these figures.

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



1. Introduction

More than 15 years ago, FSG began to undertake strategic litigations, selecting cases in different national and European jurisdictions. Some of the most emblematic include: the case of María Luisa Muñoz "La Nena"¹, brought before the European Court of Human Rights, which ruled in favour of the petitioner to recognise her rights as a widow married by traditional Roma ritual; the cases of the Mossos d'Esquadra officers sentenced to two years in prison and payment of compensation for falsely accusing a Romanian Roma ethnicity woman of abusing her baby². More recently, the case heard before the Labour Court which found there to be discriminatory motivation in a Roma woman's access to employment³; this year, the Madrid High Court of Justice ruled that the demolition of a home in Cañada Real Galiana violated the right to the inviolability of the family home, and established compensation for the family⁴.

In 2016, this area of work to defend, protect and guarantee the rights of the Roma population received a major boost: in the context of the *Calí Programme for the equality of Roma women*, a team of 28 professional women was taken on, with a profile that included specialism in gender equality, mostly for Roma women. Together with other officers working in the fight against discrimination nationwide, they form the driving team behind detecting, advising and specialist accompanying each case.

We look at strategic litigation as a whole, not on an isolated basis, seeing it as a complementary tool in addition to assisting victims, raising awareness, training, the political impact and promoting best practice. In the majority of cases, the people we work with in strategic litigation are taking part in one of our programmes, and there is prior social intervention from our teams. In many cases brought before the courts, previously or in parallel we carry out additional out of court actions that may have an impact on the approach and resolution of cases, such as claims or complaints before the state or the office of consumer affairs, complaints with the ombudsperson, complaints with the labour inspectorates, etc.

When handling a case of discrimination or anti-Gypsyism, first we need to consider the opinions and decisions of the persons affected, at all stages of the process and at all times. As part of the detailed analysis we perform in each case, first we assess the most effective and swift solution for the persons affected.

The decision to pursue strategic litigation requires joint, coordinated work with detailed analysis of the case, knowledge of international human rights standards, study of national and ECHR case law and, on many occasions, alliances with other organisations. Likewise, in cases that we have assessed at FSG as strategic litigation, we have been aided by expert legal counsel, specialising in human rights and gender and diversity issues, and with a serious social commitment.

We pursue strategic litigation not just to guarantee the protection of victims but to establish case law, raise the profile of such cases with the court and encourage the application of the law in emblematic cases of rights violations. We want the effects of court rulings to extend beyond the individual case, as a driver of positive change in the exercise of rights by people of the Roma community.

Below we set out a brief description of the cases that have been opened, remain open or have been closed during 2018, and some conclusions and recommendations.

1 <https://www.Roma.org/actualidad/archivo/47465.html>

2 <https://www.Roma.org/actualidad/archivo/104115.html>

3 <https://www.Roma.org/actualidad/prensa/comunicados/124166.html>

4 <https://www.gitanos.org/actualidad/archivo/127993.html>



2. Brief summary of strategic litigation cases undertaken in 2018

During the course of 2018, 20 strategic litigation cases were undertaken, 11 of which were concluded (two of which ended with rulings in our favour), with nine remaining ongoing.

1. Case of an aggravated racist attack against a Roma teenager in Castellon

The events took place on 31 August 2016¹ in a town in Castellon. The teenager was with his cousin on the terrace of a bar where he was having dinner with his family, when **the attacker began to throw insults at him and anti-Gypsyist threats: "Exterminate the gypsy race" and "get out of our town". He also struck the victim with a bottle to the head.** FSG filed a complaint with the Public Prosecutor for assault under article 147.1 of the Spanish Criminal Code aggravated by racism under article 22.4 of the Criminal Code, and appeared before the Investigating Court representing the victim. An Order to open the oral hearing was issued on 12 April 2019, and we are currently awaiting the scheduling of the hearing.

2. Case of denying three Roma ethnicity boys access to a nightclub in Puertollano²

On 24 September 2016, three young people went to a nightclub 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 Roma"**. A complaint was filed with the Public Prosecutor for a crime of discrimination under article 512 of the Criminal Code, and it was decided that it would be strategic to pursue the case in court, due to being one of the most prolific offences across many locations. FSG filed a prosecution brief and on 29 April 2019 we received the Court Order to hold the oral hearing, which will take place on 16 January 2020.

3. Case of denying two Roma ethnicity boys access to a bar in Valladolid

The events took place in Valladolid on 22 January 2017³, when three young men, all of Roma ethnicity, tried to enter 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 investigating judge issued a provisional acquittal, on the basis that: *"The commission of the crime does not appear to be duly justified..."* The FSG filed an appeal against the decision of the Investigating Judge and the Provincial Court partially held up our appeal, preventing the case from being closed.

4. Case of aggravated racist assault of a young Roma girl by her landlord in Granada⁴

In this case, the landlord of a house found out that his tenant was Roma, and angrily asked: **"Why didn't you tell me you were Roma?"** and began hiding household items, telling her: **"Your boyfriend is Moroccan and you're Roma, I can't trust people like you"**. On 28 June 2018, **he threatened them with a knife, causing injuries to the girl's hand.** FSG filed a complaint on 26 July 2018 with the Public Prosecutor's office, for assault under article 147.1 of the Criminal Code, aggravated on the basis of racism under article 22.4 of the Criminal Code. The public pros-

1 Case documented in the 2017 Annual Discrimination Report.

2 Case documented in the 2017 Annual Discrimination Report: <https://www.Roma.org/publicaciones/discriminacion17/files/assets/basic-html/page-1.html>

3 Case documented in the 2018 Annual Discrimination Report: https://www.Roma.org/centro_documentacion/publicaciones/fichas/125743.html.es

4 Case n° 24 documented in this Report in the area of Housing.



ecutor notified FSG on 20 September 2018 of the opening of the investigation stage and referral to the court. We are currently awaiting a court ruling.

5. Case of denying three Roma ethnicity young people access to a nightclub in Valencia⁵

The events took place on 10 February 2018, when a group of Roma young people attempted to enter a nightclub, the doorman told them that they could not: "I've been told by my boss not to let Roma in". FSG filed a complaint with the Public Prosecutor for refusal to access goods and services in the private sphere, under article 512 of the Criminal Code. The Public Prosecutor opened an investigation and referred the actions to the court. We are currently awaiting a court ruling.

6. Case of degrading treatment and false accusation of a woman in Madrid due to ethnic discrimination⁶

On 21 November 2017, a woman was subjected to degrading treatment and discrimination in a shopping centre by security guards: "We get people of your race here, Roma who come here, buy some trousers, go to their car, empty the bag and go back in with the receipt [...] We've got orders that when someone Roma comes in, we have to follow them because they try to trick us". The police refused to believe the woman's version of events and arrested her on a charge of fraud with a reckless disregard for the truth, and summoned her the next day for a speedy trial. The woman went to court the next day and was acquitted. FSG filed a complaint with the Madrid Provincial Public Prosecutor for an offence of false accusation by the police under article 456 of the Criminal Code, aggravated on the basis of racism under article 22.4 of the Criminal Code, and an offence under article 510.2 of the Criminal Code by the security guards of harassment of the Roma ethnicity. The Court issued a provisional acquittal and shelved the case because, "The commission of the crime does not appear to be duly proven". FSG appealed the ruling due to lack of sufficient justification and the existence of sufficient and overwhelming criminality. Eventually, on 24 January 2019, the Provincial Court dismissed and definitively shelved the case.

7. Case of harassment of a Roma ethnicity woman and her daughter in a shopping centre in Zaragoza⁷

The events took place in a shopping centre in Zaragoza on 10 February 2018, when a woman and her daughter were followed, searched and detained for more than three hours, surrounded by numerous security guards, one of whom told them: "terrorists no, Roma". Officers from the National Police Force then arrived, who uttered the following insults: "Always the same, you have to come here to steal", "and even worse, you come in a stolen car". FSG filed a complaint with the provincial public prosecutor for harassment and degrading treatment of two women in a shopping centre for discrimination against the Roma ethnicity under article 510.2 a) of the Criminal Code, and represented the women in court, considering that this was a case of intersectional discrimination widespread across Spain. On 17 July 2019, the appeal filed before the Zaragoza Provincial Court was dismissed in a brief and barely reasoned Order due to: "Absence of subjective elements that could be included in the criminal classification", supported by the fact that the Public Prosecutor had asked for the case to be dismissed.

8. Case of denying a Roma ethnicity boy access to a nightclub in Valladolid⁸

On 23 January 2018, a complaint was filed with the Valladolid Public Prosecutor for Hate Crimes and Discrimination, for refusal to grant access to a nightclub to a young person due to being of Roma ethnicity, because according to the doormen: "A few days ago there was a fight in the club between Roma and some street hawkers, so you can't go in". The boy was accompanied by another, non-Roma boy, who the doormen let inside. The Court issued a provisional acquittal on 20 April 2018, stating: "Since it has not been duly proven that the defendant refused the complainant entry to the nightclub because of his Roma ethnicity".

5 Case n° 9 documented in the Report, on access to goods and services.

6 Case n° 56 documented in the Report, on access to goods and services.

7 Case n° 46 documented in the Report, on access to goods and services.

8 Caso n° 55 documented in the Report, on access to goods and services.



9. Case of denying a Roma ethnicity couple entry to a restaurant in Valladolid⁹

On 5 February 2018, a couple were discriminated against when entering a restaurant in Valladolid: when entering, the owner told them, “You’re not coming in, go to one of your own places”, with no reasonable or objective reason, and refused to hand over an official complaint form. Local police officers arrived at the bar and advised the couple to file a complaint. FSG reported the case to the Valladolid Provincial Public Prosecutor for a crime under article 512 of the Criminal Code, and a private prosecution was pursued. The Court issued a provisional acquittal because, “The commission of the crime does not appear to be duly proven...” An appeal for review and a secondary appeal was filed before a higher jurisdiction, which was dismissed by the Provincial Court on 10 September 2018 on the basis that: “It has not been proven that entry was refused because the couple were Roma ethnicity...”, after the Public Prosecutor submitted the pleas of FSG to no avail.

10. Case of three men denied access to a bar on anti-Gypsyist reasons in Gijón¹⁰

The events took place on 16 June 2018 when three Roma men went to order a drink at the bar, and were told by the barman: “the boss says I can’t serve Roma, so I can’t serve you”. The owner of the bar confirmed that Roma people could not come in, due to a previous bad experience, and refused to hand over an official complaint form. The men phoned the police, who opened an investigation. FSG filed a complaint with the public prosecutor for refusal to access goods and services in the private sphere due to discrimination against the Roma ethnicity, under article 512 of the Criminal Code. The public prosecutor shelved the investigation on 31 January 2019, on the basis that: “there are two disputing versions and no reason to believe one version over another...”.

11. Case of degrading treatment of a child recorded by a neighbour in Asturias¹¹

The events took place on 3 August 2017 in a town in Asturias. A neighbour took images of a child and uploaded them to social media with humiliating and degrading comments about Roma people, such as: “What’s the website for the gypsy? At at dot chicken dot es” and “THE KID’S DOING THE VIBRATING PLATFORM ON THE STREET AHHHH!!!! WHEN IT RAINS IT POURS LOOK AT WHAT THE GYPSIES ARE DOING ON MY STREET AHHHH”. La FSG reported the case to the provincial public prosecutor for hate crime and discrimination, which was already processed and allocated to the duty attorney. The Investigating Court issued a provisional acquittal on 10 April 2018, on the basis that “the reported conduct does not have the appearance of a crime”, arguing that: “The more or less funny content of the comments accompanying the image are not sufficient in nature to consider attributing a collective action, and there is no evidence of materials having been produced to degrade or humiliate groups...” The case was definitively shelved by the Asturias Provincial Court in January 2019.

12. Case of a woman receiving anti-Roma threats and insults at her workplace in Jaén¹²

The events took place on 7 and 8 June 2018 in a town in Jaen, when a Roma woman received anti-Roma insults and threats at her workplace from a customer, while working as a parking attendant: “Don’t speak to me because you’re a shitty gypsy, the only reason I haven’t punched you is because I don’t want shit on my hand”, “I’ll slash you, you don’t know me, I’m going to stab you and kill you, bloody gypsy”. FSG filed a complaint with the public prosecutor for a case of degrading and humiliating treatment based on ethnic discrimination of the woman. The proceeding was shelved at the proposal of the public prosecutor on 15 October 2018, stating that “the officer failed to record the anti-Roma and racist comments, and there were no witnesses”.

