



SHADOW REPORT
44TH SESSION
COMMITTEE FOR THE ELIMINATION OF ALL FORMS OF
DISCRIMINATION AGAINST WOMEN

FUNDACIÓN SECRETARIADO GITANO

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Structure

The first part of this report is a presentation of the submitting organisation; the second describes the context of Spanish Roma women; the next looks into the grounds for concern regarding compliance with the Articles of the Convention and the last section contains our conclusions and recommendations.

Presentation of the FSG

The *Fundación Secretariado Gitano* is a non-profit inter-cultural social organisation which provides services for the development of the Roma community throughout the whole of the Spanish State and on the European level as well. It commenced work in the 60's, was constituted as an Association in 1982 and became a Foundation in the year 2001.

1.1 Mission and values

The mission of the FSG is the integral advancement of the Roma community based on respect for cultural identity. The purpose of this mission is to support access of Roma persons to rights, services and social resources on an equal footing with all other citizens. To accomplish this, a wide range of actions are carried out focused on improving the living standard of Roma people and encouraging recognition, support and development of the cultural identity of the Roma community.

The FSG advocates a cohesive society in which Roma persons freely and fully exercise their citizenship and contribute to the enrichment of a universal culture. Therefore, the values underlying our actions are:

- Interculturality
- Solidarity
- Dignity and justice
- Capacity-building and participation
- Openness

1.2 Main lines of action

The work carried out by the FSG focuses on the integrated advancement of the Roma community in all of its dimensions including aspects such as cultural advancement, support for identity and the fostering of participation, with a special accent on compensating for the situation of its most disadvantaged members.

In carrying out this mission it engages in two types of actions:

- Direct services lent to the Roma community with a view to promoting and improving living standards.
- Actions aimed at fostering more pro-active policies focusing on the Roma community.

These lines of action specifically give rise to:

- Sectoral programmes and projects
- Awareness-raising campaigns and dissemination of values
- Participation in networks and fora
- Offer of information, training and counselling services
- Political actions at national and international level.

1.3 Size and characteristics

The Foundation has **76 work centres** in **69 towns and cities** throughout Spain. It also carries out activities in 82 municipalities either directly or in collaboration with local governments and Roma organisations.

Its main lines of activity in areas such as employment, education, health, youth, women, housing, etc. are undertaken by multi-disciplinary teams of professionals who are very socially committed. There are over **600 staff members** nearly **40%** of whom are Roma.

In 2007 the FSG carried out **379 programmes** benefitting over 80,000 people and managed a **budget** of over **€ 19 million**.

Introduction

Today, Spain is one of the four EU countries with the largest Roma population accounting for approximately 8% of the entire European Roma population, giving it important relative weight vis-à-vis the overall European population. However, despite being Spain's most important ethnic minority and its nearly six centuries of history in the country, the Roma community is a cultural group whose social integration process has been anything but easy and it continues to be the most rejected group in Spanish society and one of the most excluded in social and economic terms.

The Spanish Roma population is estimated at around 700,000 (out of a total of 45 million inhabitants). While Roma reside throughout all of Spain, the largest percentage are found in Andalusia (close to 38%). Most live in cities and a large number of families reside in socially underprivileged areas. Although the community as a whole shares a number of recognisable common characteristics, we would draw attention to the fact that it is likewise characterised by a certain degree of heterogeneity and diversity.

The Roma population is very young; school-age children, adolescents and youth up to the age of 25 comprise the largest group (40% of the total), accounting for the proportional lack of elderly and retired persons.

The Spanish Roma community is very heterogeneous in terms of its makeup, social status, lifestyle, behavioural patterns, etc. Despite this diversity, there is no doubt a common culture and ethnic identity shared by all families and groups. This identity is mostly based on a common origin and tradition, shared beliefs and values, philosophy of life, habits, behaviours, etc.

Despite clear advances in the social inclusion process of Roma in Spanish society, especially over the last several decades, a large proportion (especially women) clearly live well below the average living standard in Spain and a series of problems prevent them from breaking away from their traditional situation of exclusion.

The following are the main problems facing a large percentage of Roma today:

1. Low academic level among both the adult and child population due to inconsistent school attendance and poor results on the part of educational institutions with this sector of the population, a high early school dropout rate and only very few who continue with their education after the compulsory stage which the majority do not complete either. The higher rate of early school leavers among Roma girls in comparison with Roma boys is especially noteworthy as is the higher illiteracy rate among adult women compared to men although in both cases these rates are much higher than those of the overall population.
2. Pervasive loss of traditional professions and labour activities (scrap metal and paper collection, seasonal field work, etc.) and difficulties continuing in the jobs they currently engage in (mobile trading); professions mostly found in the informal and underground economy and to which many families today can find no alternative.

3. Poor housing and habitat conditions in some cases; shanty towns (affecting 4% of Roma families), segregated settlements, substandard housing (affecting 12%), deteriorated housing and a serious problem of overcrowding in the case of many of those who live in standard housing owing to the early age at which Roma marry, high birth rate and lack of economic resources making it inevitable for several families to live under the same roof.
4. Inappropriate access and use (both overuse and underuse) of different types of general services: health-care, social, vocational training, etc. There are frequent problems getting on with the professionals providing these services, feelings of exclusion and mutual rejection, etc.
5. Prejudice, stereotypes and a high degree of social rejection of the Roma population in general (all studies identify Roma as the most socially rejected group) and frequently difficult and conflict-ridden inter-ethnic relationships, especially in neighbourhoods where a high percentage of Roma population resides, in special areas and shanty towns. This prejudice is increasingly associated with drugs.
6. Rapid cultural transformation process whereby a series of traditional values, rules and symbols are being questioned which, together with a parallel process of growing diversification and dissemination among the population at large, is calling into question their personal and group identity.