9 Case n° 4 documented in the Report, on access to goods and services.

10 Case n° 23 documented in the Report, on access to goods and services.

11 Case n° 4 documented in the Report, on Other.

12 Case n° 11 documented in the Report, on Police services.



13. Case of the eviction of a Roma ethnicity family and the demolition of their home in Madrid¹³

The events took place in Cañada Real on 13 February 2018. In the course of a police investigation, the City Council evicted and demolished a home occupied by a Roma ethnicity family with three children aged between one and six years. FSG accompanied, advised and represented the family in court proceedings to determine the unlawful nature of the action and the violation of the family's fundamental rights. A judicial review appeal was filed for a special proceeding for violation of fundamental rights, such as the right to physical and moral integrity enshrined in article 15 of the Spanish Constitution, the right to safety, especially for minors, enshrined in article 17 of the Constitution, the right to the inviolability of the home, honour and privacy, enshrined in articles 18.1 and 18.2 of the Constitution, and the right to court defence and protection under article 24 of the Constitution. The Appeal was dismissed by the Judicial Administrative Court on 12 June 2018 and appealed on 9 September 2018. The Madrid High Court of Justice issued a Judgment on 24 January 2019 partially upholding the family's appeal, and **declaring that the demolition of the home was not compliant with the statutory procedure, thus violating the right to the inviolability of the home**. It also ordered the City Council to pay the family compensation of 3,000 euros per child and 2,000 euros for the parents (totally compensation of 13,000 euros)¹⁴.

14. Case of denying a Roma ethnicity girl access to housing in Murcia¹⁵

The events took place in September 2016 in Murcia. A Roma woman was refused rental of a home on discriminatory grounds by two estate agents, and was subjected to degrading insults such as **"I don't rent to druggies or trash"**. The incident was a violation not just of the right to equality but of the person's dignity due to the degrading insults. FSG filed a complaint with the Public Prosecutor for refusal to access goods and services in the private sphere, under article 512 of the Criminal Code. The prosecutor opened proceedings and referred them to the court on 30 July 2018, and we were given notice of the shelving of the case on 6 May 2017, *"due to lack of proof that the accused had any obligation to facilitate the right claimed by the complainant, in the meaning of article 512 of the Criminal Code..."* The prosecutor did not file any appeal against the decision.

15. Case of a Roma man denied access to a swimming pool in Bunyola (Mallorca)

The events took place on 13 August 2017. A man was refused access to a swimming pool due to being of Roma ethnicity. The man asked for an official complaint form, which we was refused, being told: **"We reserve the right to refuse admission. I let who I want in here and I don't want Roma"**. The man called the police. The actions of the Civil Guard and the Police were irregular, since rather than dealing with the complaint, they told him to go to another swimming pool and that they were going to search his car. FSG filed a complaint with the Public Prosecutor for refusal to access goods and services in the private sphere, under article 512 of the Criminal Code. The investigating court issued a provisional acquittal on 30 November 2018, on the basis that: *"The commission of the crime does not appear to be duly proven..."*.

16. Case of denying a Roma ethnicity boy access to a nightclub in Almeria

The events took place in April 2017. The doorman of the nightclub denied a young man entry because: **"The nightclub owners don't like to let in Roma"**. When asked why, the doorman repeated: **"We've had fights here before between Roma people now the owners don't want to let Roma in the club"**. The young man asked for an official complaint form but was refused. A complaint was filed with the Public Prosecutor for refusal to access goods and services in the private sphere, under article 512 of the Criminal Code. The Court issued a provisional acquittal that was appealed by the prosecutor before the Provincial Court. On 18 July 2018, the prosecutor notified us that the Appeal had been dismissed and the case had been definitively shelved.

¹³ Case documented in this Report on Housing, and in chapter 5 "In Depth" (Rafael Cid).

¹⁴ <https://www.Roma.org/actualidad/archivo/127993.html>

¹⁵ Case documented in the 2017 Annual Discrimination Report, page 50: <https://www.Roma.org/publicaciones/discriminacion17/files/assets/basic-html/page-1.html>



17. Case of a Roma girl refused employment in Madrid

The events took place on 29 June 2017. A Roma ethnicity young woman taking part in a recruitment process was interviewed by the service coordinator, who asked her if she was Roma, to which the girl responded yes. After that, the coordinator's attitude changed and she asked the girl to produce documents that the human resources department had not asked for at the beginning of the process, such as a criminal record certificate. It turned out that the woman was not hired, in spite of having received two days of training. FSG filed a complaint with the Madrid Labour Court on the basis that the events constituted discrimination in access to employment that violated her fundamental right to equal treatment and non-discrimination, enshrined in article 14 of the Spanish Constitution. On 15 March 2018, an agreement was reached by the Court recognising that the right to non-discrimination due to ethnic origin had been violated.

18. Complaint with the Albacete Public Prosecutor for hate speech on Forocoches¹⁶

FSG reported anti-Gypsyist hate comments with the Albacete Public Prosecutor, which opened an investigation and ordered the police to locate the website and its users. We are currently awaiting a decision from the court. One user of FOROCOCHES began a thread entitled "Why SOME ROMA are such GARBAGE", which garnered responses such as: "Burn them all in a big fire and do the same to the Arabs", "You can't call them human beings, don't compare humans with those subhumans", "Burn them all, castrate them to stop them from multiplying", "Roma are garbage, no exceptions". The public prosecutor instructed the National Police to locate the website and the users who posted the comments. We are currently awaiting a decision from the court.

19. Complaint with the Ourense Public Prosecutor for hate speech on Burbuja.info¹⁷

FSG filed a complaint with the public prosecutor for 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 know what that scum are, 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 Investigating Court recused itself in favour of the Ourense Investigating Court, where the author of the comments was located. We appeared before the court 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. A statement was taken from the defendant on 30 September. We are currently awaiting the conclusion of the investigation stage.

20. Complaint with the Toledo Public Prosecutor for hate speech on a Facebook page¹⁸

FSG reported this case to the public prosecutor on 31 October 2017, for hate crime under article 510.1 of the Criminal Code, for a series of hate comments against Roma people by certain Facebook users, such as: "Fucking scumbags is what they are, and now they will exaggerate the damage to them. If I was a doctor I would exterminate them by castrating them as they were born". Where are the Yakuzas when you need them...they're so brave, a Samurai sword to the neck would do them...". On 22 October 2019, an FSG officer testified before the Talavera Investigating Court. We are currently awaiting a ruling from the court on the opening of the oral hearing phase.

¹⁶ Case n° 26 documented in the Report, on media and internet.

¹⁷ Case n° 60 documented in the Report, on media and internet

¹⁸ Case documented in the 2018 Annual Discrimination Report: https://www.Roma.org/centro_documentacion/publicaciones/fichas/125743.html



3. Conclusions

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

- They have raised awareness among courts and public prosecutors, encouraging them to better apply the Spanish Criminal Code to hate crime and hate speech and to incorporate European and international standards into case law.
- 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), this helps to reduce the feeling of impunity perceived by Roma people, bolsters confidence in institutions and raises reporting rates.
- Awareness has been raised among judges, prosecutors and lawyers and society in general about the prevalence of discrimination against the Roma community and anti-Gypsyism, since this kind of cases tend to have a greater media impact. This also means that the effect of court rulings will extend beyond a given case, stimulating major change for the Roma population.
- Roma people whom we accompany and represent in court tell us that they feel empowered to be claiming and exercising their rights, and doing so 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:

- They tend to be lengthy and costly proceedings, requiring a great deal of dedication and study of each step, which is not always practicable in a social organisation.
- On the other hand, at times we have found that the institutions with which we are filing complaints are not sufficiently aware and lack adequate training on the legal standards that apply to these cases. That means that, on occasions, they fail to duly appreciate the discriminatory or anti-Roma aggravating factors in police reports, they minimise the facts ("if they don't let you into one bar, just go to another") or they shelve proceedings without hardly having opened an investigation or preliminary stages (this is virtually automatic when the victims are not represented in court).
- In cases of actionable *online* hate speech, added complexities arise, such as: the validity of evidence, determining which court has jurisdiction and the international nature of some operators.
- We have found that cases without private prosecution rarely reach trial stage, instead being shelved either by the prosecutor or by the court in investigation stage, without sufficient investigation having been carried out. That leads to the shelving of cases based on poorly reasoned criteria, such as: "there are two disputing versions and no reason to believe one version over the other ...", "the perpetration of the crime has not been duly proven", and "the conduct does not have the appearance of a crime".
- Another disadvantage in these cases is the inadequacy of the legal structure to deal with incidents of discrimination: those that are not a criminal offence are not duly regulated, thus blocking any effective judicial channel to pursue litigation.



3. From the victim's perspective, pursuing litigation can be a difficult and complex decision:

- The 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, and the statutory deadlines set in many proceedings do not allow them to take that time.
- On the other hand, many proceedings are excessively delayed, preventing victims from achieving swift and effective justice.
- Sometimes, opening a court proceeding raises expectations that are not fulfilled, due to difficulties indicated above preventing satisfactory outcomes for victims.

4. Taking into account the above circumstances, it would be positive to continue to make progress in responses 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 made in the fight against hate crime and discrimination by the creation of specialist hate crime units in the national security forces, many officers still lack the sufficient training to deal with this sort of crime.
- Awareness and training for key legal and judicial stakeholders (judges, prosecutors, duty attorneys) remain essential to combat prejudice, which comes into play when addressing cases and questions the credibility of victim testimony. They must deepen their knowledge of national and international standards and rules that apply to hate crime, 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 verified in many of the cases we have brought before the courts. However, it is important 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 shine a light on hate crime, discrimination and anti-Gypsyism affecting Roma people, ideally, statistical reports from the Department of Public Prosecutions and the General Judicial Powers Council should include a category on anti-Gypsyism, as planned for 2020 in the annual reports of the Ministry for the Interior and in the monitoring cycles on hate speech published by the European Commission.



**In depth: Analysis of
discrimination in
access to housing**



1. Housing and the Roma Community: a human rights issue

María del Carmen Cortés Amador, Cristina de la Serna and Rafael Saavedra Rodríguez.
Fundación Secretariado Gitano.

Introduction: housing with a human rights focus

The right to housing is incontrovertibly a human right, even though our Constitution does not include it among the fundamental rights of Chapter II, Title I, and therefore it cannot be claimed before the courts or through constitutional remedy¹. It is so recognised in the Universal Declaration of Human Rights taken up by 170 States, including Spain, which has signed and ratified the International Covenant on Economic, Social and Cultural Rights.

Guaranteeing access to dignified housing for all, irrespective of origin or economic status, is not merely an issue of "charity", "solidarity", "handouts" or even "social policy", but a human rights obligation of States. The defence of housing is, therefore, at the same level as the defence of the dignity of the person, the principle of equality, the prohibition of torture or freedom from arbitrary detention. Irrespective of whether they are individual or collective, civil or political, economic or social, they are all human rights and, therefore, are indivisible and interdependent. In the case of housing, that interdependence is clear: without a safe, dignified and adequate home, it is impossible for people to exercise many other rights, from education to political participation, or political and religious freedoms.

To meet the human right of "adequate housing", States must guarantee: (i) security of tenure; (ii) availability of services, materials, facilities and infrastructure; (iii) affordability; (iv) habitability; (v) accessibility; (vi) location with access to employment opportunities and health-care services; and (vii) cultural adequacy². Sadly, as we will see below, many of the parts that constitute the right to housing have not been secured for the Roma community.

Roma community and access to housing: from the slums to segregation or ghettoisation

Collective thinking adheres to the stereotype connecting the Roma community to slums and substandard housing. However, akin to so many of the other characteristics with which Roma people are often labelled, and which the media play a big part in perpetuating, this is an outdated concept and misaligned with the current reality. In the last 30 years there has been enormous progress in this area: most recent figures available (for 2015 and taken from the *Housing and Roma Population Mapping* prepared by Fundación Secretariado Gitano, commissioned by the Ministry of Health, Consumer Affairs and Social Well-being) indicated that just 2.17% of homes lived in by Roma families are categorised as slums, with 6.46% living in other kinds of substandard housing, meaning that 91.37% of Roma people live in standard housing, and just 2.78% live in segregated settlements³.

¹ Article 47 of the Spanish Constitution, which sets out that "all Spaniards have the right to enjoy decent and adequate housing" is not included in the fundamental rights of Chapter II, Title I, and therefore cannot be claimed before the courts or via constitutional remedy. However, United Nations Committee on Economic, Social and Cultural Rights, which oversees compliance with the treaty, has reprimanded Spain for the lack of justiciability, urging it to "Take the legislative measures necessary to ensure that economic, social and cultural rights enjoy the same level of protection as civil and political rights, and those necessary to promote the enforceability of all the rights enshrined in the Covenant at all levels of the justice system, including by means of the remedy of *amparo*" (Concluding observations on the sixth periodic report of Spain, 25 April 2018 IE/C.12/ESP/CO/6).

² United Nations Committee of Economic, Social and Cultural Rights (1991), General Observation n° 4, The right to adequate housing (article 1, paragraph 1 of the II of the Covenant).

³ Ministry for Health, Consumer Affairs and Social Well-being (2015), *Housing and Roma Population Mapping*, available at: https://www.msccbs.gob.es/ssi/familiasInfancia/PoblacionGitana/docs/INFORMECOMPLETO_STUDIO-MAPA-VIVIE-Y_P...G.pdf



However, a human rights-based focus forces us to consider the figures not as percentages but as a whole, focusing on families and, above all, people: all the men, women and children whose human right to housing is being grossly violated. With this focus we must stress that around 60,000 Roma people (9,086 families) live in substandard housing, of which it is estimated that nearly 11,300 (2,284 families) are living in slums. These homes are often located in places where they are particularly vulnerable to violation of their rights, where unlawful evictions take place, such as in the case of Cañada Real, which FSG pursued before the courts (and which the lawyer Rafael Cid explains in his article later in this report).

In essence, although we appreciate the reduction in substandard housing and slums, this persistent situation, despite being less prevalent than in previous times, has no place in a welfare state under the rule of law, and requires an urgent response from the authorities until its full eradication.

There are also other circumstances that affect multiple layers of the Roma population, with an impact on the equal enjoyment of their right to housing. Firstly, we cannot forget that the economic crises and resulting political decisions taken have had a particularly sharp effect on the Roma community. Our recent *2018 comparative study on the situation of the Roma population in Spain in relation to employment and poverty*⁴ uncovered alarming data: some 85.9% of Roma people are at risk of poverty and social exclusion (compared with 22.9% of the general population) and 46% are in extreme poverty. For Roma children and teenagers, 89.1% are at risk of poverty (compared with 31.1% of children in the general Spanish population).

The data show that many Roma people are barely living a dignified life, including in respect of housing, and are indicative of the difficulties in accessing housing, especially when young people try to secure somewhere to live for the first time. There is a high incidence of evictions due to non-payment of mortgage or rent, where the vulnerability of the affected Roma families is not taken into consideration, and where there is no rehoming option offered or provided.

Likewise, lack of resources often forces Roma families to live in disadvantaged areas where access to social services and basic healthcare is not guaranteed. *The Housing and Roma Population Mapping* reports on situations of particular vulnerability relating to high levels of unemployment and various social problems that are ex-

tremely prevalent in 36.5% of neighbourhoods analysed, as well as serious issues with the condition of buildings in 22.64% of neighbourhoods analysed, principally relating to their conservation due to lack of funds to pay for the maintenance required to keep them in a good state of repair. According to the study, paradoxically, many of these issues arise in publicly owned housing.

Discrimination in access to housing

In addition to the planning and social problems that play a role in Roma people's access to dignified housing, another key element impeding the equal exercise of this right is discrimination and anti-Gypsyism. FSG's department for equality and anti-discrimination has reported a total of 217 cases of housing discrimination in the 15 annual reports that we have published since 2004. Although these cases are just a poorly representative sample, due to the chronic underreporting of cases of racial or ethnic discrimination, there are clear signs of Roma people suffering widespread racial or ethnic discrimination in access to housing, showing us the circumstances in which discrimination often occurs.

The most common cases of anti-Gypsyism we encounter involve landlords' refusal to rent to Roma people on discovery of their ethnic origin. In some cases, this is sudden and takes place when the rental agreement has mostly been arranged, and in spite of the potential tenants having proven that their income is sufficient to pay the rent. Occasionally, real estate agents or property owners have directly asked applicants what their ethnic origin is, and have automatically refused to rent to them. The discrimination can also be the result of automatic association with a surname, or neighbourhood in which the applicants live.

Throughout the years, at FSG we have encountered countless cases of discriminatory and anti-Gypsyist harassment by neighbours associations in buildings where Roma people live, which has also hindered their right to housing in equal conditions. We have seen cases of very subtle harassment, ranging from the unjustified blaming of Roma people for any problem to more serious insults such as "fucking gypsies" or Nazi graffiti painted on the doors of Roma people's residences. We have also intervened in some situations when Roma people have been harassed or bullied (and even where flyers have been distributed) to force them to leave.

Sometimes, the person perpetrating the anti-Gypsyist discrimination is the estate agent: we have documented numerous cases where they have refused to provide their services for no other reason than the ethnicity of the applicants. Sometimes they are adamant that they have no homes available for them (falsely, as when we have tested this using a non-Roma applicant, they say

⁴ Fundación Secretariado Gitano (2019), 2018 comparative study on the situation of the Roma population in Spain in relation to employment and poverty. Executive summary and graphic information available at: https://www.Roma.org/centro_documentacion/publicaciones/fichas/129378.html. es



that there are homes available),⁵ and at other times they evade responsibility, stating that the owners have instructed them not to rent to Roma people. We have also encountered cases in which estate agents have persuaded Roma people not to choose a certain neighbourhood, instead recommending another, “typically Roma” one.

In other cases, the discrimination in access to the right to housing in equal conditions comes from the public sector. In some areas and neighbourhoods, such as Cañada Real (Madrid) recently, evictions of Roma families have taken place with no respect for the statutory procedure or procedural safeguards in place for evictions, leaving the affected families utterly defenceless due to their ignorance of the administrative procedures in which those evictions should take place.

We have also found that in some cases, local authorities have failed to respond at all to serious harassment and hate speech directed at Roma families by neighbours, as occurred in Castellar or Estepa, or protests and concentrations of neighbours against Roma families with barely any police presence. In many of these cases, the Roma families tend to be blamed and they end up being relocated to run down areas beset by overcrowding and segregation to avoid greater problems rather than secure their rights.

We have also ascertained that some local authorities establish barriers that can result in indirect discrimination, by imposing requirements such as having an email address or an electronic signature as the only way of accessing certain public services for social housing. The requirement of computer skills and certain technical resources precludes many Roma families from accessing this type of housing in equal conditions, as a result of the digital gap that persists between the Roma population and the general population.

Our intervention in discrimination and anti-Gypsyism cases such as these has not enabled us to protect and adequately compensate the victim, except in a few exceptional cases where the discriminating person has recognised their mistake and remedied it. This is because most of the discrimination that Roma people suffer when accessing housing (such as the refusal to rent to a Roma person) is not covered by legislation; there is no rule that imposes any kind of penalty on property owners who act in this unlawful way when doing so as individuals. For this reason, for many years FSG has been calling for a comprehensive law for equal treatment and non-discrimination.

Conclusions and recommendations

Housing is a human right that underpins the effective exercise of many other rights, such as education, access to basic social services and other civil and political rights. It is clear that, currently, this right to access to dignified housing in equal conditions is not effectively guaranteed for many in the Roma community. That is why we wanted to dedicate this 15th Annual Report on Discrimination and the Roma Community to an in-depth examination of this issue.

In consideration of all the circumstances that have a negative impact on Roma people’s enjoyment of the right to housing, we call on the authorities to take the following action:

- To approve action plans to eradicate slums and substandard housing, in the context of the State Housing Plan 2018–2021, with the necessary resources, and applying methodologies to provide stable and definitive solutions combining rehoming measures with accompaniment and social support for families throughout the process.
- As a priority, and while those action plans are being implemented, there must be greater resources for the most disadvantaged neighbourhoods with a high concentration of Roma people, including health centres, schools, social services, communications, transport services, leisure areas and schools.
- The approval of a comprehensive law for equal treatment and non-discrimination that establishes measures to eradicate residential segregation and creates infringements and penalties for discrimination in access to housing, including cases in which the discriminating party is an individual, and establishes an equality body that can accompany the victims of this kind of discrimination.
- The breaking down of digital barriers that often prevent Roma families from making social housing applications.
- An increase in 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.

⁵ To better understanding the *testing* methodology, we refer to the article by Mikel Mazkarian later in this report.



2. The human right to adequate housing, a shipwreck lost at sea

Public housing policy with a human rights focus,
the challenge of a paradigm shift

Sonia Olea Ferreras.
Human rights legal expert.

Summary

Adequate housing as a right is enshrined not only in our Constitution and international human rights treaties, but in the day to day of thousands and people and families living in our country (sadly, due to its difficulty of access, enjoyment and legal certainty). The response to the indignant cry, *"No to houses without people, and people without houses"* lingers in the air. Steps have been made towards legislation to push through new forms of access (renting and not buying), but the reality remains the same: there is no accessible housing stock to allow people to enjoy this right, much less rented social housing to deal with the most vulnerable and excluded. Perhaps the response lies in accepting that housing is not an asset to be consumed, and not even a building; it is a human right and involves the public space, the city and the full and complete development of dignity¹.

Keywords: Human right to adequate housing. Public policy. Human rights focus. Common good. Public interest. Social function of housing. Collective spirit. Non-discrimination. Equality. Vulnerability.

"Human rights on the whole is going through a moment of turbulence. That turbulence is manifesting as a deadlock, which is uncovering the limits of conventional human rights, a language of dignity now unquestionably hegemonic".

Boaventura de Sousa Santos (2019)

"Individual rights can carry more weight than financial policy reasoning"

Alexy (1993)

I. INTRODUCTION

In 2007, Catalonia published Spain's first ever law on **the right to housing** (Act 18/2007, of 28 December). Its preamble contains the intrinsic and constant contradiction that leads us to talk about the "shipwreck lost at sea" drifting in such diverse and contradictory waters as that of human rights (professors Julio Ponce and Guillermo Escobar would insist on also calling them Fundamental Rights) and economic investment or the financialisation of goods. Its opening paragraphs talk about an "essential good", "adaptation to the new market realities" and "consumers". The most recent regional law published to date, the Balearic Islands **Housing Act 5/2018**, of 19 June, contains the steps taken in 11 years (with the constant threat of appeals on the basis of being unconstitutional filed by the Government up to 2018 against each of the regional laws passed) and gives us further clues: it follows the path trodden by Andalusia of developing the contents of international human rights law, as well as the European regional path, and relying on our own fundamental rights. Reference to situations of vulnerability has special meaning in the development of a human right; it talks about structural and integral actions (perhaps subtle small notes about the interrelation of rights); it also provides definitions and types of housing, etc.

That said, it was the Basque Country Housing Act 3/2015, of 18 June, which was the first to introduce **"access to legal occupancy of dignified and adequate housing"** into subjective law (two years after Valencian Act 2/2017, of 3 February, on the social function of housing), which included the option of accessing housing (public or on the open market) provided by public administrations or, if not available, financial assistance to pay for it (in the current shortage of available public housing, this is the most used channel). The tool of temporary expropriation of housing undergoing an eviction process for vulnerable families/people was cancelled by our Constitutional Court in September 20018, but not the expropriation of homes standing unoccupied for more than two years without just cause

¹ There are many people who, with their contrasting positions and wisdom, share with me every day their work to fight human rights violations against individuals, families and collectives. This article has been written with the indispensable assistance of Bruce Porter, Executive Director of the Social Rights Advocacy Centre in Canada.



that are located in areas with high demand for public or social housing. In both laws (Basque Country and Valencia), the Constitutional Court has annulled the possibility of claiming the subjective right to housing within the jurisdictional scope.

We highlight two logics that deepen this division: the social reality of accommodation emergencies (which “soak” all the regional and national legislative preambles and allow small circumstantial changes rather than structural changes in public development policies) and permanent support (financial and tax) for the big players underpinning the real estate sector (real estate investment vehicles, banks, multinationals, etc.).

Without wanting to embark on a dogmatic study of state housing legislation in recent years, and as we have done with the cursory description of the progress brought by the regional regulation of the human right to adequate housing, we will state that, with the exception of traditional mortgage and renting legislation (in their respective laws and amendments), a solid example of the previous paragraph is the attempt to tackle the terrible social, economic and housing crisis of the end of the last decade, which led to numerous regulations that were eventually scooped up in a law to protect mortgagors (Act 1/2013, of 14 May, on measures to strengthen the protection of mortgagors, debt restructuring and social renting) designed by the Ministry of Economy, with a clearly economic focus, with the primary goal of allowing vulnerable and socially excluded families and individuals at the brink of losing their primary homes to pay their debts. Running parallel to that was the “banking bailout”, and the creation of the *Sociedad de Gestión de Activos procedentes de la Reestructuración Bancaria* (SAREB) comprising real estate investment companies of rental apartments.

Conversely, the most recent regulation published to date (pending unconstitutionality appeal no. 2208/2019 brought by the Spanish People’s Party Parliamentary Group) and validated *in extremis* by the Permanent Council of Congress after Parliament was dissolved a few months previously; Royal Decree Law 7/2019, of 1 March, on urgent measures in housing and renting, contains the permanent description of the urgent and painful social reality of many people and families living in our country, sets out the special situation of vulnerability (as part of the right to equality and non-discrimination) and establishes specific proposals in relation to access to adequate housing and to avoid its loss.