General conditions specific to Roma women

Roma women, as an ethnic group forming part of the Spanish society, face a different situation with respect to the majority insofar as they are affected by three factors: the fact that they are women in a patriarchal society, that they belong to an ethnic minority which is the one most negatively viewed by mainstream society and that they belong to a culture which considers women almost exclusively as mothers and wives thus limiting their possibility for advancement.

Roma women, like all other members of the community, are victims of stereotypes whereby all behaviours are judged. Within these we can differentiate idealised stereotypes attributing characteristics such as purity, virginity, fidelity (conjugal and to the community), hard working and blind obedience to any cultural trait considered Roma.

In contrast, stereotypes from outside of the community are more harsh: subservient to the family, lazy, dirty, illiterate, married at the age of 14, mothers of large families and always found between home and the market.

It would be untrue to say that there are no women featuring at least some of these characteristics just as it would be unfair to say that there are no other valid descriptions of Roma women. The reality is, however, that this group is characterised by a great degree of heterogeneity.

Despite these obstacles, today is the time for women within the Roma community. Through dialogue, reflection, effort and their increasing participation in society, women are giving new meaning to Roma identity, they are becoming role models for other members of their communities and are transmitting everything they are learning to future generations.

The following aspects promote an improvement in their situation at this point in time:

1. *A changing attitude* adopted by an increasing number of Roma women, especially young women, giving rise to change in their communities and the majority society:

- Increased motivation to take part in training, seek employment and partake in entertainment activities.
- An increase in the number of Roma women who study and work.

- Later marrying age and greater capacity to choose married or single life.
- More time spent in open, intercultural areas (training centres, universities, workplaces and entertainment centres), an opportunity which requires greater autonomy decreasing group dependence and obliges them to learn new strategies and develop personal communication skills, to solve problems and seek information just like all other citizens.

2. *Non-formal qualification* learned at home: they have knowledge acquired since they were very young related to domestic work and taking care of others: cooking, cleaning, home management and decoration, personal aesthetics, seeing to others' needs and taking care of the elderly and children.

3. *Responsibility*: Most Roma woman are quite used to taking on responsibility from a very young age which is why they tend to respond very well to training offered them through different organisations.

Grounds for concern regarding compliance with the Articles of the Convention.

Article 2. Despite advances in the area of non-discrimination based on gender and ethnic background, enforcement of the anti-discrimination rule remains minimal.

As concerns **anti-discrimination regulation**, Spain has indeed transposed European Directives 2000/43/EC and 2000/78/EC establishing the basic regulatory framework of the equal treatment principle at European level into domestic legislation through Law 62/2003. However, the implementation of the body responsible for the advancement of equal treatment created by virtue of Directive 2000/43/EC has been considerably delayed.

Important events have taken place in 2008 with regard to the creation of the **Council for the advancement of equal treatment and non-discrimination of persons for reasons of racial or ethnic origin** through Royal Decree 1262/2007: first of all, the affiliation of this body has been changed and it is now attached to the Anti-Discrimination Directorate-General under the auspices of the Ministry of Equality and secondly, the FSG was selected as one of the social entities forming part of this Council by virtue of Order IGD/18/2009 published in the Official State Gazette on 19 January 2009.

In accordance with Order IGD/18/2009 the Council for the advancement of equal treatment is composed of 8 representatives of the General State Administration with the competences included in their sphere of action and by representatives of the Autonomous Communities, local organisations, business organisations and trade unions and other organisations representing interests relating to racial or ethnic origin.

We have once again come up against sluggishness in the effective implementation of Directive 2000/43/EC on the enforcement of the equal treatment principle evident in its scant application in judicial decisions and expert reports and in terms of preventive measures enacted by the different government administrations.

In the view of our Foundation, while we salute the transposition of European Directive 2000/43/EC prohibiting discrimination for reasons of ethnic origin, this transposition remains incomplete and enforcement of the anti-discrimination rule is anything but apparent. There are several issues concerning us due to insufficient progress made:

- Although the **Council for the advancement of equal treatment and non-discrimination of persons for reasons of racial or ethnic origin** has been formed by virtue of Royal Decree 1262/2007, the **implementation** process which should have taken place in 2003 has still not been finalised.
- We continue immersed in a **situation of insufficient information and training of key players** (judges and jurists, police forces, civil servants, trade unions, etc.) and Roma organisations regarding anti-discrimination legislation.

- There has yet to be **any practical enforcement whatsoever** of the anti-discrimination rule and especially of **Directive 2000/43/EC thus preventing suitable protection** of the Roma community's right to equal treatment.

From among all of the discrimination cases which the FSG collected in 2007, there was only one conviction for discrimination. However, the text of the judgement makes no reference to this fact and therefore it is not proportional to the facts, does not serve as a deterrent nor is it effective in combating discrimination. No judgements were handed down in favour of victims of discrimination in 2008 or 2009.

Along these same lines, we believe it is necessary to:

- Form specialised bodies at regional/local level to assist victims of discrimination throughout the entire process (information, counselling and legal representation), conduct studies, train key agents, guarantee the absence of discrimination in administrative practices and promote equal treatment, etc.
- Inform the community of its rights under anti-discrimination law and provide support in exercising those rights given that today the lack of information and the poor response provided by the system leads victims to accept discrimination and not bother filing complaints.
- Implement awareness-raising initiatives to eliminate the stigmatisation and persistence of prejudice against the Roma community.