But it overlooks a great opportunity, although it does nod and refer to it, of bringing over in full the decision issued against Spain in 2017 by the United Nations Committee of Economic, Social and Cultural Rights due to having violated the human right to adequate hous-

ing which, once again, transposes the obligation under General Comment n° 7 of being able to proceed to eviction from a home by the public authorities only when alternative accommodation (adequate and dignified) has been previously offered and, lastly, without solving the underlying equation: how to recover/procure social housing for rent by vulnerable people and accessible housing for the rest of the population.

It is clear that in this introduction we have left many doors open, and many will remain open, left to be closed by someone else. We are constructing a new paradigm that places dignity of persons at its core, but also that of the community, the collective. That is where the challenge lies.

Before concluding this introduction I must make two further points: I must mention and pay homage to all the people who, from social and collective movements (the PAH, Stop Desahucios, CAES...) have made these changes possible, perhaps small changes for some (of course not from my perspective) but irreversible ones, to public housing policy in this country. They have not only condemned the violation of human rights but have made an enormous effort to systemise them, collate them, find the causes and have been the driving force behind legislative and public policy proposals at all levels (local, territorial, state, regional and international).

Lastly, below is the definition of adequate housing, in parallel and based on the contents of the Constitution and the international treaty of reference signed by our country, together with what numerous homeless people on the street told me more than a decade ago:

This image also shows the unison of the integral and interdependent nature of human rights and the holistic approach when addressing the dignity of persons in the exercise, enjoyment and guarantee of those rights, in this case the right to adequate housing.

II. CURRENT SITUATION IN SPAIN: THE SNAPSHOT

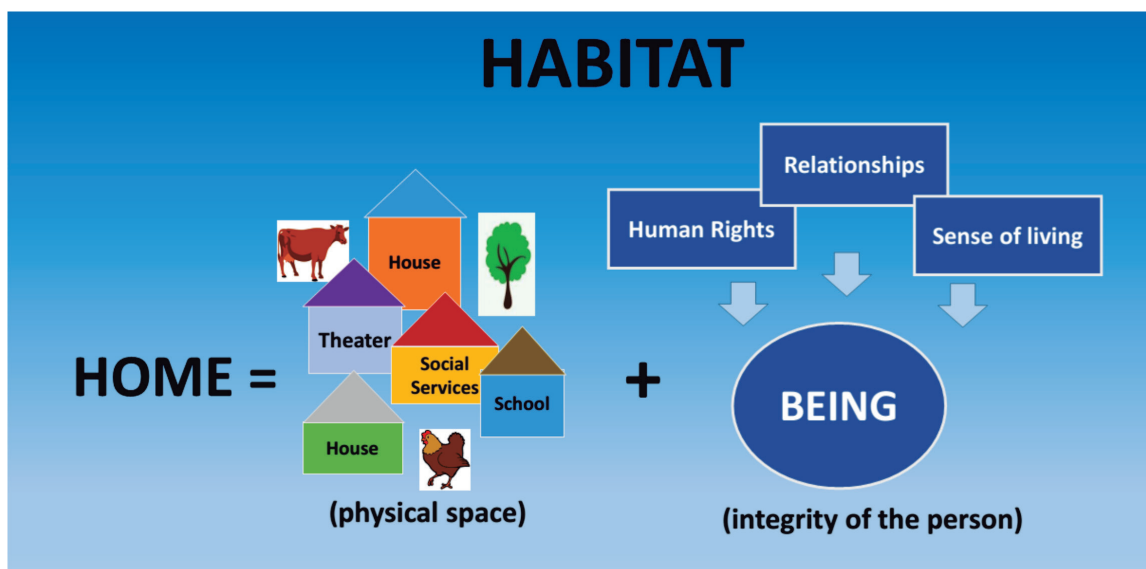
We have taken from three relevant and up-to-date sources, the Ministry for Public Works², Fundación FOESSA³ and Observatorio Social de “La Caixa” (which collates the following public and official figures from INE and EUROSTAT, and private studies and surveys). We can do so because, given the diagnosis, the agreement is clear. There is not sufficient available social

2 *Agenda Urbana Española. Diagnóstico y síntesis territorial* (2019) http://www.aue.gob.es/agenda-urbana-espanola/#Diagnostico_y_Sintesis_territorial

3 *VIII Informe FOESSA. Chapter 4. El papel de las políticas sociales en la salida de la crisis* (2019) <https://www.foessa.es/capitulos/capitulo4/>



| Spanish Constitution 1978 | Comment nº 4 of the International Covenant on | Anonymous. Definition of home |
|--|---|---|
| <p>All Spaniards have the right to enjoy decent and adequate housing. The public authorities shall promote the conditions necessary and establish the pertinent norms to make this right effective, regulating the use of land in accordance with the general interest to prevent speculation. The community shall share in the increased values generated by urban activities of public bodies.</p> | <p>While adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, the Committee believes that it is nevertheless possible to identify certain aspects of the right that must be taken into account for this purpose in any particular context. They include the following:</p> <ul style="list-style-type: none"> • Legal security of tenure (and its defence in case of danger of losing it/eviction). • Availability of services and infrastructure. • Affordability (without compromising on basic needs). Access to provisions (oil and gas). • Habitability (physically safe). Right to refurbishment and restoration. Energy efficiency. • Accessibility (special groups). • Location (with access to other rights: health, culture, education, etc.). | <p>Home. Where I have my space, my privacy. Where people can't come in whenever they want. Home. I can change location without losing my identity. Where they will accept me if I can't live in what was once mine. Home. That has my things in it. Whether there is a lot or a little, or practically nothing. With my dreams and projects. For everything I share or the memory of what I have shared. Home. My neighbourhood. My neighbours and friends. The people I know from the park, the bank or the kick around. Home. House, water, electricity, no barriers. Health, education, training. Music, fun, Union. Home. Mine and everyone's. Share. Giving and taking. Learning and helping to learn.</p> |



housing in our country to tackle the situation of vulnerability/residential exclusion experienced by hundreds of thousands of families. The snapshot (to which no further comments are necessary than those we read, hear and study every day):

- In 2017, rental prices rose on average 18.4%, and six in 10 evictions were the result of procedures under

the Urban Leasing Act. 13.6% of the total population struggle to pay their mortgage, rent and the costs required of a dignified life; 7.4% are late in paying rent/mortgage, and 15% in paying water, gas and heating bills.

- Nearly 4.5 million people spend more than 40% of their income on housing costs.



- 4.6 million people live in inadequate housing situations, and 2.1 million live in unsafe situations.
- The Comprehensive National Strategy for the Homeless 2015–2020 estimates that 33,275 people are on the street (homeless).
- Between 2015 and 2017, the Banking Code of Best Practice received 66,792 applications, of which only 33,881 operations were accepted, and of them, 31,998 were resolved through debt restructuring, 3 reliefs and 1,880 daciones en pago, where the asset is relinquished in exchange for the debt being written off.
- Protected social housing has gone from 63,990 homes with definitive classification in 2008 to 2,618 homes in 2017, and according to the Ombudsperson, in 2013 more than 10,000 homes stood empty.
- The 2011 Population and Housing Census carried out by the Spanish National Institute of Statistics (INE) recorded 3,443,365 empty homes; 21.3% of homes have no heating, 20.1% of over-65s live in situations of extreme vulnerability and six in every 10 excluded persons are for the first time affected by housing issues.
- In 2017, the public authorities dedicated 1.1% of public spending on financing housing and community services. In 2015, the percentage of homes under the public rental system in Spain was 2.5% (16.8% in France).
- Together with the data already collected that in 2005 as many homes were built in Spain as in the United Kingdom, France and Germany together, as well as the reference to the rise in prices: doubled in real terms between 1976 and 2002, and once again between 2002 and 2008; once again housing has been financialised, used for investment, speculation and as a consumer good.

III. HOUSING PUBLIC POLICY WITH A HUMAN RIGHTS FOCUS

1. Ten human rights principles for housing public policies and strategies:

In March 2018, the Special Rapporteur on adequate housing presented a special document before the United Nations Human Rights Council: ten principles for a housing strategy to be implemented by member states. It assessed it as “verification tool” in the fulfilment of the commitments agreed a few months before the General Assembly’s approval of the New Urban Agenda⁴ and the

2020 Agenda⁵. We will list these 10 principles together with the questions we would make of the Special Rapporteur to check whether there are tools and/or actions to implement them in our country. The development of the content of each one is splendidly, systematically and concisely set out in the Report, and I invite you to read it in detail⁶.

Although in Spain there is no national housing strategy (there is for homeless people, but only in respect of the situations contained in dimensions 1 and 2 of the ETHOS Typology – institutionalised street homelessness), and no national housing law (although we know from programming and electoral references in recent months and days that the Ministry for Public Works is considering and working on both tools), and likewise there has been no call for a State agreement on housing, we believe that, from the preceding pages and investigations and articles of reference accompanying this article it will be easy for the reader to respond to the question posed and to reach a final decision, by merely changing the word “strategy” for “legislation” and/or “housing public policies”:

Principle nº 1: Based in law and legal standards: *Is there legislation giving the housing strategy legal effect? Does it recognise the primacy of the right to housing as a legal right subject to effective resources? Has a process been outlined to realise that right, and have immediate and progressive obligations been defined according to the maximum resources available?*

Principle nº 2: Prioritise those most in need and ensure equality: *Does the strategy prioritise the most needy, ensure substantive equality and respond to the particular needs of groups suffering from discrimination?*

Principle nº 3: Comprehensive and whole-of-government: *Is this a global strategy that spans all dimensions of the right to housing and covers all pertinent issues, policies, groups and regions? Does it have the participation of all levels and spheres of government?*

Principle nº 4: Rights-based participation: *Does the strategy establish specific mechanisms to ensure rights-based participation? Does it ensure major participation in the design, application and oversight of the strategy, and offer support for participation by marginalised groups?*

Principle nº 5: Accountable budgeting and tax justice: *Does the strategy ensure the maximum allocation of available resources? Does it include measures to address the inequalities and injustices that affect the tax*

⁴ UNITED NATIONS GENERAL ASSEMBLY. (2017) New urban Agenda A/RES/71/256.

⁵ UNITED NATIONS GENERAL ASSEMBLY (2015). Transforming our World: The 2030 Agenda for Sustainable Development. A/RES/70/1

⁶ See BIBLIOGRAPHY.



system, particularly tax evasion, and guarantee that taxation promotes the effectiveness of the right to housing?

Principle nº 6: Human rights-based goals and timelines:

Does the strategy contain reasonable goals and deadlines based on human rights indicators, and subject to rigorous oversight and enforcement?

Principle nº 7: Accountability and monitoring: *Does the strategy provide for an independent oversight body with powers to address systematic issues directly with governments and in diverse forums?*

Principle nº 8: Ensuring access to justice: *Does the strategy provide for effective claim mechanisms in relation to the right to housing through courts and other channels, particularly when rights have been violated as a result of failure to meet the obligation to progressively achieve the right effective right to housing?*

Principle nº 9: Clarify the obligations of private actors and regulate financial, housing and real estate markets: *Does the strategy clarify the obligations of private actors and ensure that the financial, housing and real estate markets are regulated in accordance with all State obligations, including the obligation to enforce the right to housing?*

Principle nº 10: Implement international cooperation and assistance: *Does the strategy address international cooperation and assistance and promote the participation of international financial institutions to solve the global challenges affecting the right to adequate housing?*

All these principles contain in their design, execution and evaluation the general human rights principles of universality, interdependence and indivisibility, equality and non-discrimination; together with the visibility of special recognition for the Protection of vulnerable groups contained in UN ad hoc conventions (racial minorities, women, children, adolescents and the disabled) to which we add the homeless, the socially excluded and the poor.

IV. GENERAL INTEREST, SOCIAL FUNCTION AND COMMON GOOD

Just a few lines, but essential to bring us closer to these three principles for action/human rights principles, and to track to footprints traced in the following section:

- Article 47 of our Constitution: "All Spaniards are entitled to enjoy decent and adequate housing. The public authorities shall promote the necessary conditions and shall establish appropriate standards in order to make this right effective, regulating land

use in accordance with the **general interest** in order to prevent speculation." Our legal system imposes this principle on public administration in order for them to meet the objectives of public use, social interest and general economic interest for the persons forming part of our country.

- Act 4/2013 of the Andalusia Parliament, of 1 October, on measures to ensure the social function of housing, which gives a new wording to article 1.3 of Act 1/2010, of 8 March, on the right to housing in Andalusia (declared constitutional by Supreme Court Judgment 32/2018, of 12 April): "The **social function of housing** establishes the essential content of the right through the possibility of imposed positive duties on the holder that ensure their effective use for residential purposes, understanding that such essential content cannot be established from the exclusively subjective consideration of the right or individual interests. In short, the social function of housing is not a limit that is external to its definition or exercise, but an integral part of the right to us. Individual use and social function, therefore, are an inseparable part of the content of the right of ownership".
- Paragraph 2 of article 29 of the Universal Declaration of Human Rights establishes: "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the **general welfare** in a democratic society." That general welfare, which I translate as "common good" means that "society is a necessary reality for the individual (society in the sense of the political society) and that society cannot be what it is or do what it must do without sufficient material resources available to all individuals" (ELLACURÍA, I.).

The monitoring, control and guarantee of the presence of general interest, common good and social function of housing in our public policies and state and regional legislation are all essential to develop the human right to housing in a state of social and democratic rule of law such as ours.

V. A SHIPWRECK LOST AT SEA. POSSIBLE TRACES

Gradually over the last 20 years, a number of European countries have begun incorporated a housing-led or housing-first approach in their planning and housing actions, which have been fundamental so that those public policies have considered other key aspects in their design and monitoring (dignity of the person, mental health, violation and exclusion, etc.).



These housing-led focuses must go further and be used in conjunction with the human rights-based approach to housing, to also address the factors symptomatic of discrimination/inequality of people and grounds, human mobility, criminalisation of poverty, participation, social exclusion and vulnerability, public space (containing a community/group element) and, particularly, to address the structural change that means that housing is no longer a speculative and highly lucrative business (anywhere in the world) addressing specific regulation in relation to national and international commercial agents. This may be the way to finally envision a "port of call": to make that access, enjoyment and guarantee of the human right to housing a (legal, economic and social) reality.

BIBLIOGRAPHY

ACOSTA, P. (2016). "El interés general como principio inspirador de las políticas públicas". Estudios y Comentarios. Instituto Nacional de Administraciones Públicas. Ministerio de Política Territorial y Función Pública. Febrero 2016.

ELLACURIA, I. (1978). "Historización del bien común y de los derechos humanos en una sociedad dividida", en: Escritos Filosóficos II. UCA. Editores, San Salvador, 2001 pp. 207-225.

FARHA, F. (2018). "Informe de la Relatora Especial sobre una vivienda adecuada como elemento integrante del derecho a un nivel de vida adecuado y sobre el derecho de no discriminación a este respecto" A/HRC/37/53.

LEAL MALDONADO, J; MARTINEZ DEL OLMO, A. (2017). "Tendencias recientes de la política de vivienda en España". Cuadernos de Relaciones Laborales 35 (1), 2017.

OLEA FERRERAS, S. et al. (2019). "El sistema público de vivienda en el Estado español. Sin estrategia ni fundamentación en los Derechos humanos". VIII INFORME FOESSA. Documento de Trabajo 4.13.

PEÑA, L. (2018). "El bien común, esencia y función del Derecho". Eunomía. Revista en Cultura de la Legalidad. ISSN 2253-6655 N.º 15, octubre 2018 - marzo 2019, pp. 401-433.

PONCE, J. y FERNANDEZ, G. (2010). "Derecho urbanístico, derecho a la vivienda y personas sin hogar. Nuevos desarrollos y perspectivas en España a la vista de las novedades europeas en la materia". Revista de Derecho urbanístico y medio ambiente n.º 255, enero-febrero 2010.

PORTER, B. (2014). "International Human Rights in Anti-Poverty and Housing Strategies: Making the Connection". SSRN, septiembre 2014.

TRILLA, C. y BOSCH, J. (2018). "El parque público y protegido de viviendas en España: un análisis desde el contexto europeo". Fundación Alternativas Documento de Trabajo 197/2018.

VV.AA. (2013). "La vivienda en España en el siglo XXI: Diagnóstico del modelo residencial y propuestas para otra política de vivienda". Madrid: FOESSA, Cuarta parte: La vivienda como derecho.



3. Evictions in Cañada Real are a serious violation of human rights

Rafael Cid Rico.

Lawyer and Head of Legal Strategy at Gentium, legal counsel who acted, with the support of FSG, in fighting the eviction of a family in Cañada Real.

On the morning of 13 February 2018, officers from the Urban Enforcement Service of Madrid City Council entered the home of a Roma family with three children, removed the mother and the youngest child (the other two children were at school) and demolished it. Another six homes in the area were demolished in the same operation. No explanation, no warning. In just two hours, the house in which the three children were born and had lived was destroyed. No alternative. No place to sleep. The three children were aged 6, 4 and 1 year.

A year later, on 16 January 2019, following a claim filed with the support of FSG, the Madrid High Court of Justice ruled that the actions of Madrid City Council violated the fundamental right to the inviolability of the family home, and ordered the council to pay 13,000 euros in moral damages.

It was not the first time for something similar to occur in the irregular settlement located on the outskirts of Cañada Real Galiana just a few kilometres from the centre of Madrid, which is home to complex and diverse realities that have been transforming from its origins more than 40 years ago.

The peculiarity of its planning situation (it was initially animal grazing land owned by the State), the multiplicity of jurisdictions applying to it and its changing reality, on the one hand, have posed barriers to a solution to the challenges that persist and, on other, have been a pretext for the authorities to draw attention from the absence of an integral human rights perspective to adequately address its various problems. Act 2/2011 of Cañada Real Galiana, the 2014 Framework Agreement and the 2017 Regional Agreement for Cañada Real Galiana brought major progress, but fell short of a full solution aligned with international human rights standards for the people living there, many of whom are Roma people.

In this context, irregular demolitions of substandard homes and slums inhabited by people who are in a po-

sition of extreme social exclusion has long been a bone of contention of civil organisations and legal experts who continue working to put an end to the arbitrary nature of authorities' actions in the most deprived areas of Cañada Real Galiana.

It is precisely in the area of fighting to stop the vulnerable situation of families living in the area becoming a bare-faced trampling of their rights in which the Court's ruling shows its worth.

The ruling exposes the authorities with powers in the affected area and responsibility to protect the rights of the persons affected. The Madrid City Council Urban Enforcement Service had not even opened a case to restore urban planning legality, the procedure that must be completed to change and, where appropriate, evict people living in homes that have been built without the necessary permits before demolishing them.

The processing of an administrative case is a basic guarantee provided to citizens to ensure that the State acts lawfully, exercises their right to be heard, to make the appropriate representations in defence of their interests and to obtain a justified resolution. In this instance, a case should have been opened, with resulting decisions from the City Council plenum and the interested parties being duly served notices and requests; however, all that was provided was a single sheet of paper, drafted in 2009, which appears to be a demolition order on other buildings located on different plots from that of the family. That is all. There is no reference to the home, the people who lived in it for more than eight years, including three children, with no other place to live. Nothing.

There was no urban planning legality restoration order, therefore no documentation proving that the home was built illegally and that action needed to be taken to end the unlawful situation; therefore, the authorities had no right to issue the demolition order (which must have been issued as a result of the declaration of irregularity).



Indeed, the house was demolished without a demolition order.

That further reveals the irresponsible and arbitrary actions of the City Council. The demolition took place not only without the pertinent administrative paperwork and without completion of the necessary procedures to avoid the violation of the most basic rights of the affected people; nobody actually formally agreed the demolition. This is an outrageous violation of the constitutional principle of legality and the prohibition of arbitrary action by public powers.

The Court agreed with that statement, concluding that the demolition was legally classed as an action taken by the authorities in clear violation of the legal framework regulating them.

Yet the severity of the matter goes much further: this is not merely an arbitrary action by the State. The demolition of a home in which people are living necessitates the additional requirement of a demolition order. Insofar as this is a space in which people decide to live their private life, the authorities pursuing a demolition must obtain either the consent of the inhabitants or a court order issued by a judge who has adequately weighted the need to put the public interest before the constitutional right of any individual to stop the unauthorised entry of third parties in their home. In this case, there was no court order granting access to the home to carry out the demolition (no judge would issue such an order without a demolition case being opened), nor, unsurprisingly, was consent given by anyone. In fact, the mother and her one-year-old had been forcibly removed from the house just hours before and, according to the mother's statement circulated by the media, National Police officers prevented them from re-entering during the demolition.

The home is sacrosanct, and should any authority want to violate that, they must have previously gained authorisation from a court to do so. The Constitutional Court is unequivocal: "The Judge must verify that the applicant owns the home in which entry is granted, the act must have the appearance of legality, the entry to the home must be necessary to do so and, where appropriate, it must be carried out in such a way that does not further limit the right under article 18.2 of the Spanish Constitution."¹

The right to the inviolability of the home has a much more penetrating impact than the mere "corporeal" manifestation of preventing someone from entering another's home without their consent. The inviolability of the home is the material transposition of the right to privacy, the right of any human being to maintain their

private life outside the scope of society and, therefore, any public authority.

It is precisely this element rooted into the most basic values of our modern democracy that has exalted its "sacrosanct" nature through its recognition as one of the fundamental rights on which the social and democratic rule of law in our Constitution relies.

That connection to privacy and the private life of the individual, regardless of the conditions in which it occurs, is what drives the domestic, European and international courts to maintain such a broad definition of "home", to encompass any physical space in which the person carries on their private life. The Supreme Court offers a prescient explanation in this respect: "Its purpose or use is a core element in defining the constitutionally protected spaces, to the extent that, in theory, its location, physical configuration, movable or immovable nature, existence or type of legal title permitting its use or, finally, the intensity and regularity with which the person carries on their private life there are all irrelevant."²

For quite some time, the courts have expressly recognised that precarious homes in Sector 6 of Cañada Real Galiana are protected by the right to the inviolability of the home. However, the authorities with executive powers in the area have stated on multiple occasions that they either have an alternative interpretation or have no interest in applying it.

Eradicating private and family life is akin to curtailing individuality and, as a result, excludes them as rights holders. It is the most radical exclusion from democratic society in our constitutional order, which is why it is so important to halt exclusion and discrimination of the Roma community.

Violating the home of a Roma family, as Madrid City Council did in this case, is a type of structural discrimination that goes far beyond the mere demolition. This is the most serious form of discrimination: that which sustains and protects the exclusion of Roma people as holders of the right to privacy of the Roma person as any other individual.

On this occasion, it was the Court that declared the unconstitutional nature of the demolition, following the line drawn by other courts, such as the Supreme Court in the matter of Abdul, with the magnificent work of CAES and the European Court of Human Rights, in the notorious Yordanova case³.

¹ Supreme Court Judgment 139/2004, of 13 September.

² Supreme Court Judgment 1021/2012, of 18 December.

³ <http://hudoc.echr.coe.int/eng/?i=001-110449>



There is hope, but there is also a lot to do. The Madrid Court did not go far enough to assess the discriminatory nature of the demolition, and failed to appreciate that the act was a violation of the physical and moral integrity of the children who, in a matter of hours, saw the only place they knew as home disappear.

At a time when there is openly racist discourse in the lower chamber of the Spanish Parliament, and in regional parliaments and city councils, the courts will play a crucial role that will largely define the limits that society is prepared to put up with and, in particular, the extent to which it is prepared to guarantee the principle of equality and protect the dignity of the most vulnerable and excluded groups.

That is why the strategic litigation of human rights is growing in importance, from the discipline that promotes the effective use of legal tools to call for compliance with international human rights standards and the progressive application of basic principles to guarantee social cohesion and peace. It is the natural tool with the greatest legitimacy that can be used by any group to fight the violation of their rights.

However, it is a tool that, alone, runs the risk of having little effect. In order for it to fulfil all its potential and to be effective in protecting the dignity of excluded groups, it must be part of a broader global strategy of advocacy, communication and education designed comprehensively and with the sole purpose of achieving real social change. It is in this context that the law and legal tools harness their full transformative power and expansive capacity to set the pace in pushing to guarantee that human rights are fully respected.

This article lies within this framework and the global strategies, to attempt to inform of a fully valid reality that is as relevant as the mentioned judgment, so that the progress achieved in the courts is passed on to society, and is actually useful for Roma families living in precarious situations, who are constantly subject to the arbitrariness of the public authorities. This annual report prepared by Fundación Secretariado Gitano thus becomes another key cog in the mechanism so worthily developed by civil society to continue to fight for the rights and the dignity of Roma people. That is why its dissemination is worthy act to which anyone is very welcome.



4. Doors slamming shut. Discrimination in access to housing

Mikel Mazkarian.
Federación SOS Racismo.

The snapshot

Together with express racism there is social racism, which manifests itself in various ways. One of the hidden faces of discrimination is the difficulty faced by immigrants when trying to find rental housing. In order to measure this discrimination, between April and May 2015, a telephone survey was carried out by calling a list of randomly selected estate agents. A total of 462 calls were made to estate agents across eight autonomous regions: Andalusia, Aragon, Asturias, Catalonia, Galicia, Madrid, Navarre and Basque Country. Further to that, in June 2015, a series of in-person tests were carried out. Forty visits were made to 20 estate agents in Barcelona, Donostia-San Sebastián, Gasteiz-Vitoria and Madrid.

The tests were carried out through experiments carried out in certain locations, in a defined timeframe and in various scenarios, to analyse the presence or absence of discrimination, the treatment received, etc. The investigators coupled up with people of similar features to not adulterate the anticipated outcome. The 2015 experiments were carried out with an "autochthonous" person, i.e. with autochthonous-looking physical features and appearance, and Arabic, Latin American and African persons. The gender variable was tested in some cities.