The need to break down data by sex and ethnic origin

Before studying the Convention Articles which is the focus of this exercise, the report reminds readers that in previous reports on Spain, a lack of data and information on the situation of Roma girls and women was observed. The Spanish Government's refusal to quantify the Roma population is to protect the latter in accordance with Article 18(4) of the Constitution which restricts the use and processing of personal and family data in the interest of guaranteeing privacy. However, according to an interpretation by the European Parliament and Council, a blanket prohibition should not be put on the registration of data but only on those "subjective" data liable to directly or indirectly identify specific persons.

The lack of data broken down by sex and ethnic group makes it difficult to acquire an accurate idea of the degree to which Roma women have access to services such as education, employment, housing, health-care and political participation. This is particularly relevant in light of the fact that Spain's Social Inclusion Schemes do acknowledge the importance of collecting updated information on the Roma population through reports and research in order to assess the impact of today's social policies and design tomorrow's.

Article 3: Gender-based violence: Roma women encounter difficulties gaining access to services offered through victim care networks.

The lack of knowledge that the majority culture (non-Roma) has of Roma often limits the access of these women to mainstream resources where most caretakers are non-Roma. That is why it is useful to be familiar with some aspects of Roma culture where the family is the basic pillar from which a network of relations develops and where solidarity is very important. Members of the Roma community generally have very strong family ties and adhere to values which often place a priority on community issues over individual ones. A conflict between individuals from different families could turn into a conflict between families and sometimes women suffering violence fail to speak up because they fear that the conflict will take on greater proportions.

Roma women encounter many problems gaining access to existing social resources. This is partly due to ignorance of their culture on the part of the services and partly due to ignorance of the resources on the part of Roma women and also partly because many of these women fail to see the usefulness of these services in resolving their problems.

Another of the reasons why few women make use of resources to help victims of violence is the fact that this access is generally contingent upon the filing of a complaint. Many experts feel that this is a mistake. This leaves many victims defenceless because the filing of a complaint can raise the likelihood that the aggressor may take serious reprisals and does not guarantee effective protection for victims (many of the women who have died at the hands of their partner or ex-partner had filed one or several complaints against them and failed to receive the necessary protection). For many Roma women, filing a complaint against their aggressor is tantamount to acknowledging that their community's internal mechanisms are not working to solve the problem they are suffering. Furthermore, denouncing a member of their own community to a non-Roma institution could result in rejection or even being ostracised from their community and very few people are willing to renounce their group ties.

Services dealing with women who are victims of gender-based violence must be conscious of these difficulties and try to adapt services to the needs of Roma women. If our priority is truly the protection of victims, the filing of a complaint should not be a prerequisite to gain access to emergency shelters for battered women. It is likewise very important to be familiar with the reality of these women so as to be able to offer them proper care, to help them become fully aware of their situation and to help them break out of it.

Article 5: Stereotypes. The media promote stereotypes about Roma women by generalising the actions of one or a mere few to the entire community.

The media promulgate **stereotypes** about the Roma community due to ignorance of their reality, generalising the actions of one Roma person to the entire community and make use of indirect sources without consulting with the Roma themselves. They publish stories in the society section treating Roma as people with exotic customs instead of focusing on their culture. These messages are disseminated at lightning speed on television and can have a devastating effect. This situation is even worse in the case of Roma women who are depicted as being dirty, virgins, married at the age of 14, mothers of very large families and stuck between home and market.

Article 7. Public and political life.

Special mention should be made of the headway made at national level in terms of the participation of women in politics as exemplified by the last government cabinet, the first gender-balanced government in the history of Spain. We would also mention that women have gained access to ministries which used to be men's private domain such as the Chief Vice-presidency of the Government or the first woman to be appointed Minister of Defence.

However, having regard to decision-making and the social participation of Roma women, despite the lack of quantifiable data it is fair to say that their presence in the political arena is scarce at best.

Today there is not even one Roma woman in Parliament or the Senate. This same lack of participation is apparent at the National Government level and among high-ranking state officials.

There is a symbolic presence among local councillors but the representation of Roma women in politics and the decision-making process is clearly scant at best. Although measurable efforts are being made to strike a balance between men and women in leadership posts and while the law requires a balanced distribution of women and men on the lists of candidates running for Parliamentary, Municipal or European Parliamentary elections and for the Legislative Assemblies of the Autonomous Communities, there is no reference in our laws to the participation of Roma women who form part of the largest ethnic minority in Spain and suffer multiple discrimination, more severe than that faced by the rest of the women of the

majority society, meaning that the likelihood of their taking part in politics and the decision-making process is lower than that of Roma men and of all other women from the majority society.

The role traditionally played by Roma women within Roma culture acts as a barrier in gaining access not only to political posts but to public life in general. Their role as educators and caretakers which is part of their duties as mothers and wives earning them recognition within the group, limits their sphere of action to the private realm rather than the public. Over the last several years through the associationist movement Roma women have increasingly tried to play a greater role in public life but the appropriate measures have not been taken to facilitate this participation; in other words, their situation within their community which is hampering this development has not been taken into consideration.

We can provide some data about the State Council of the Roma People. Its plenum is formed by 39 members, 11 of whom are women, i.e. 28.2%. However, 6 of these representatives are from the public administration and therefore only 5 of members of the Council are Roma women.