The study recorded the difference in treatment, and therefore discrimination, in respect of various aspects under analysis. The first aspect related to the amount of apartments offered. In the telephone and the in-person tests, there is a clear difference in the apartments offered to one group and another. In the telephone tests, of the persons who were told there were no apartments available to them, 69.8% were foreign, compared with 30.2% autochthonous. In the in-person tests, of the persons who were told there were no apartments available to them, 86.7% were foreign (42.9% sub-Saharan, 28.6% Arabic and 14.3% Latin American).

In terms of providing a service, offering fewer apartments to certain people depending on their race or ethnicity lacks any reasonable justification and is an act of discrimination by those working in such establishments.

This and other, similar studies have focused on the repercussions of the discriminatory act for potential customers of an estate agent. However, a closer look is required at the reasons why estate agents act in this way. It is our experience that in the majority of cases, it is the property owner who gives verbal instructions that are discriminatory.

Unlike other areas of service provision, such as hospital-ity, estate agents navigate more complex relationships in the provision of the service, which can make it more difficult to pinpoint the elements of these contractual relationships that are unfairly different. Testing on access to leisure facilities by the national organisation SOS Racismo in 2014, in most cases discrimination boils down to refusal to allow entry to the premises, and only in one nightclub was the reason the establishment of different entry requirements on the immigrant couple compared with the autochthonous couple.

However, in an estate agent relationship, the elements to observe are much broader, and a testing of these features is unlikely to capture all the grounds for discrimination that may arise in the total process of an estate agent managing a property rental. Furthermore, it should not be forgotten that the testing was carried out in the initial enquiry about the availability of homes, based on certain features that the person pretended to be interested in. It is yet to be seen what sort of discrimination would occur once the offer of a property was arranged.

Housing discrimination is a nuanced matter, and testing methods are sometimes the sole most effective tool to investigate whether estate agents operating in Spain really do apply discriminatory policies and prac-



tices. Without forgetting that housing is an extremely sensitive issue, it is also a basic yet expensive need. The public housing stock is very limited, as is the rental stock, and buying a property is unattainable due to price or the impossibility of securing a home loan. In this context, prejudice plays a major role when distributing added difficulties to certain groups. The equation Roma family = conflict in neighbour relations is a barrier to access to housing in what is a generally complicated panorama for all.

It goes without saying that all indications noted about immigrants are perfectly transferable to Roma people, with an even higher degree of discrimination. Testing is a useful tool to take a snapshot of discrimination in access to rental housing faced by immigrants and Roma people.

Now what?

Taking that more or less sharp snapshot is not enough; the next step has to be to reflect on the mechanisms in place to fight that discrimination. The first tool to examine is the courts. Article 512 of the Spanish Criminal Code enables the professional disqualification of anyone who refuses to provide a service to which someone is entitled due to their belonging to a certain group. However, the article is very difficult to apply to estate agents. That is because a rental agreement is entered into by the property owner, the estate agent and the service user. The property owner, who is not the service provider, and who frequently is the person who has given the instruction not to rent to foreigners, cannot be made subject to the article. The result is that it is rare to be able pursue a refusal of rental on racist grounds through the courts, without this resulting in the case being shelved. Furthermore, a whole area of doctrine is not convinced that discrimination can be a criminal offence in such situations.

In short, we are led back to the great debate on whether discrimination can exist in relationships between private individuals – in other words, free will versus the principle of equality. The position we defend is that, in a relationship between private individuals, there are no doubts about refusing to rent a home to a person due to their origin, religion, sexual orientation, etc. However, the questions arise when the property owner engages an estate agent. This is because the estate agent offers a service to the general public, even in the context of a private professional activity.

Having ruled out criminal actions due to their ineffectiveness, we must look to alternative channels of remedy. The civil jurisdiction may be a solution, but legal experts observe discrimination in private relationships

as separate from general contract theory. The state can play an educational role as well as a regulatory role in this area. In some autonomous regions, statutory non-discrimination provisions are in place in respect of estate agents, such as in Catalonia. Yet greater state enforcement over estate agents' activities as providers of a public good are not much use if not accompanied by awareness-raising efforts. The Basque Country rolled out a campaign last year targeted at estate agents to encourage them not to allow discriminatory clauses in contracts signed by property owners. Another example of raising awareness in the real estate sector is initiatives such as Etikalia, which promotes a real estate model where ethics supersedes speculation.

Reflections and advice

These initiatives and others allow us to exercise some final reflections on certain issues. Firstly, the solution to a common practice illustrated in studies such as the one described above cannot come from the litigation of the few complaints that are made about the refusal to provide rental housing due to origin (Roma, migrant, sexual orientation, etc.). Estate agents cannot just be seen as the bad guy, because they do not all accept the restrictions imposed by property owners and because they must compete in a market in which rental housing is in very short supply. We must also not forget the abundance of websites where it is all too common to see adverts stating, "Spaniards only".

In such cases, all that can be done is to send an email stating that such messages are discriminatory and asking for them to be removed. Beyond these actions, the legal system is not prepared to offer a stronger response since estate agents are mere intermediaries between the seeker and provider of a service.

Lastly, we must highlight an increasingly common reality in the residential rental market. We are talking about housing that fails to meet the minimum required habitability standards, making it very difficult to rent. Migrant and Roma groups end up with those homes because of the difficulty in finding decent accommodation. The need and urgency of securing housing means that they accept clauses in rental agreements that are not suitable for the state of repair of the property. On the other hand, this situation only raises the social stigma that is often fuelled by evictions due to non-payment of rent, due to this being the last means of exerting pressure to demand that repairs be made to a property. Administrative action is currently limited to new buildings and there is a lack of knowledge of how to act in this kind of situations. The condition of a home can even affect a family's right to live as a family unit when a family reunification takes place under immigration rules, requir-



ing a report signing off on the living conditions of the reunifying family.

Finally, below are some practical tips in case someone is rejected for their origin, culture, orientation, etc., by an estate agent, or if they become away of such an incident. Firstly, the person must complete an official complaint form, which must be made available in all estate agents. Next, they may pursue actions through the

courts, although with all the hurdles we have indicated above, or they may contact the authorities to report a poor service. However, we note that the most effective and practical solution may be to explain to the property owner and the estate agent that they cannot discriminate, with the assistance of a social affairs organisation. It is simple yet difficult to achieve without vigilant authorities that combine education with a firm stance.



**Best practice,
progress and case law**

1. Best practice and progress.

New publications from OBERAXE in 2018

“Analysis of cases and judgments on matters of racism, racial discrimination, xenophobia and other forms of intolerance”

- This report is a response to a request from the “Court Judgments Analysis” Working Group that forms part of the Monitoring Committee of the Inter-institutional Cooperation and Collaboration Agreement against racism, xenophobia and other forms of intolerance.
- The purpose of the report is to disclose how the law is applied in cases of hate crime and to discover the strengths and weaknesses of that application, and to describe the features of the selected judgments. It does so by analysing a sample of judgments handed down by our courts. The principal outcomes of the study are divided into four large blocks: features of hate crime cases, profile of defendants, profile of victims and issues concerning convictions and legal aspects. The final chapter is dedicated to the conclusions and limitations of the methodology, the difficulty in obtaining results, principally due to the lack of detailed information and the complexity of existing databases.
- Authors: Andrea Giménez-Salinas Framis, Mercedes Pérez Manzano, Manuel Cancio Meliá, Juan Alberto Díaz López, Carmen Jordá Sanz, Paloma Díaz Izquierdo, David Gallego Arribas.

http://www.mitramiss.gob.es/oberaxe/es/publicaciones/documentos/documento_0104.htm

“Comparative Study and Best Practice: services, structure, strategies and methodologies in community policing against racism, xenophobia and other forms of intolerance”

- The study showcases the results of research carried out in the project’s Proximity Work Package 1 (PT1) “Best practices and comparative study: services, structures and methodologies”, on experiences and best practice to prevent and combat racism, xeno-

phobia and other forms of intolerance, involving police officers from the countries partnering in the project: Bulgaria, Estonia, Finland, Italy, Lithuania, Portugal, Spain and the United Kingdom.

- The study is structured as follows: the first chapter outlines the framework in which Member States can act to prevent and combat the phenomena of discrimination, racism, etc., and establishes a conceptual framework with key words shared by partners. Chapters 2 and 3 are dedicated to describing and analysing the results of best practice identified by partners in the project; the second chapter presents the best practice while chapter 3 collects the results of interviews and focal groups targeted at representative of organisations involved in the best practice cases. There is also a comparative analysis of best practice on: communication, tools and strategies to prevent and resolve conflicts; existence of specific training and ways of sharing it; and specific attention in operational procedures on gender issues and LGBT persons.

http://www.mitramiss.gob.es/oberaxe/es/publicaciones/documentos/documento_0107.htm

“Report conceptually defining hate crime”

- This reports aims to lay down a series of basic conceptual clarification that can service as a guide to handle and discuss the problems of hate crimes. It attempts to clarify concepts such as hate, discrimination and intolerance, hate speech, hate incidents and more, in order to facilitate theoretical debate.
- It also includes a list of personal conditions and cases of discrimination that most commonly appear in criminal offences; ethnicity and race, ideology, religion and belief, nationality, sex and gender, sexual orientation and identity, illness and disability.
- Study commissioned by the Monitoring Committee of the Inter-institutional Cooperation and Collaboration Agreement against racism, xenophobia and other forms of intolerance and financed by the Secretariat general of Immigration and Emigration.



- Author: Juan Alberto Díaz López, Doctor of Criminal Law at Universidad Autónoma de Madrid.

http://www.mitramiss.gob.es/oberaxe/es/publicaciones/documentos/documento_0092.htm





The European Commission includes anti-Gypsyism category in its reports on hate speech

For the first time, the European Commission's High Level Group on combating racism, xenophobia and other forms of intolerance has itemised cases of anti-Gypsyism, **thanks to a successful initiative by Fundación Secretariado Gitano to include this category**, since we consider it fundamental to shine a spotlight on this specific kind of rejection of Roma people. 12.2% of cases reported cases in Europe (527) are illegal anti-Roma hate speech.

In 2018, 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). 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).

On average, internet and social media providers (Facebook, Twitter, YouTube, Instagram) are removing 72%

of reported unlawful hate speech. 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 highly 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-migrant hatred) is the most commonly reported hate speech (17%) followed content attacking the LGBT community (15.6%), anti-Muslim hatred (13%) **and anti-Gypsyist 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 Roma people (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 Roma people. Thanks to this report we now have a significant sample of the scale of this problem in Europe.





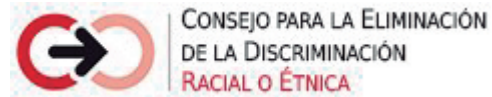
Ángeles Solanes Corella, new President of the Council for the Elimination of Racial or Ethnic Discrimination

Professor Ángeles Solanes Corella was appointed President of the Council for the Elimination of Racial or Ethnic Discrimination in the Order of 3 October 2018. This is a major step in driving forward the body that was created under the auspices of Directive 2000/43/EC of 29 June implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

The appointment of the President is a further step in complying with the Directive, the recommendations of various European bodies and those of the fifth report of the ECRI on Spain published on 27 February 2018, the most recent recommendations to Spain made by the Committee on the Elimination of Racial Discrimination (CERD) on 13 May 2016, and the requests made from civil society on the need to promote the activities of the Council. The President's extensive academic background in human rights, particularly in terms of immigration, refugees and asylum from a legal point of view, is a quality hallmark for the new era posed by this appointment.

We believe it is key to promote compliance with Directive 2000/43/EC through this Council, and is also necessary to promote its successful transposition through the approval of the draft Comprehensive Equality Act which is currently undergoing scrutiny and amendment in the Spanish Parliament. These are the necessary mechanisms to guarantee equal treatment for all and to fight the everyday discrimination that many groups, including Roma, continue to suffer in our country.

At Fundación Secretariado Gitano, as a member of the Council for the Elimination of Racial or Ethnic Discrimination and coordinators of the Assistance Service for Victims of Racial or Ethnic Discrimination, we celebrate this appointment, which is a step forward, and we will continue to play an active part in this Organisation to promote the fight against discrimination in our country.





Fifth report of the ECRI on Spain

In 2018, the European Commission against Racism and Intolerance (ECRI), established by the Council of Europe, published its regular follow-up report on Spain on issues concerning racism and intolerance. In this report, the ECRI reviews the progress made by Spain since the last report (2010) and points out several recommendations that directly affect Roma people. The ECRI strongly recommends, once again, that the Spanish authorities put in place measures to ensure a rapid increase of the percentage of Roma children who complete compulsory education. ECRI believes that the Spanish authorities should, at the central, regional and local levels, focus on improving the educational outcomes of Roma students. **"It states: "ECRI welcomes the models conceived by civil society, such as the Fundación Secretariado Gitano, to prevent school absenteeism and early school leaving".** However, it adds "that these programs should be extended and that their financing by a specific part of income taxes should be maintained." However, given the scale of the problem, "ECRI believes that efforts by civil society alone are not enough and that school authorities at the national and regional levels must assume their responsibility to guarantee compulsory education for all. Therefore, they should take responsibility and adopt, in close collaboration with Roma civil society, other structural measures aimed at tackling school absenteeism and early school leaving."

On the other hand, the ECRI considers the Recommendation subject to follow-up issued in its last report to "adopt measures to ensure an equitable distribution of Spanish students, immigrants and Roma in the various schools". **This body of the Council of Europe points out the negative impact of school segregation on the expectations of Roma children and, in particular, Roma girls, which in many cases leads to early school leaving.** In this context, the ECRI estimates "that the authorities should continue to focus on reducing school segregation and its negative impact."

The second priority recommendation indicated by the ECRI implies "that the authorities adopt urgent measures to establish an independent body to promote equality, in order to ensure that the Council for the Elimination of Racial or Ethnic Discrimination is independent and it is endowed with the faculties set forth in Recommendations nos. 2 and 7 of the general policy of the ECRI".

Already in its fourth report (2010), ECRI noted that the Council for the Elimination of Racial or Ethnic Discrimination (CERED), established in 2009, lacked independence and investigative powers and the right to initiate and participate in judicial proceedings, and recommended that the authorities adopt measures on an urgent basis, fundamentally as regards their independence.

In a broader context, "ECRI strongly recommends once again that the Spanish authorities adopt as soon as possible a general anti-discrimination legislation that is in line with the standards set out in paragraphs 4 to 17 of its Recommendation no. 7 of general policy".

According to the ECRI report, "the media also contributes to the spread of racism and xenophobia." This body understands that media coverage of issues related to the Roma community sometimes diffuses a negative image.

At Fundación Secretariado Gitano we share the concern for the education status of Roma pupils as stated by the ECRI and we believe, as indicated in the report, that urgent, bespoke measures are needed to fight academic failure among Roma pupils and reduce segregation. Civil society organisations are united in this task, but it is the responsibility of public powers to guarantee the fundamental right to education and, therefore, to implement the action to achieve it. We believe that the Education Pact of the Political and Social State, which is currently being discussed in the Spanish Parliament, is the appropriate political framework to implement that action.





The FRA publishes a new survey on anti-Gypsyism

In 2018, the European Union Agency for Fundamental Rights published "A persisting concern: anti-Gypsyism as a barrier to Roma Inclusion", a major study analysing how anti-Gypsyism is a key obstacle to the social inclusion of the Roma community in many EU countries.

According to the study, the most atrocious forms of anti-Gypsyism, crimes motivated by hate and harassment, are obstacles to the inclusion of Roma people in society. The results of the EU-MIDIS II survey, carried out 2016, are concerning. They show that, in spite of years of effort, on average one in three Roma people surveyed had experienced some kind of harassment, whether offensive or threatening comments in person, threats of violence in person, offensive gestures or inappropriate, offensive or threatening stares, or offensive emails or text messages or comments online about them. Even more concerning, 4% had experienced physical violence driven by anti-Gypsyism; of those, only one in three reported it to an organisation, including the police. This shows that not enough attention has been paid to anti-Gypsyist declarations in the form of **hate crimes against Roma people. As expected, this weakens Roma people's trust in public institutions, particularly when it comes to applying the law and justice, seriously undermining social inclusion efforts.**

The data harvested by the FRA show that, although in some Member States, enrolment of Roma children in education improved over time, the education gap between Roma and non-Roma children remains high, especially past compulsory education. It is encouraging that between 2011 and 2016, participation in early childhood education rose in six of the nine countries surveyed, although it is still below average for the general population. Improvements in participation in compulsory education were also encouraging, although this remains below the average of the general population in most countries. Moreover, between 2011 and 2016, the amount of Roma pupils who lefts secondary education dropped from 87% in 2011 to 68% in 2016. In terms of experiences of direct discrimination, the general proportion of Roma who felt discriminated against at school has not changed since 2011, sitting at 14% in 2016. Meanwhile, the proportion of young people who left school early compared with those in the general population who left school in all countries surveyed remains intolerably high. **In respect of school segregation, the proportion of Roma who attend classes where "all the classmates are Roma" rose on average from 10% in 2011 to 15% in 2016, which underlies the need for most decisive action in this area.** Achieving this would also contribute to attaining Sustainable Development Goal

N° 4: "Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all".

Poverty is both a result and a driver for exclusion in education, employment, health and housing. A key objective of the EU 2002 Strategy for smart, sustainable and inclusive growth is to take 20 million people out of the risk of poverty; addressing poverty among Roma people would be a major contribution to reaching that goal. Data analysed in this report show that EU member states are still far from reaching that goal with respect to Roma citizens. With few exceptions, poverty rates among Roma people did not abate between 2011 and 2016. An overwhelming proportion of Roma – on average, 80% in the nine Member States surveyed in 2016 – still live at risk of poverty. Worse still, an average of 27% of Roma live in homes where at least one person had to go to bed hungry at least once in the previous month; in some Member States, this proportion is even higher.

This problem demands poverty reduction policies that combine a number of approaches to fulfil the rights and principles of the Pillar of Social Rights, such as the right to minimum wages that guarantee a dignified life in all stages of life; effective access to goods and services for all those lacking resources; the right of all children to be protected from poverty; and the right of children from disadvantaged backgrounds to improve equality of opportunities. Those policies would directly contribute to the commitment made by EU member states to meet the sustainable development goals, such as goal no. 1: "End poverty in all its forms everywhere".

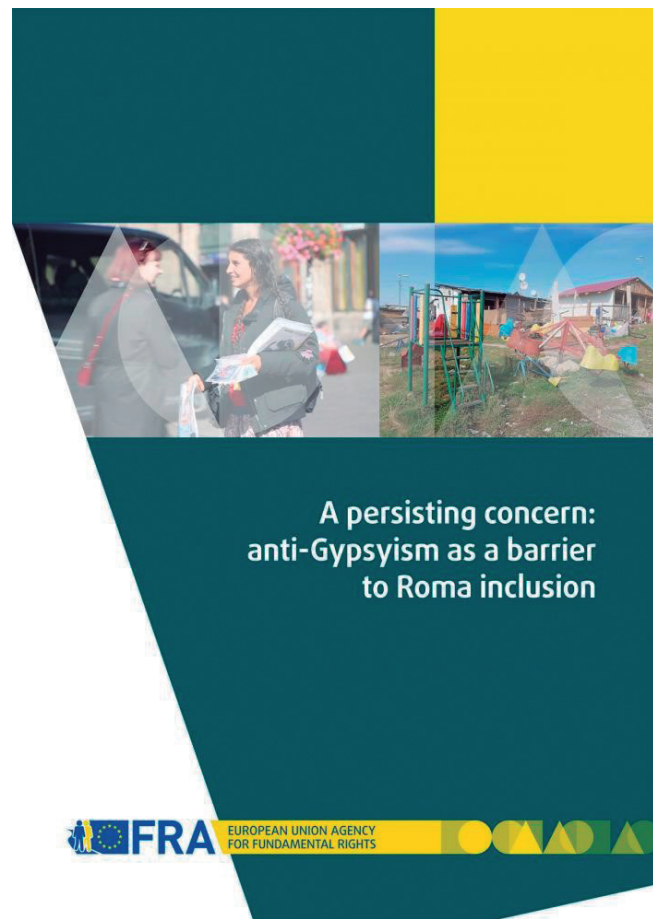
The general employment rates of Roma people remain low compared with the general population. In the five years between the two surveys, EU member states implemented a series of initiatives to boost employment rates among Roma, principally to address employability, but there is little evidence of measures to tackle anti-Gypsyism in the job market. The proportion of young Roma aged 16–24, particularly women, without employment, education or skills, remains high, in stark contrast to the rates among the mainstream population. This could partly be down to the impact of anti-Gypsyism, as well as other factors relating to persistent social exclusion, such as deficient functional literacy, inadequate qualifications or deficient social skills, as well as the traditional gender roles that are still common in Roma communities. The rates of discriminatory incidents that Roma people experience when looking for work and when there are in work remain very high. Many

Roma throughout the EU take part in business activities, but that employment potential is not fully harnessed.

The data show that housing conditions for Roma people experienced no major changes between 2011 and 2016. For many, the right to social and housing help, safeguarded in the Charter of Fundamental Rights, remains unfulfilled. This means cramped homes, no regular access to plumbing and sewerage (drinking water, toilets, showers, bathrooms within the home), and no electricity supply. The results show the progress made is patchy across the countries, with negative changes in some. A large part of Roma people still do not have regular access to basic sanitation or living in overcrowded conditions, which forms an obstacle in other areas such as education, health or employment. In addition,

the proportion of Roma who experience housing discrimination rose in a number of countries. With respect to the space available to each person in a home, the results show a persistent large gap compared with the general population. One third of Roma surveyed still lived in homes with no running water inside; 38% do not have a toilet, shower or bath inside the home, in stark contrast with the average general population recorded by Eurostat. There were no changes in the discrimination experienced when looking for housing between 2011 and 2016, although there were major differences between different member states.

The study can be downloaded at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-antigypsyism-barrier-roma-inclusion_en.pdf





#RomaniLesson, the lost chapter of history to combat ignorance of the Roma People

On November 16, the International Day for Tolerance and also the International Flamenco Day, Fundación Secretariado Gitano (FSG) launched its last campaign #RomaniLesson, “the chapter missing from our history books”. The awareness-raising campaign seeks to increase knowledge of the Roma people among the general population in an effort to fight prejudice and discrimination.

#RomaniLesson was taught in a master class by journalist Ana Segovia and musicologist Gonzalo Montaña, who work at Fundación Secretariado Gitano. During their presentation they shared the main milestones in the history, culture and progress of the Roma People. The campaign’s centrepiece is the book Romani Lesson. Its 54 pages, divided into three chapters, tell a story of persecution and pain, but also one of resistance, triumph and dignity, as well as the Roma contribution to the shared social and cultural heritage. The campaign

materials also include a 6-second video, the microsite www.leccionggitana.org, a leaflet and a poster.

Following the launch, the campaign #RomaniLesson has toured Spain through FSG offices, reaching libraries, primary and secondary schools and cultural centres to allow children and adults to “receive the lesson they were never taught”.

The book can be downloaded at www.leccionggitana.org, where you can also read about real-life cases of young Roma people to break down the stereotypes that weigh on this group, and to offer a better understanding of their diversity.

The campaign is funded by the income tax funded programmes of the Spanish Ministry of Health, Consumer Affairs and Social Well-being and the European Social Fund.





European Parliament resolution of 7 February 2018 on protection and non-discrimination with regard to minorities in the EU Member States (2017/2937(RSP))

This important Resolution aims to promote actions to combat discrimination against minorities, including Roma people, as a national and European Union responsibility.

It states that insufficient importance has been given to the problems suffered by minorities in the EU agenda and supports an integrated approach with respect to equality and non-discrimination, to guarantee that Member States adequately handle population diversity in their respective societies.

It believes that the EU is responsible for protecting and promoting the rights of minorities; it believes that there must be a better EU legislative framework to exhaustively protect the rights of minorities.

It places emphasis on the EU institutions when raising awareness of issues surrounding the protection of minorities and encouraging and supporting member state to promote cultural diversity and tolerance, especially through education; it indicates that the EU lacks the effective instruments to oversee respect for minority rights; it calls for effective EU monitoring of the situation of autochthonous and linguistic minorities; it believes that the European Union Fundamental Rights Agency must better monitor discrimination against minorities in member states.

It recognises the important role played by member states in protecting autochthonous, national and linguistic minorities; it notes that the protection of national minorities and the prohibition of discrimination due to language or belonging to a national minority is enshrined in the Treaties and the European Union Charter of Fundamental Rights.

The Resolution calls for the review of the Directive on racial equality and the Directive on equal treatment in employment; it condemns the lack of progress in adopting the proposed Directive on equal treatment and asks the Commission and Council to resume negotiations to conclude them by the end of this legislative session.

You can read the directive at: https://eur-lex.europa.eu/legal-content/ES/TXT/?uri=uriserv:OJ.C_.2018.463.01.0021.01.SPA&toc=OJ:C:2018:463:FULL



European Parliament resolution on minimum standards for minorities in the EU (2018/2036(INI))

This Resolution, approved on 13 November 2018, is a major effort by the Parliament to better fight discrimination in Europe, and repeatedly **mentions Roma people as some of the most common victims of discrimination.**

It highlights its profound concern for the number of **stateless Roma** people in Europe, which means they are denied access to social, education and health services, and relegates them to the margins of society; it asks member states to assist stateless persons and guarantee that everyone can enjoy fundamental human rights.