Article 10. Education: Although legally everyone must be enrolled in school until the age of 16, the public administrations do not always implement measures to guarantee permanence in school.

The enrolment of Roma children in school in Spain has only been mandatory for just over 30 years now. To summarise, the scholastic history of Roma has gone through three stages which have sometimes overlapped: exclusion, separate enrolment and unified enrolment under a majority group model.

It is important to draw attention to the fact that at the compulsory secondary level of education the Roma community exhibits a **high rate of early school dropout**. Roma girls have to overcome even greater obstacles in entering secondary school as shown by the statistics: 60.7% of Roma boys make the transition from primary school to compulsory secondary school compared with only 39.3% of the girls.¹

Moreover, according to the data gleaned from the research report "*Incorporación y trayectoria de las niñas gitanas en la ESO*" (Incorporation and pathways of Roma girls in compulsory secondary education)² **80% of all Roma students who begin compulsory secondary education drop out before concluding their compulsory studies.**

The main conclusions and recommendation taken from this study are:

- 80% of the Roma students who enter their first year of compulsory secondary education drop out before completing their last year. Although the enrolment level is lower in the case of Roma girls at the outset of this new educational level, girls have lower dropout rates than boys at the second stage of compulsory secondary education.
- Early school dropout is usually preceded by absenteeism due to the fact that academically they lag behind the rest of the students.
- Lack of work and study habits on the part of Roma students and stormy relationships between families and schools.
- Lack of motivation at school in the case of Roma students (68.5% are unmotivated and do not like to study compared to 46.9% of non-Roma students) although we found that Roma girls were more motivated to study.

¹ Madrid, FSG: Incorporation and pathways of Roma girls in compulsory secondary education. 2006

² Idem.

Enrolment levels of Roma students at the secondary level remain low, absenteeism rates are high as is the early school dropout rate. And, although there is no precise figure showing the number of Roma university students, it is safe to say that they are grossly underrepresented but we should point out that **8 out of 10 Roma university students are women**, although this is not reflected later in terms of access to employment.

The academic level of the Roma population has a clear effect on employment:; Just over **7 out of every 10 Roma over the age of 15 is completely or functionally illiterate**. In absolute terms we are talking about approximately 340,000 Roma and of these, close to a fifth are completely illiterate. Of these, nearly **60% are women**.³

The low academic level in general and the illiteracy rate in particular are very closely related and are even more prevalent in the case of women, the elderly and, therefore, among those with the worst health and likewise among those residing in small towns with relatively fewer inhabitants.

Internal difficulties

The negative stereotypes held by a sector of the Roma population towards secondary education are, to a large degree, the result of ignorance arising from the exclusion that the Roma community has suffered during the course of its history. **The law did not encourage their access to formal education** until the 1960's when the *Bridge Schools* were created – an initiative of the *Secretariado Gitano* – specifically targeting the Roma population and intended to close the gap between Roma children and the educational system.

Only a minority of the adult Roma population has achieved academic qualifications beyond basic levels because educational policies making school compulsory for all cultural groups are relatively recent. Therefore, Roma children and adolescents have **very few nearby role models** with secondary or university studies.

Due to this lack of role models and the persistence of negative stereotypes against the Roma population held by mainstream society and the resistance of the Roma population to the **schools' tendency to try to assimilate them**, a significant proportion of the Roma population perceives secondary or university studies as something incompatible with being Roma.

As seen throughout this analysis, early school dropout by Roma girls has to do with what is considered the woman's role and her dedication to domestic work, taking care of family members, marriage and virginity before marriage.

Although **legally everyone must be enrolled in school** until the age of 16, the public administrations do **not always implement measures to guarantee permanence in school**. Some mothers draw attention to their feelings of impotence in light of the social pressure to take their daughters out of school and the passive attitude on the part of public entities when it comes to absenteeism or early school dropout.

One of the recommendations for Spain made by the CEDAW Committee in its V Report was the promotion and protection of the rights of Roma women, especially in the areas of education, employment, housing and health. In this connection, we feel that important measures have been taken as indicated in the 2008 Government Report such as the creation of the Roma Cultural Institute and the State Council of the Roma People. However, we also believe that the efforts made by the Spanish Government at the request of the Committee to keep Roma girls and adolescents in school have been insufficient because, although some measures have been taken, they are treated as a group at risk and not as holders of rights. The data mentioned in the foregoing bears witness to this.⁴

³ Idem.

⁴ Idem.

Madrid. March. Discrimination in education. The president of the School Enrolment Committee of a district of Madrid appropriately proposed that a place be made available at the school for a young Roma girl whose mother is a beneficiary of the FSG's Social Action Programme. The FSG intercultural mediator went to the school to register the child. The school director told our mediator that it was impossible to enrol this child because "the child ratio is... complete". Despite arguing that it was the Committee itself that proposed the child's enrolment, the mediator was unsuccessful in getting the director to see things that way. Thanks to inside information, the mediator knew that the classrooms were not full. After that, the local school inspector met with the mediator and the mother of the child and subsequently sent a letter to the school indicating that the child must be enrolled. In the end the child was enrolled thanks to the efforts of the mediator.

Article 11: Employment

The lack of data broken down by sex and ethnic group and the Spanish Government's refusal to quantify the Roma population is to protect the latter in accordance with Article 18(4) of the Spanish Constitution which restricts the use and processing of personal and family data in the interest of guaranteeing privacy. However, according to an interpretation by the European Parliament and Council, a blanket prohibition should not be put on the registration of data but only on those "subjective" data liable to directly or indirectly identify specific persons. This is important because the lack of specific data in this case makes it difficult to get a grasp on the situation facing Roma women when it comes to employment and also prevents us from assessing the impact of current social policies and the design of future ones.

From the data collected on the women taking part in the FSG-managed Multi-Regional Operational Programme to Combat Discrimination, we find that Roma women have a lower activity and employment rate and a higher unemployment rate, account for a greater share of temporary and part-time work and shoulder the brunt of family obligations, especially those in the 16-29 age bracket. This coincides with the fact that the average number of children is 3.18, more than 1.86 points higher than the figure for the overall population.

Roma women have traditionally engaged in domestic work and provided support for family members in their activities such as mobile trading, urban waste collection, horse training, etc. Virtually all of these activities today, however, are undergoing a dramatic transformation and regulation process which, in many cases, excludes Roma from these employment niches and leaves the younger generations without these traditional labour options.

The initial reason Roma women seek employment is to meet the economic needs of their families. In some cases, however, the desire for economic independence and self-esteem also come into play and once they begin to work they tend to appreciate this secondary reason more upon discovering the social and personal benefits of taking part in the mainstream labour market. Unfortunately, in most cases their options are limited to those jobs requiring unskilled labour which is almost always poorly paid and more often than not within the sphere of the underground economy.

Within this context of inequality, the weaknesses characterising Roma women who seek employment⁵ can be summed up as follows: low self-esteem and motivation, high level of dependence on the "protective" family, professionally unskilled, poor social skills for the job seeking process and to handle everyday social situations and low motivation to take part in employment training.

The following barriers stand in the way to training and employment making incorporation into the labour market difficult:

- Barriers in the form of personal resistance to new situations which could clash with deeply rooted social values and which may result from a sense of insecurity or discomfort when re-thinking cultural values, new and different ways of doing things and the incorporation of new knowledge, roles and ways of relating to others.
- Barriers in the form of the family's resistance to women taking part in training processes or seeking employment due to their responsibilities in taking care of home and family. This is in addition to the idea that a man's salary is considered basic to the family unit while a woman's salary is "just to help out".
- Barriers from the social or community environment relating to the previous point. Women working outside of the home may be accused of abandoning their families and oftentimes the women themselves believe that if they do not organise the family, no one else will.
- Barriers in the labour environment. In many cases, company human resource policies indirectly discriminate against women by failing to implement measures conducive to the reconciliation of family and professional life, for example.

We feel the need to point out that, knowing the factors and obstacles holding Roma women back from training and employment, and despite some specific programmes such as one to promote employment of Roma women under the Roma Development Plan or through Income Tax subsidies, public policies are still **too few and far between** and do not result in a sufficient number of programmes or **public affirmative action measures** to compensate for or eliminate these inequalities.

Lugo. January. Discrimination in employment. A Roma woman began working in a cleaning company in January 2006. During the course of the year new work centres were added and at the end of the year the woman's boss told her that there were a total of 7 centres. A week after starting in her new work centres, the president of one of the homeowner's associations where she was working came to the company office demanding that she be replaced. One of the company's workers asked why to which the president responded that they did not want a Roma person to have the keys to the building entrance because they didn't trust her. Those responsible for the company then asked whether she was doing her job properly to which the president answered in the affirmative, stating that she was much more efficient than the previous person but that they simply "did not want a Roma woman cleaning the entrance hall of their building of flats" and he even threatened to end the contract with the cleaning company if this woman continued working at his building. Despite this clear discrimination, the worker decided not file an official complaint so as not to jeopardise her job.

Article 12: Health

First of all, one must remain mindful of the lack of studies carried out or supported by health authorities in the field of health and the Roma community.

Our work is therefore based on the data gleaned from the 2006 report conducted by the Ministry of Health and Social Policy and the FSG entitled *"Hacia la equidad en Salud; Disminuir las desigualdades en una generación en la Comunidad Gitana. Estudio comparativo de las encuestas nacionales de Salud, la población gitana y población general de España"* (Towards health equality; reducing inequalities in a generation in the Roma community, a study of national health surveys comparing the Roma population to the overall population in Spain). These data show that Roma women have poorer health than Roma men. 14% of the girls are in poor health compared with 11.7% of the boys. Among the adult Roma population, 41.4% of the women have poor health compared to 28.1% of the men.

The main activity of women is more seriously affected by health problems than that of men:

- Migraine headaches are more prevalent among Roma women than for the rest of the population; 37.1% compared with 9% among non-Roma women.

- 16.4% of the Roma women reported allergy problems compared with 10.9% of the rest of the population.
- Depression among Roma women runs at 17.6% compared to 7.7% for the rest of the population.

The prevalence of obesity among Roma girls under the age of 18 is 22.9%, greater than that of girls from social class V⁶ (10.1%) and from social class I⁷ (5.2%).

Visits by Roma women to the gynaecologist, regardless of their social status, are comparable in number to women from the lowest socio-economic level of the general population. 25.3% of Roma women age 16 and older have never been to the gynaecologist compared to 17.6% of women overall.

Roma girls age 0 to 15 use emergency services much more frequently than boys while just the opposite is true of the overall population. 40.4% of young Roma girls used emergency services during the past year compared to 36.4% of the overall population.

Consumption of medicines is higher among Roma girls in comparison with the rest of the population: 42.9% of Roma women claim to have taken medicines for pain or fever during the last two weeks (compared to 14.7% and 24.9% of men and women respectively of the general population).

Living in sub-standard housing or shanty towns increases the likelihood that Roma women will suffer poor or very poor health, hypertension, asthma, heart disease and accidents, will go on sick leave from their main activity, will smoke, use emergency room services and/or of have loose teeth.

These data show that Roma women and girls make improper use of health-care services, sometimes abusing them and other times failing to take advantage of them. We also discovered that there is often a lack of understanding between Roma women and health-care providers, frequently caused or exacerbated by the lack of awareness that these professionals have of Roma culture.

A general **lack of awareness on the part of health-care professionals is observed regarding the characteristics and culture of this minority**, frequently giving rise to the emergence of prejudice and stereotypes. It is generally observed that these professionals are not able to differentiate between specifically cultural aspects and others which are more related with the socio-economic situation in which many Roma families find themselves. In other words, no distinction is drawn between what can be considered Roma culture and the "culture of marginalisation."

The FSG study entitled "Health and the Roma Community" highlights an important communication barrier between the health-care system and a large proportion of Roma and this is even more true of Roma women who typically are the ones in direct contact with health services. This may be due to a number of factors:⁸

- Failure to adapt or tailor messages given to the Roma population.
- Discrepancy as concerns criteria for the assessment of the quality of treatment.
- Prejudice which, in many cases, leads to a relationship based on defensiveness and mistrust.

All of the above are related with two important weaknesses in the way the health-care system deals with this issue:

- Health-care services encounter **great difficulties in employing flexibility in the face of "differences."** The **lack of tailored protocols** is one of those difficulties. Until these protocols are established, many professionals will continue to justify their actions by strictly complying with general protocols.

⁶ Social classification V: unskilled workers.

⁷ Social class I: public and private administrative directors of 10 or more employees. Professions associated with second and third cycle university degrees.

⁸ Idem.

- The lack of empathy skill training and the failure to address “*cultural*” aspects in university studies. The overall perception is that **field professionals need mediator skill training** if they are to effectively treat minority groups with special characteristics.

The few programmes implemented (with some exceptions) are characterised by their fragmentation, discontinuity and lack of evaluation. In any case, according to data obtained, sufficient and appropriate measures are not being taken to resolve these deficiencies and difficulties facing Roma women and the Roma community in general in gaining access to health-care resources.⁹

Linares. May. Discrimination in health-care. A middle-age Roma women went to her family doctor because she needed some prescriptions. Her physician was not there and she was attended by the substitute. This latter physician said that she could only prescribe half of the medicines requested by the patient because she couldn't find the list which the woman referred to in the computer. The Roma woman said that half of the prescriptions was no good and that she needed all of them at which time the physician threw the prescription in the garbage. The woman asked the physician why she threw the prescription away and asked her to take them out of the garbage to which the physician responded that she (the patient) could take them from the garbage. María (the patient) left the examining room and went to the desk to file a complaint. The patient then returned to the examining room and since the physician persisted in her refusal to give her the prescriptions she spilled the contents of the wastepaper basket on the floor to pick out her prescriptions. The physician then called an orderly on the phone and said "I have a Gypsy in my examining room. Come at once" to which the patient responded that the doctor had no business referring to her ethnicity.

Article 15

In Articles 15 and 16, sections 344, 345 and 346 of the Spanish Government report referring to the current situation of social exclusion, specific mention is made of Roma women and certain measures carried out to promote equal opportunity, equal treatment and gender equality in the Roma community. In addition to these measures, we would draw attention to the following:

The ongoing agreement concluded between the FSG and the Women's Institute in 2005, 2006, 2007 and 2008 to conduct activities to foster the social and labour market integration of Roma women. Within this same framework, four state-wide seminars have been organised for Roma professionals, four national conferences on Roma Women and three teaching guides have been compiled for use by professionals working with Roma women designed to facilitate equal treatment and equal opportunity between women and men and between Roma and non-Roma.

As already mentioned, we assess the public initiatives recently implemented at national, regional and local level in a very positive light and we believe that **efforts should be made to implement them in all of Spain**. However, these measures must be provided with **sufficient means and the political and institutional support** needed to function properly.

Article 16: Failure to recognise the Roma marriage rite.

Article 16 of the Convention on the elimination of all forms of discrimination against women requires States Parties to "take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations". Spanish civil legislation does not recognise the legal effects of the Roma

⁹ Idem 9 and 10

marriage rite. Roma women in particular have suffered from this lack of recognition insofar as on a number of occasions the courts have refused to award them widow's pensions despite having been married according to the traditional Roma rite as from an early age, having contributed to the Social Security system for a great many years and possessing the Spanish *Libro de Familia* (Family Record) where the births of their children have been duly recorded, as we will analyse in a specific case further on.

It should be remembered that the notion of multiple discrimination has not been expressly recognised by the Spanish legal system (this is one of the recommendations of the European report). Article 14 of the Spanish Constitution contains an open list of discriminatory factors but does not expressly allude to the possible combination of two or more of them but neither does it negate that possibility. The fact is that judicial analysis of equality in Spain has always looked at discriminatory factors on a one-by-one basis and never jointly.

This fact has led to controversial rulings for failing to consider the discriminatory situation in all of its complexity. A good example of this is Constitutional Court Judgement 69/2007 of 16 April 2007. A Roma woman appealed to the Court because she had been denied a widow's pension for not being officially married to the deceased despite having married to him in accordance with Roma uses and customs in November 1971. The complainant claimed discrimination based on ethnic background and social origin (Article 14 of the Spanish Constitution) but the Court dismissed the appeal and the case is now before the European Court of Human Rights. The arguments presented by the Constitutional Court can be summarised as follows:

(1) General framework. The Court identified two principles:

a) The Constitution prohibits racial or ethnic discrimination which it describes as "legally hateful and perverse"¹⁰, regardless of whether such discrimination is direct or indirect¹¹.

b) In terms of the legal instances under which one can be awarded widow's benefits, the Court has reiterated that the fact that the legislator limits the said benefit to cases of institutionalised co-existence such as marriage while excluding other types of union or co-existence does not constitute discrimination. In this regard, the legislator has a wide margin because the Constitution does not prohibit widow's benefits from being extended to other unions other than formal marriage. In fact, the recently enacted Law 40/2007 of 4 December 2007 regarding Social Security measures has extended widow's pensions to common law couples although applies some different requirements. The union consummated according to Roma uses and customs, however, was not recognised by the legislator as a legitimate form of marriage.

(2) Applying these principles to the case leads to the conclusion that refusal to award the widow's pension to the appellant for not having married does not constitute social or ethnic discrimination (it does not, at any time, refer to race or ethnic origin). The difference in treatment between those that are entitled to a widow's pension for having married and those who have not is completely neutral from an ethnic or racial point of view.

(3) The Court could have rested its case on these grounds but it also had to address an argument proposed by the appellant alleging that the comparison of her union formed by virtue of the Roma marriage rite with common law couples and not with marriage was tantamount to ethnic discrimination. In

¹⁰ I find fault with this expression because the perversion (i.e. the fact producing the discrimination) could be judicial only if it is caused by a rule or a legal decision but most times the perversion is an element of fact and not judicial given that legal perversion could only arise from faulty protection and subsequent legal remedy of the discrimination suffered.

¹¹ The Court also insists on using the terms "patent" for direct discrimination and "covert" for the indirect sort. This is a serious conceptual error because both direct and indirect discrimination can also be "patent" (i.e. dismissal for becoming pregnant) or "covert" (dismissal for becoming pregnant but alleging lack of punctuality at work). For the sake of accuracy, the Court should link direct discrimination with that having to do with "treatment" and indirect with the "impact". Both could be patent or covert.

the view of the appellant, this was "discrimination due to failure to differentiate", i.e. giving the same legal treatment to two different realities (unions by the Roma rite and common law couples). The Court, however, recalled that Article 14 of the Spanish Constitution does not cover this sort of discrimination for failure to differentiate.

(4) However, the judgement concluded with a recommendation to the legislator stating that, while conserving constitutional rights and values, unions celebrated in accordance with the Roma rite could have the legal effects of civil marriage (motive No 4).

The dissenting opinion of jurist J. Rodríguez-Zapata stated that different arguments and a different ruling could have been in order. He first of all points out that in this case the Court's reasoning strays from that followed in a similar case resolved with Constitution Court Ruling 199/2004. In that judgement the Court ruled in favour of the appellant for infringement of the right to equality in the case of the widower whose deceased partner was a civil servant and who furnished evidence of the existence of a conjugal relationship with her although their religious marriage had not been registered at the Civil Registry due to the expressed wishes of the spouses¹². Rodríguez-Zapata went on to argue in favour of recognising the rights of minorities and their cultural diversity (the only limit being constitutionally supported public order) requiring affirmative action measures.

Hence, the Constitutional Court's interpretation of this case has been meticulously *formalist*. In the US legal system, this would be called a *race-blind* approach. However the message is clear. If you want a widow's pension, get married according to the rules. The legal form of marriage as a prerequisite to be entitled to a widow's pension is not a suspicious *tertium comparationis* in terms of race or ethnic group. A legal response which was short and sweet, just like the Ruling.

The strategic multiple discrimination approach based on equality arguments is as follows: In the case under scrutiny the appellant was socially and culturally prevented from working outside the home (for being a Roma woman), the Roma marriage rite was culturally imposed upon her (for being a Roma woman), she had to take care of her husband until his death (for being a Roma woman) but she was declared legally ineligible to receive a widow's pension (for a circumstance which would never have been legally applicable to a non-Roma woman or tactically applied to a Roma man). **It goes without saying that a non-Roma woman or a Roma man would never have suffered this discrimination.** It is specific. It is multiple discrimination. And is discrimination which has not been judicially remedied.

Conclusions

- While 2008 was marked by a few important milestones regarding the advancement of Equal Treatment and non-discrimination in all areas, we once again face a certain sluggishness in the effective implementation of Directive 2000/43/EC and the preventive measures promoted by the different State Administrations.

- The **lack of data broken down by sex and ethnic group** makes it difficult to acquire an accurate idea of the degree to which Roma women have access to services such as education, employment, housing, health-care and political participation. This is particularly relevant in light of the fact that Spain's Social Inclusion Schemes do acknowledge the importance of collecting updated information on the Roma population through reports and research in order to assess the impact of today's social policies and design tomorrow's.

- The prevailing lack of awareness of Roma culture on the part of the majority society **limits the access of Roma women to mainstream resources to help victims of gender-based violence.** Another of the reasons why few women make use of these resources is the fact that this access is generally contingent

¹² In legal ground 2, the Court rejected the similarity between the two cases because in 2004 a valid marriage had been celebrated (although it had not been registered) while in this case no legally recognised marriage had taken place.

upon the filing of a complaint. For many Roma women, filing a complaint against their aggressor means recognising the failure of the Community's internal mechanisms to solve the problem, in addition to denouncing a member of their own community to a non-Roma institution which could lead to rejection or ostracism by their community and few people are willing to risk renouncing their ties and sense of group membership. It is therefore essential to bear these difficulties in mind and try to adapt services to the needs of Roma women because at present many have nowhere to turn.

- The **media** promote stereotypes of the Roma community, especially of Roma women, by generalising the actions of one or a mere few to the entire group and this has a devastating effect. There is a general lack of control over the different digital newspaper fora where, despite rules prohibiting racist commentaries, in practice their publication is permitted. The biased and stereotyped depiction of the Roma reality in the news is indicative of an overall lack of knowledge. News stories are also often accompanied by images or photographs which are clearly derisive towards Roma women, making note of the ethnic origin of those involved in the news story when this has no relevance whatsoever.

- Despite advances made at national level in terms of the **participation of women in political life**, the participation of Roma Women is scarce (this is known despite the fact that there are no quantifiable data). Although there are rules on the books requiring a balanced composition of women and men in lists of candidates running for elections, we do not find any reference or action to the participation of Roma women despite their suffering multiple discrimination, more serious than that faced by the rest of the women in mainstream society, making their opportunities to take part in political life and decision-taking processes even more scarce vis-à-vis the men of their community.

- **Education** is a fundamental right and as such comes under the heading of social justice and is an essential tool in building a truly democratic and participatory society where both individual and collective human rights are respected. Within this framework, education must be guaranteed to men and women during the course of their lives on an equal footing regardless of ethnic or cultural background and must adapt to the specific needs and conditions of different groups supporting the diversity and idiosyncrasies of different social groups while guaranteeing that teacher training is void of any sexist, racist or discriminatory stereotypes. In this connection, as pointed out by the Committee in the Spanish Government report, insufficient effort is being made, despite some advances, to keep Roma girls and adolescents from dropping out of the educational system.

- In the area of **employment**, Roma women have a lower activity rate, higher unemployment, account for a greater share of temporary and part-time work and shoulder the brunt of family obligations, especially those in the 16 – 29 age bracket (according to data collected through the Multi-Regional Operational Programme to Combat Discrimination – FSG Acceder). It is therefore important to stress that the ad hoc public policies over the last several years aiming at the labour market integration of Roma women are not enough insofar as they do not contribute to eliminating these inequalities.

- In addition to suffering a poorer state of health, Roma women and girls make inappropriate use of health-care services, on occasion by abusing them and sometimes for failing to take advantage of them. There is often a lack of understanding between Roma women and health-care providers, many times caused or exacerbated by the lack of awareness that these professionals have of Roma culture. There are two major weaknesses in the way the health-care system addresses this issue:

 - Health-care services have great difficulties in employing flexibility in the face of "differences."

The **lack of tailored protocols** is one of those difficulties.

 - The lack of empathy skill training and the failure to address "*cultural*" aspects in university studies.

The few programmes implemented (with some exceptions) are characterised by their fragmentation, discontinuity and lack of evaluation. In any case, according to data obtained, sufficient and appropriate

measures are not being taken to resolve these deficiencies and difficulties facing Roma women and the Roma community in general in gaining access to health-care resources¹³.

- As already mentioned, we assess the public initiatives recently implemented at national, regional and local level in a very positive light and we believe that efforts should be made to implement them in all of Spain. However, these measures must be provided with sufficient means and the political and institutional support needed to function properly.

Recommendations:

- Raise the awareness of victims of discrimination as to their rights and provide them with all available information on the mechanisms to defend those rights. Implement counselling and accompaniment measures and assistance to victims of discrimination which are truly effective and easily accessible.
- Educate key agents when it comes to anti-discrimination law (the media, police, jurists and those working directly with victims).
- Make progress in the analysis of situations of multiple discrimination suffered by many Roma Women and in the drafting of laws which make provisions for much more complex situations of this sort.
- Demand that political measures go hand-in-hand with the law because despite a robust legal framework, situations of discrimination are far from being eliminated thus proving that legislative measures are not enough to combat discrimination.
- Raise the awareness of the entire society so that equal opportunity between women and men is perceived as a key element in the evolution of the democratic system and the fight against discrimination is valued as a civic duty of all citizens.
- Collect and publish data broken down by sex and ethnic origin on the status of Roma men and women in the spheres of education, housing, employment, health and other relevant issues.
- Foster and provide incentives for the inclusion of Roma women in politics and in the decision-making process.
- Require the Ministry of Equality and the Women's Institute to develop programmes focused on facilitating the access of Roma women to health, education, employment and participation in political life and likewise the creation of counselling services to combat gender-based violence.
- Place a special priority on the disproportionate early school dropout rate of Roma girls when devising inclusion policies targeting the Roma community with particular focus on the step from primary to secondary school. Implement measures to provide incentive (scholarships and other support measures) to Roma women to continue with their middle school and university studies.
- Encourage specific training on cultural minorities in Spain and non-discrimination duties for key players working in the areas of education, health-care, social services, help networks for victims of gender-based violence and others.
- Investigate the underlying causes of unemployment among Roma women and develop initiatives to remove barriers to employment.

¹³ Health and the Roma Community. Analysis of action proposals. *Dirección General de Salud Pública* (Directorate-General for Public Health). Ministry of Health and Consumer Affairs, FSG. Madrid, 2005.

- Encourage the presence of women in advisory and representative bodies (State Council of the Roma People and regional councils).

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