It declares its concern for the alarming rise in incidents of hate crime and the incitement of hatred on the basis of racism, xenophobia or religious intolerance aimed at minorities in Europe; it calls on the EU and member states to concentrate their efforts on combating hate crime and discriminatory behaviour; it asks the Commission and the FRA to continue their work on monitoring hate crimes and the incitement of hate against minorities in Member States, and to regularly report on cases and trends.

It unequivocally condemns all forms of discrimination, irrespective of the cause, and all forms of segregation, hate speech, hate crimes and social exclusion, and asks the Commission and member states to robustly punish and penalise the denial of atrocities against national or ethnic minorities; **given the Resolution of 25 October 2017, on fundamental rights aspects in Roma integration in the EU: fighting anti-Gypsyism, remember that all European citizens should receive help and be protected to an equal extent, irrespective of their ethnic or cultural origin;** it asks the Commission to create a European framework and for member states to prepare dedicated national plans to combat xenophobic violence and the incitement of hate against minorities.

It encourages the Commission and member states to implement awareness activities among the EU population on diversity, and to promote all peaceful forms of manifestation of minority cultures; it encourages member states to include the history of national and ethnic minorities and to promote a culture of tolerance in schools as part of the curriculum; it urges the Commission and member states to open cultural dialogue, including but not exclusively in schools, on the different forms and faces of hate against minority groups; it encourages member states to eradicate discrimination, and to ensure that the history and rights of persons belonging to minority groups are included in the content of the national education system.

It encourages the Commission and member states to launch campaigns to combat speech inciting hate, to create units to combat hate crime within police forces, based on the knowledge of challenges faced by different minority groups, and to carry out continuous training activities, as well as to guarantee the equality of people belonging to minorities before the law, and to guarantee equal access to justice and procedural rights.

It states that the Commission and member states must ensure that those belonging to minorities can exercise their rights without fear; it urges member states to introduce compulsory education on human rights, democratic citizenship and political literacy in all stages of the curriculum; it encourages the Commission and member states to provide mandatory training to political leaders who play a key role in correctly applying EU and domestic legislation, and who need to be prepared to serve all citizens from a human rights perspective; it asks the Commission and member states to **address intersectional discrimination** in their policies and their financing programmes.

It asks the Commission and member states to safeguard the protection of minorities and address inequalities, since those belonging to minorities often face **multiple, intersectional discrimination; it asks the Commission and member states to investigate the complex problem of multiple and intersectional discrimination.**

It encourages member states to establish national truth and reconciliation commissions in order to recognise the persecution, exclusion and rejection of minorities for centuries, and to document those issues; it asks member states to unequivocally punish and sanction the denial of atrocities committed against the members of national minorities, and encourages them to celebrate and honour the important commemoration days for minority groups at national level, such as **Roma Holocaust Memorial Day;** it encourages member states to establish institutions that depict the history and culture of minority groups and to offer them financial and administrative assistance.

It considers the active and substantial participation of minority groups in the social, economic, political and cultural spheres to be key; it therefore asks the Commission and member states to draw up strategies that include proactive and reactive measures based on real and systematic consultations with representatives of minority groups, involving them in the management, monitoring and evaluation of programmes and projects



launched at all levels, including local levels, to safeguard their inclusive and non-discriminatory nature.

It asks the Commission and member states to guarantee the fully fledged application and fulfilment of the racial equality directive, and encourages them to participate in **awareness campaigns on anti-discrimination legislation**; it believes that member states must ensure that sanctions are effective, proportionate and dissuasive, as required in the Directive; it asks the Commission to appropriately enforce the application of the Directive.

It regrets that the proposal for a Directive on equal treatment (COM(2008)0426) is still pending approval by the Council; it repeats its call to the Council to adopt a position as soon as possible.

The resolution is available at: http://www.europarl.europa.eu/doceo/document/TA-8-2018-0447_ES.html





Assistance and Guidance Service for Victims of Racial or Ethnic Discrimination.

2018 results

The Assistance and Guidance Service for Victims of Racial or Ethnic Discrimination is a free of charge state service available to victims of racial or ethnic discrimination, provided by the Council for the Elimination of Racial or Ethnic Discrimination¹, a body belonging to the Directorate General of Equal Treatment and Diversity, reporting to the Office for the Prime Minister, Parliamentary Relations and Equality.

The Service has two objectives:

1. *To provide technical assistance required to assist victims of racial or ethnic discrimination in order 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.*

The service is formed of the following organisations, in addition to FSG as coordinator:

- ACCEM
- Spanish Red Cross
- Comisión de Ayuda al Refugiado en España (CEAR)
- CEPAIM Foundation
- Movimiento contra la Intolerancia (MCI)
- Movimiento por la Paz (MPDL)
- Red Acoge (RA)

Fundación Secretariado Gitano has coordinated the service throughout this period, together with the seven organisations and through a network of 87 offices (present in every autonomous community 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 729 cases

of racial or ethnic discrimination, of which 416 were individual cases and 313 were group cases. Of those, 268 women were identified, and 198 men. Of the total number of cases reported, 84 were related to access to housing (28 groups and 56 individuals) – the issue concerning this 2018 annual report.

In spite of the data on the victims identified, we must stress that the Assistance Service continues to work on and perfect our tools and protocols to better identify victims of discrimination, due to its importance to the Service, and being aware of the difficulty that entails (since we still encounter serious problems with under-reporting, assimilation of discrimination and ignorance of rights in the face of discrimination in any of the areas where we record discriminatory incidents).

Between 1 January and 31 December 2018, the Assistance Service has developed a total of 333 information, awareness and training activities, of which 49 were for key agents, reaching a total of 1,314 agents. In addition, a total of 279 information activities were carried out for potential victims of racial or ethnic discrimination and other beneficiaries of the programmes carried out by each of the social organisations forming part of the Assistance Service. In total, 9,297 potential victims and/or beneficiaries participated in our activities.

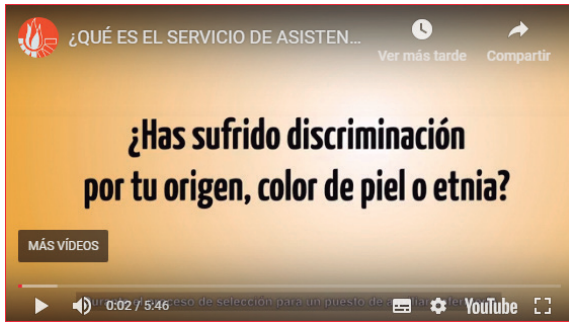
During the same period, a total of 36,950 informative leaflets on the service were distributed to potential victims of discrimination.

In addition, with the aim of contributing to information and awareness of racial or ethnic discrimination, audio-visual material has been put together, including a video from the Assistance Service, which has been uploaded to the Service's website:

https://asistenciavictimasdiscriminacion.org/el_servicio/que_es_el_servicio

www.asistenciavictimasdiscriminacion.org

¹ Royal Decree 1262/2007, of 21 September.



<http://www.igualdadynodiscriminacion.msssi.es/redOficinas/portada/home.htm>

<https://asistenciavictimasdiscriminacion.org/derechos/discriminacion/>





2. Case law

ECHR cases of discrimination against Roma people, 2018

1. NEGREA AND OTHERS v. ROMANIA

(24 July 2018)

The case concerns, among other matters, complaints of indirect discrimination due to belonging to the Roma ethnic group in relation to maternity benefits. The applicants also complained about the length of the proceedings.

The Court upheld that there has been a violation of article 6.1 (right to a fair hearing within a reasonable time) and article 13 (right to effective remedy) of the Convention. The Court found, firstly, that the proceedings lasted seven years and nine months, a length that could not be blamed on the complexity of the case or the conduct of the claimants, due not meet the requirement of "reasonable time" under article 6.1 However, it observed that there was no tangible evidence in the case file to show that the persons of Romani ethnicity had been more affected than others, and so anti-Roma discrimination had been proven.

The ruling can be viewed (in French) at: <http://hudoc.echr.coe.int/eng?i=001-185280>

2. JANSEN V. NORWAY

(6 September 2018)

The applicant, a Roma-origin Norwegian citizen, complained that she was denied access to her child, who had been taken into the custody of social services and placed with a foster family. The main reason for the contact limitations outlined by the Norwegian courts was the danger of the child being kidnapped by the applicant's family, which would have been detrimental to the child, and the possibility of the secret location of the foster family being revealed.

The Court found that article 8 of the Convention (right to respect of family life) had been violated, due to believing that there had not been a balance consideration

of the negative long-term repercussions for the child of losing contact with her mother, and that the duty of taking steps to facilitate family reunification as soon as reasonably possible had been violated. It indicated that, according to case law, it was imperative to consider the long-term effects of permanent separation of a child from her biological mother, also taking into account that the separation of the child from her mother could deprive her of her Romani identity.

The judgment can be viewed at: <http://hudoc.echr.coe.int/fre/?i=001-185495>

3. LINGURAR AND OTHERS v. ROMANIA

(16 October 2018)

This case referred to two police operations carried out in the Roma community of Pata Rât to locate suspects of a robbery. The applicants' particular complaint was that they had been mistreated by state officers and that there had not been an effective investigation of their complaint. They also alleged that they were discriminated against for their ethnicity.

The Court upheld that substantive and procedural aspects of article had been violated (not to be subject to inhuman or degrading treatment) in respect of two of the applicants, due to considering that the use of force against them by the police was excessive and unjustified in the circumstances. One police officer dragged the first applicant to the ground, and the second was beaten with a truncheon, even though he had not resisted and had been immobilised by two police officers. The Court found that these acts of brutality were intended to generate fear, anguish and a sense of inferiority, which was tantamount to humiliating and degrading treatment. The Court further upheld that article 14 had been violated in relation to article 3 in the procedural respect, since the authorities investigation into the applicants' accusations of racism had lacked detail.

The judgment can be viewed at: <http://hudoc.echr.coe.int/eng?i=001-192466>

4. BURLYA AND OTHERS v. UKRAINE

(6 November 2018)

The applicants, who were Roma-ethnicity Ukrainian citizens, stated that they had been forced to flee their homes in a village in the region of Odessa following warnings of a threat against the Roma community. They complained about the attack on their homes and alleged that the authorities had been complicit, or at least had failed to effectively prevent or investigate the attack.

The Court upheld that article 8 (right to private and family life) of the Convention had been violated, in relation to article 14 (prohibition of discrimination). It also upheld, in respect of the applicants that were in the country at the time the events took place, that two violations of article 3 had taken place (prohibition of inhuman or degrading treatment), considered in relation to article 14. The Court indicated in particular that the role of the police, who had opted not to protect the applicants but had advised them to flee before the pogrom, and the fact that the events entail the invasion and plundering of the applicants' homes by a large group, fuelled by anti-Roma sentiment, was an attack on the dignity of the applicants that was serious enough to be classed as degrading treatment. In addition, in spite of the clear evidence that the attack had targeted members of a specific ethnic group, it had been investigated as a straightforward disturbance, and there was no evidence that the authorities had carried out any investigation into hate against Roma people as a probable motive for the crime.

The judgment can be viewed at: <http://hudoc.echr.coe.int/eng?i=001-187508>

5. LAKATOŠOVÁ AND LAKATOŠ v.

SLOVAKIA

(11 December 2018)

This case referred to a series of shots fired in 012 by an off-duty police officer in the home of a Romani family. The two applicants, a married couple, were seriously injured, and three members of their family were killed. When questioned by the police, the officer stated that he had been thinking about "a radical solution to the Roma people". He was eventually convicted with a reduced sentence of nine years in prison on the basis of diminished responsibility. The ruling was adopted in simplified form, with no legal reasoning. The applicants complained that the Slovak authorities had failed to ef-

fectively investigate whether the attack on the family had had racial connotations.

The Court upheld that article 14 (prohibiting discrimination) in relation to article 2 (right to life) of the Convention had been violated, and found that there was plausible information to alert the authorities of the need to carry out an investigation into a possible racist motivation for the attack. In particular, it observed that the racist violence was a particular attack on human dignity, and would require special vigilance and a vigorous reaction from the authorities. However, the authorities failed to examine in depth the strong indications of racism in this case. In addition, the police officer was not accused of a racially motivated crime, and the prosecutor had not at all considered or discussed the possible aggravating factor of racist grounds. In addition, the domestic courts failed to provide any justification at all for the limited scope of the investigation, and the simplified trial and judgment in the case offered no legal reasoning for that deficiency. In fact, as the applicants had been civil parties to the proceeding, they were only allowed to submit challenges in respect of their claims for damages.

The judgment can be viewed at: <http://hudoc.echr.coe.int/eng?i=001-188265>



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



Collaboration:

