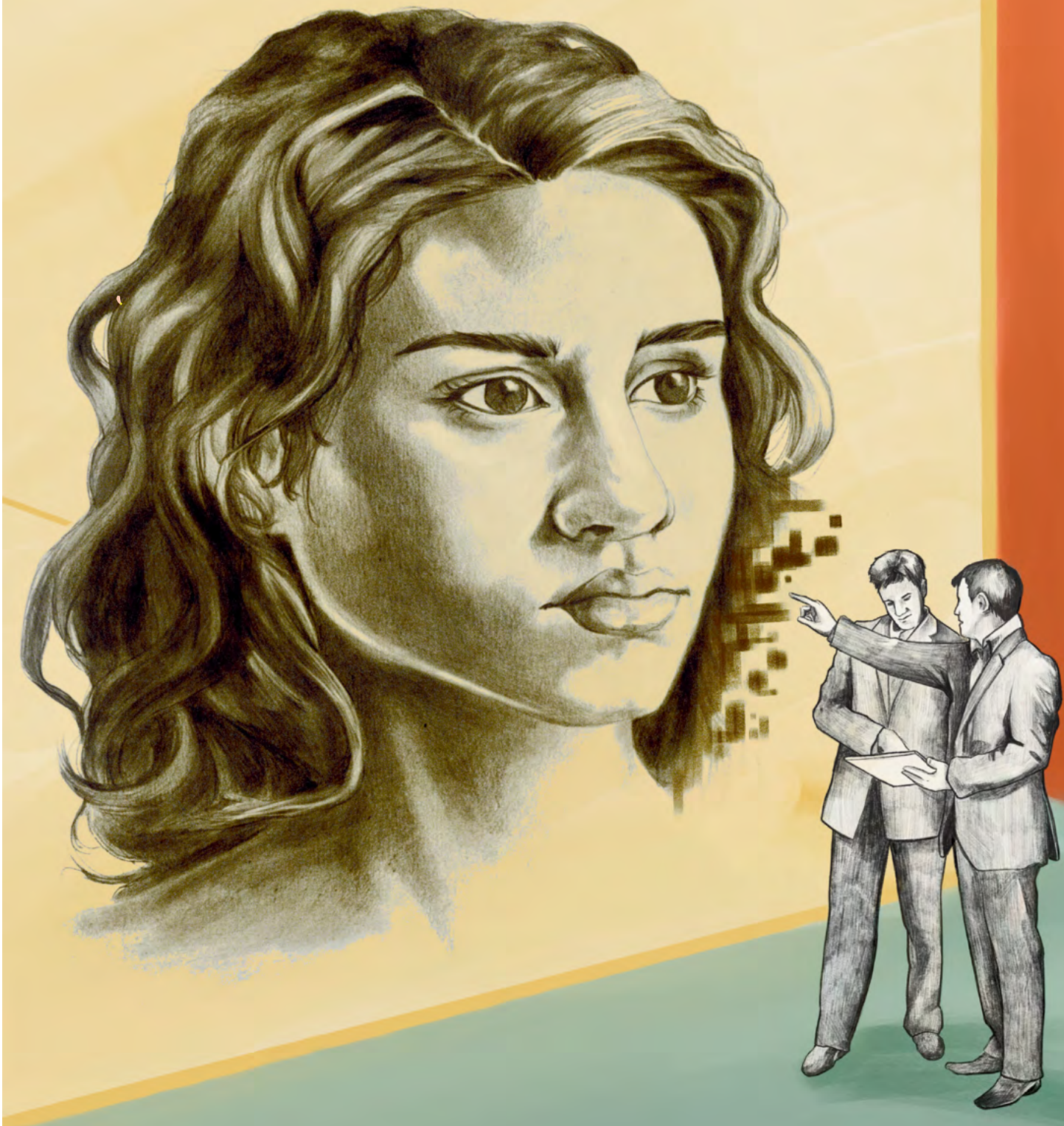
Discrimination and the Roma Community

FSG Annual Report **2022**



IN DEPTH:
DISCRIMINATORY BIAS IN THE USE OF ARTIFICIAL INTELLIGENCE AND IMPACT ON THE ROMA COMMUNITY

554 cases of discrimination
Progress, best practice and case law
Strategic litigation by FSG

Fundación Secretariado Gitano

Written and published by:

Fundación Secretariado Gitano

C/ Ahijones, s/ 28018 Madrid

Tel.: 91 422 09 60

E-mail: fsg@gitanos.org

Web: www.gitanos.org

Technical coordination and preparation:

Department of Equality and Fight Against Discrimination - FSG

Cristina de la Serna

Mª Carmen Cortés

Javier Sáez

Edurne de la Hera

Nidia Calleros

Communication Department – FSG

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

Collaboration:

FSG would like to thank the following contributors:

Ella Jakubowska

David Martín Abanades

Antoni Lorente

Design, layout and printing: Coral Cano Domínguez

Front cover: Sandra Carmona Durán

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Chapter 1

Introduction

Introduction

As it has done every year since 2005, Fundación Secretariado Gitano (FSG) is publishing its Annual Report "Discrimination and the Roma Community", with the aim of offering some specific data and verified cases of discrimination that show that for many Roma people in this country, the right to equal treatment is not a reality.

Although this year's edition focuses on collating and examining cases and best practice from 2021, we must mention the important news of the **approval of Spanish Comprehensive Law 15/22, of 12 July, on Equal Treatment and Non-discrimination**, given the impact that this will have on our work.

FSG has championed this law since its inception 12 years ago, and has played a role in developing its contents from a gender and human rights perspective, with a view to European and international standards, with the goal of making a law that contains the right measures to eradicate all forms of discrimination and antigypsyism.

I have been involved in this law since its very beginnings; first as part of the FSG team that initially developed its design in collaboration with experts hand-picked by Pedro Zerolo; and then in the various stages of development of the law in the last 12 years, by submitting a number of comments and amendments to it. Fundación Secretariado Gitano also recently championed the creation of the **Equality Law Alliance** to consolidate the joint working of social entities with potential victims of discrimination. The alliance has made an important contribution to the contents of the law.

The approval of this law is a major step forward for Spain to enhance its anti-discriminatory law framework to protect the right to equality, and will have a targeted impact on Roma people, as a group that faces the largest amount of discrimination. Fundación Secretariado Gitano has been documenting cases discrimination for a great many years, as this Annual Report is testament, as well as supporting and advising victims who, thanks to this new law, will now have their own reporting channels. We are delighted that the law provides for the creation of an **Independent Authority** that will charged with protecting and promoting equal treatment and non-discrimination. We also think it is important that one of the law's final provisions is to **include antigypsyism in the Spanish Criminal Code** as an aggravating factor and standalone hate crime. One of the positive new measures to be introduced is an administrative sanctions framework for incidents of discrimination that do not constitute a crime. We are also pleased to see the inclusion and **special focus on intersectional discrimination**, which will be a consideration when applying measures and penalties. Lastly, we welcome the introduction of **support for victims of discrimination.**

As a member of the **Spanish Alliance against School Segregation**, together with Save The Children and CERMI, we have advocated for the recognition of school segregation as a form of discrimination, and welcome the fact that, following the approval of an amendment in the Spanish Upper Chamber, the **law provides a definition of school segregation, an issue that severely affects Roma people**, and provides a channel for measures to prevent it.

Lastly, we note the **inclusion of awareness and respect for Roma history in the school curriculum.**

However, in spite of the progress made by the law, **we are disappointed to see that issues such as protection and compensation for victims have not been suitably addressed**, with no safeguarding measures or instruments in place. The law is also somewhat ambiguous about **how infractions and sanctions for incidents of discrimination** will be implemented. Likewise, we are disappointed to see

that **ethnic or racial profiling** by the national security forces and private security officers has been adequately regulated to eradicate and sanction such conduct.

Returning to the Annual Report, this year our "In Depth" section focuses on a relatively innovative issues that may have a bearing of the Roma community's exercise of fundamental rights: discriminatory bias **in the use of artificial intelligence and algorithms, and the impact on the Roma community**. As will be explained in the various articles in the chapter, the increasingly frequent use of algorithms in decision making, and of systems based on artificial intelligence in many areas of society, the economy and everyday life, can carry risks to the exercise of fundamental rights, due to a variety of biases (ethnic, gender and more) built in to their design, or directly or blinding, due to the use of big data perpetuating stereotypes pre-existing in society.

This year we have been fortunate to be joined by three experts in preparing the report, who have provided different perspectives to this issue: As a police officer specialising in human rights and adviser to the Council of Europe, David Martín explains the potential risks of these system when applied to predictive policing, and the vulnerabilities of programmes already being used in a number of countries. Antoni Lorente, an expert from Eticas Consulting, takes a deep dive into the challenges of managing AI models and the impact on our lives, and how to establish the limits of sophistication of these technologies, determine the scope of application and essential forms of oversight. We have Ella Jakubowska to offer us the European perspective, an expert from the European Digital Rights (EDRi), who draws some conclusions from an **interesting debate last year with Roma activists who are specialists** in this area on facial recognition, human rights and the rights of the Roma people. We are deeply grateful to them for offering their knowledge and experience both to the report and to our mission to fight discrimination and antigypsyism.

As we have done in previous annual reports, this year we have collated all the cases we handled in 2021 in which we could confirm that a discriminatory or anti-Gypsyist hate incident had taken place. You can find a summary of the cases in the printed version of the report, and a more detailed recounting of all cases, with a description of the events, our intervention and the outcome, on our microsite https://informesdiscriminacion.gitanos.org/informes-completos-ingles

The total number of cases in this year's edition is 554, compared with the 364 cases we reported last year. It is important to stress that this sharp rise is partly owing to the inclusion of anti-Gypsyist hate messages identified on social media and report in the *6th Monitoring round of the European Commission Code of Conduct on countering hate speech online,* in which FSG is a trusted flagger. Since there was no monitoring round in 2020, the number of cases was considerably lower than in 2021. On the other hand, this year we have reported far fewer cases in the media than last year, which shows the significant progress made by mainstream media outlets in 2021. **However, at the same time, there has been a major rise in cases of direct victims in other areas, such as access to goods and services, education, employment and health,** which doubtless shows that Roma people are becoming better equipped at identifying situations of discrimination and reporting them.

We want to stress that **the role that our Equality Officers (mostly Roma women) have been playing in many areas since 2016 is unquestionable, in the programme Calí, por la igualdad de las mujeres gitanas.** The inclusion of this professional profile has contributed to an improvement not just in the care for victims of discrimination and antigypsyism, but in Roma people's awareness of their rights when faced with discrimination.

This year **we have continued to pursue strategic litigation as a way of securing favourable court rulings for victims of discrimination and antigypsyism,** improving the response from the courts and their case law in these cases, and raising awareness among the authorities and society as a whole of the human impact of discrimination and the importance of tackling it.

Lastly, we are grateful to the institutions who have helped us in preparing this report. We are grateful to the Ministry for Social Rights and the 2030 Agenda, for its economic support in the publication and dissemination of the report, as well as the Ministry of Equality and the Council for the Elimination of Racial or Ethnic Discrimination, which have also contributed to FSG's work to tackle the discrimination suffered by Roma people.

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

Sara Giménez

President of Fundación Secretariado Gitano.

Chapter 2

Conclusions and summary of cases of discrimination

Summary of cases documented in 2021.

Conclusions and recommendations.

In 2021, FSG documented and handled 554 cases of discrimination, 190 more than the previous year. This sharp rise is partly owing to the *6th Monitoring round of the European Commission Code of Conduct on countering hate speech online,* signed by internet companies and the EU, which took place in 2021 and in which FSG flagged 180 cases of this type, which are included in the report (there was no 2020 monitoring round, which explains the lower number of recorded cases). On the other hand, there has been a significant rise in cases of victims identified in a range of areas, and a fall in cases in the media.

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

I- CONCLUSIONS AND RECOMMENDATIONS

Increase awareness among Roma people of discrimination cases, yet there are still barriers to more active reporting, which have an impact on access to justice.

Our experience leads us to draw five broad conclusions:

1) We have found two contradictory trends in the reporting of cases. On the one hand, **we have seen greater awareness among victims when reporting cases, and growing interest in defending human rights.** Many Roma people understand that these cases are acts of discrimination against Roma people, violating their rights and attacking their dignity. On the other hand, in spite of documenting cases and seeking support, sometimes the victims of these incidents do not wish to pursue a complaint. There is still a certain distrust of the authorities and institutions of the state when reporting or instigating court action. **Victims want to document their cases, and ask for support and information on their rights and what to do in such cases, but often they are reticent to pursue concrete legal action,** for fear of causing trouble with the person or entity responsible for the discrimination or of possible negative repercussions in future, or because they simple tire of the complexity or sluggishness of certain proceedings, partly due to the perceived impunity of people who commit anti-Gypsyist discrimination, a situation that is a **considerable barrier to access to justice.**

2) **Positive judgments in cases of strategic litigation cases are encouraging to other victims and result in more active reporting processes. We have bolstered our strategic litigation work, bringing more cases of anti-Gypsyist discrimination and hate before the courts and offering a solid legal defence and comprehensive support for victims throughout the court process.** Another barrier that may have had a bearing on people not reporting certain cases is the **dearth of positive outcomes where the anti-Gypsyist motivation behind crimes is recognised, and where the victim is adequately compensated and steps are taken to ensure that it does not happen again.** We have seen that where a positive outcome or successful conviction is secured, it is more likely that new cases will be reported, because victims see the benefit of reporting these incidents in defending the rights of Roma people. On the opposite side of the spectrum, impunity breeds under-reporting.

3) Akin to other years, we have also found a great many cases of intersectional discrimination, in which other situations of vulnerability are at play as well as Roma ethnicity. **Gender is one of the most common vectors of intersectional discrimination. Roma women face highly complex social barriers and therefore require specialist attention and accompanying,** which our Equality Officers offer in the context of the programme "*Calí. For equality of Roma women*". There is a significant and alarming incidence of cases of anti-Gypsyist intersectional discrimination against **children, teenagers and the disabled,** particularly in the sphere of education.

4) As is shown in the digital version of the report (which details each of the cases, our interventions and the outcomes), cases of discrimination and hate crime against Roma people in our country remain high in all aspects of society. **These cases are linked to the spreading of anti-Gypsyist hate online and on social media, ranging from negative stereotypes and fake news to inciting violence against Roma people.** A phenomenon that we analyse in the "In Depth" section is that this kind of fake news are shared and reproduced hugely on these social media platforms, through automation, fake accounts and bots. **In other words, fake news and hate messages are spread far wider than true and verifiable news, and the negative repercussions are extremely dangerous.**

5) **The new framework for protecting and helping victims of racial or ethnic discrimination is a meaningful step forward in guaranteeing the right to equal treatment and non-discrimination.** On the one hand, the approval of the Comprehensive Law for equal treatment and non-discrimination offers a protective framework against broader discrimination, and on the other, the **CEDRE assistance service for victims of racial or ethnic discrimination has had the benefit of greater economic and human resources,** which means more specialist and interdisciplinary capacity to attend to, advise and guide victims[1].

1- For more information, see the chapter below on Best Practice.

Based on these conclusions and the context, we want to make a series of proposals or recommendations to improve the response to discrimination and antigypsyism, with an intersectional focus:

- The **effective application of the Comprehensive Law for equal treatment and non-discrimination** passed in July 2022, which specifically provides for antigypsyism, intersectional discrimination, a sanctions regime and the creation of the **Independent Authority** set out in title III of the Law.
- **The application of antigypsyism as an aggravating factor included in the Criminal Code** in 2022 (section 24) thanks to the new Comprehensive Law for equal treatment and non-discrimination, in cases of crimes against Roma people with an anti-Gypsyist component.
- The approval in 2023 of a **National Action Plan to Counter Racism,** in application of the EU Anti-racism Action Plan 2020-2025[2], which offers specific measures to prevent discrimination and antigypsyism in all areas in its scope.
- **The approval of a Basic Law against racism, racial discrimination and related forms of intolerance** (following a public consultation[3] by the Ministry of Equality in 2022) that improves attention for victims of racial discrimination and associated intolerance, and that specifically includes combating antigypsyism, school segregation, ban on ethnic profiling and the intersection focus.
- **Training in the new Comprehensive Law for equal treatment and non-discrimination for all key stakeholders in this area:** judicial powers, public prosecutors, lawyers and the national security forces.
- The establishment and proper resourcing of **specialist programmes to provide comprehensive support to Roma women,** above all those in vulnerable situations, with a view to empowering them to exercise their rights when experiencing intersectional discrimination and gender violence.
- In line with section 23 of the new Comprehensive Law for equal treatment and non-discrimination (and as set out in the In Depth section of this report), **to launch measures to audit algorithms companies and public administrations that use artificial intelligence** and automatic decision-making systems to prevent and correct potential discriminatory bias.

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

3 - https://www.igualdad.gob.es/servicios/participacion/consultapublica/Paginas/2022/consulta-previa-ley-organica-contra-el-racismo.aspx

II - CASES OF DISCRIMINATION BY AREA

1 - Discrimination and antigypsyism in the media.

In 2021, we collated a total of 87 cases in the **media**. The majority are news items mentioning the ethnicity of persons in situations of crime and violence. In these cases, as we have been doing for years, we wrote to the media to explain that mentioning ethnicity is contrary to the ethics codes of the media themselves, and damages and stigmatises the social image of Roma people. In some cases, the media recognise their mistake and remove the mention of ethnicity, and also promise not to repeat this bad practice, showing how useful the FSG's awareness-raising work is in this area.

We frequently come across anti-Gypsyist hate comments posted by readers of online news articles. Always considering respect for freedom of speech, these media outlets must moderate their content to ensure zero tolerance to racist and anti-Gypsyist speech.

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

- **The media** to apply the provisions of section 22 of the new Comprehensive Law for equal treatment and non-discrimination: to avoid all forms of discrimination in the news and to promote the non-stereotyped image of different people and groups. The reporting of news that displays a negative image of Roma people that can propagate hostile attitudes, violent attacks or discrimination against Roma people.

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

- Content moderators on online news articles **to quickly examine and delete hate speech and anti-Gypsyist comments posted by readers to news articles involving Roma people.**

2 - Anti-Roma hate spread on social media.

We have identified 189 cases of hate speech on social media. As we have mentioned, for the past six years, Fundación Secretariado Gitano has participated in the European Commission's monitoring rounds on the Code of Conduct that internet companies signed on removing illegal hate speech from social media. The sixth monitoring round took place in 2021[4], in which the FSG identified and reported 178 cases of social media platforms such as Facebook, Twitter and YouTube, which are included in this report.

Some are extremely serious incidents, inciting violence or even the extermination of Roma people, or dehumanising them by comparing them to animals. This type of message is not just illegal and severely damaging to the honour and dignity of Roma people but can provoke people to act, i.e. committing attacks and acts of violence against Roma men and women, and even children. The majority of these incidents were removed by the platforms once FSG made its complaint. We are pleased that these companies are showing a growing commitment to monitoring and removing these kinds of anti-Gypsyist messages, also the response rate to complaints is quite inconsistent, depending on each platform (72% of content reported by FSG was removed).

To illustrate the seriousness of the content, below is a selection of the messages in question:

"You don't deserve respect, you're worse than rats".

"Shot in the head" [for Roma people].

"What they need to do to that neighbourhood is burn the whole thing down".

"A bomb needs to be dropped on it" (a neighbourhood with a high Roma population)

"Bloody Gypsies, fucking rats that haven't been house trained. Cockroaches"

"Napalm the whole place".

"Those people just need to be eliminated".

"Euthanasia is the answer".

"I want to kill some Gypsies so bad".

"So let's exterminate them once and for all".

"They're a group to wipe off the face of the earth".

We therefore appeal to:

- **Leading social media platforms,** to continue to engage and **to improve their response to anti-Roma hate speech**, removing illegal hate speech as soon as possible, in accordance with section 22 of the new Comprehensive Law for equal treatment and non-discrimination, on the internet and social media.
- **Online forums to engage in the fight against anti-Gypsyist hate speech,** moderating comments and removing the most serious hate messages.

4 - More information on outcomes at: https://www.gitanos.org/actualidad/archivo/134275.html

3 - Denial of access to goods and services on discriminatory grounds.

In the section of access to goods and services we found numerous cases of discrimination this year (79 cases) in accessing restaurants, bars and night clubs, swimming pools and other leisure venues, where Roma people were unable to enter simply due to their ethnicity.

An extremely common incident of this type consists of the excessive surveillance of Roma women in shopping centres and supermarkets, where security guards follow these women or accuse them of having stolen something. These are cases of intersectional discrimination (since they are suffered mostly by women) that create ill feeling, humiliation and harassment when these women are made to feel vulnerable compared with other customers in a situation that undermines their dignity and image.

For cases of access to goods and services, the Foundation undertakes a number of different strategies: we submit formal complaints or we encourage victims to ask for an official complaint form. In other cases, we mediate with the manager of the premises, night club, bar or supermarket to help them to recognise their mistake and stop refusing these persons entry. We refer the more serious cases to the consumer affairs office or to judicial channels.

Thanks to the new Comprehensive Law for equal treatment and non-discrimination, we will be able to deal with these cases more effectively, since section 17 covers non-discrimination when offering goods and services to the public, section 21 prohibits discrimination in access to establishments.

An example of a positive outcome took place in Caceres, when a number of Roma families found themselves discriminated against in at a swimming pool; staff at the entrance were trying to present them entering with the excuse that they needed to be registered with the local authorities. We tested their excuse with a non-Roma person who was not registered, and they were allowed to enter. We sent them a formal letter, copied to the mayor of the town, setting out what had happened, how we tested the theory, and provided supporting documents. We eventually received a response in which they promised that such a situation would not happen again, guaranteeing that all persons would be treated equally and apologising for what had happened.

We welcome the passing of the Comprehensive Law for equal treatment and non-discrimination as a conduit to more effectively tackling this kind of discrimination, which includes a proper sanctions framework for discriminatory treatment in businesses, shops and other PUBLIC and private spaces where goods and services are provided. We also appeal to:

- **The local heads of consumer affairs offices,** to provide a swift and appropriate response when discriminatory treatment is reported.
- **Businesses and public providers of goods and services,** to ensure that public-facing staff comply with the principle of equal treatment and do not discriminate, **in accordance with articles 17 and 21 of the new Comprehensive Law for Equal Treatment and Non-discrimination.**

4 - Discrimination and antigypsyism experienced by Roma schoolchildren.

There has been a notable rise in cases in **education**, from 27 cases last year to 51 this year. This rise may be owing to greater knowledge among Roma families of how to report incidents, or a real rise in hostility and harassment towards Roma pupils in some schools.

Different forms of discrimination were carried out against Roma schoolchildren. Some cases concern remarks from certain teachers about the Roma community, using stereotypes, prejudice and generalisations. These stereotypes are particularly prolific against Roma girls, for whom teachers tend to have very low expectations, reinforcing gender roles—a clear example of intersectional discrimination. Another type of case is bullying among pupils, namely non-Roma pupils insulting or assaulting Roma children due to the ethnicity.

A positive outcome took place in a case in Barcelona, where the Roma girl with a Moroccan father experience harassment in her school, with a poor response from teachers resulting in the child being isolated rather than protected. A meeting was arranged with the mother and the grandmother, the principal and the curriculum coordinator at the school. During the meeting, the facts were determined and we were informed that the school's protocols had been followed. The principal confirmed that meetings were held with the families of the two children involved in the incident. They also spoke about it in class, to normalise the situation, and sent a letter to students' families to try to prevent discriminatory and derogatory comments and messages. The school also informed the Education Inspectorate of the situation, as well as the educational psychology advice and guidance teams to follow up with the child. The outcome was positive: the school improved its focus on the child's academic performance and well-being. The school was open to working with FSG to develop actions to raise awareness of diversity and multiculturalism in the classroom.

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

- **Reduce school segregation** as part of the Education Inclusion and Anti-Segregation Plan, considering the information included by the ***Exploratory pilot study on school segregation of Roma pupils***[5], published recently by the Ministry of Education and Professional Training and FSG.
- Investigate, punish and respond to the **bullying of Roma children and teenagers** in school because of their ethnicity, applying **the provisions of section 13 of the new Comprehensive Law for Equal Treatment and Non-discrimination.**
- We ask the **Education Inspectorate** to intervene in such cases to guarantee respect for equal treatment and non-discrimination and to combating antigypsyism in schools, focusing on the superior interest of the child.

5 - https://www.gitanos.org/actualidad/archivo/136556.html.es

5 - Discrimination in employment: barriers to equal opportunities.

In employment we have identified more cases than last year, with 40 in 2021 (compared with 28 cases in 2020). Broadly speaking, these are companies that to refuse to accept CVs from Roma candidates, or refusing them interviews once they realise their ethnicity. Discrimination also takes place between co-workers, where Roma people working in a business receive humiliating comments and insults, are subjected to stereotypes or negative remarks about the Roma community. Some victims are reluctant to report, for fear of retaliation when looking for a job in local businesses, or due to the difficulty of proving the racist motivation. These are important factors that explain the prolific under-reporting of cases in Spain.

A positive outcome occurred in a case in Murcia, where a Roma man was discriminated against in a company recruitment process. The interviewer met him outside the company premises and asked him a series of questions, including whether he was Roma, to which he answered that he was. The interviewer ended the interview and told him that he was not required to complete any more tests. When the man was leaving, he saw another man arriving, who did not appear to be Roma, and was also attending an interview. The interviewer told him to come inside. The man felt he had been discriminated against for being Roma, and went to the CEDRE Assistance Service for Victims. FSG wrote a letter to the company, setting out the facts, and asked for an investigation to be undertaken and for the appropriate action to be taken to ensure that such an incident would not happen again. The outcome was positive: the interviewer called the man to apologise and to acknowledge that it was not right to ask him about his ethnicity. As recompense, in addition to apologising, he assured the man that when a vacancy came up, they would call him.

All these discriminatory practices pose an enormous barrier to Roma people entering the workforce and exercising their right to work. This type of discrimination stops people from enjoying a dignified life and their personal and social development. For this reason, we appeal to:

- **Businesses** to focus more on ethnic diversity and to pursue awareness-raising initiatives for human resources teams to eradicate these stereotypes and enable fair access to the world of work.
- **Labour inspectorates** to investigate and, where necessary, to sanction incidents and discrimination and antigypsyism in employment, and to include among its actions **the development of specific plans for equal treatments and non-discrimination, in line with section 9 the Comprehensive Law for Equal Treatment and Non-discrimination.**

6 - Discrimination in healthcare centres and hospitals.

In healthcare, we identified 16 cases in 2021 (double the number of cases last year), showing that, unfortunately, discriminatory situations continue to occur in healthcare centres and hospitals. The most common cases are hostile treatment towards Roma patients by medical personnel, nurses or porters, and negative comments about Roma people. Some particularly alarming cases include the recording of ethnicity on patients' medical reports, which is against the law.

A positive outcome took place in Alava: a baby was admitted to hospital and treated, and upon discharge, the medical report stated: "Family perinatal history, mother aged 27 years. Roma ethnicity". Once the mother discovered this, the mother sought the assistance of FSG to draft and submit her complaint. After contacting the patient assistance service, the mother submitted her complaint to the neonatal department, which wrote the report. Eventually, the victim was sent a new report, with the mention of the mother's ethnicity removed.

We urge the national and regional health authorities to **develop initiatives for equal treatment and preventing discrimination** and improving the intercultural skills of health professionals, to avoid bias or prejudice when dealing with Roma people. It is fundamental that public employees who commit anti-Gypsyist discriminatory acts in the course of their duties are properly punished and such acts are not left in impunity.

We also recommend that the health authorities train their staff and make them aware of the content of **article 15** of the new Comprehensive Law for equal treatment and non-discrimination, **on healthcare.**

7 - Discrimination from the police: stops and ID checks by the police based on ethnic profiling continue.

We identified 27 cases of discrimination in 2021 in the police, which is a similar figure to last year (25 cases). The majority were cases of ethnic profiling from police, a bad practice that many Roma people are subject to.

An example of this bad practice from police was experienced by a group of young Roma from FSG's *Aprender Trabajando programme*. While they were having a break and standing in the street opposite the FGS offices, three national police officers on motorbikes asked for their documents and asked them a series of questions as if they were suspected criminals: "Where have you come from? What are you doing here? Are you armed? Where have you stashed your drugs? How many of you have been arrested before? At that time, the director of FSG walked past, heard the questions and asked the police officers what they were doing. The next day at the same time, a police van pulled up and five police officers got out. Once again, they questioned the same boys, asking if they were carrying anything that could compromise them, asked for their documents and searched three of the boys—the darkest of the group and easily identifiable as Roma, based on their ethnic profile. Logically, the boys felt upset about the discriminatory and offensive treatment. We contacted the Citizens' Engagement unit to inform them of the complaint regarding the police's action. The Police Diversity Management Unit was informed of the incident and a complaint was sent to the Director of Police, explaining the events, to ask for an investigation and to ensure that it would never happen again. The outcome was positive. The Director of Police responded, stating that guidance had been sent to all National Police Units to remind them of the basic principles of non-discrimination that they should follow. The young men were satisfied with the response.

Given the above, we urge the security forces to adopt the following recommendations:

- Introduce identification forms and independent bodies to enable s**upervision of police activities** to prevent stops motivated by ethnic profiling, and avoid using discriminatory profiles without objective justification, **as stated in section 18 of the new Comprehensive Law for Equal Treatment and Non-discrimination, which also includes private security services.**
- Establish **dialogue** mechanisms between the police and people affected by discriminatory controls to overcome stereotypes and improve relations..
- Encourage the **recruitment of Roma ethnicity officers** to make the police forces more representative of the society they serve..
- Improve **practical training** for officers on the principle of non-discrimination and effective, unbiased police action, including better knowledge and greater application of the **"Protocol for the Security Services for Hate Crime and Conduct that Undermines Legal Regulations on Discrimination".**
- **And in line with the declarations of European and international bodies, ban police stops made based on ethnic profiling as they are acts of harassment, humiliation and even violence from those who are supposed to protect people.**

8 - Discrimination in housing for Roma people: struggles when renting based on anti-Gypsyist prejudice.

In the area of housing, we continue to find quite a number of discrimination cases (40 cases). Akin to previous years, the most common cases relate to some estate agents' or owners' refusal to rent or sell a flat when they discover that the person or family wishing to buy or rent it is Roma. Another kind of cases arises in relations between neighbours, i.e. non-Roma neighbours who are hostile to the fact that there are Roma neighbours in the building or who unfairly report Roma families to the police to harass them, even those with young children. We are seeing once again that the discrimination is not just illegal and a violation of people's dignity but impedes the exercise of other human rights such as, in this case, the right to a dignified home.

An example is a case in Leon, when a Roma woman inquired by telephone about a home for rent. During the conversation with the owner, the woman stated that her income came from welfare benefits. The woman informed the landlady to make sure that it would not be a problem. After that, they agreed to sign a contract, for which the woman sent her identity document. After seeing the woman's face, the landlady said that she should purchase an insurance policy. In the end, the owner called her to return her deposit money. The young woman was certain that the change of heart was due to the landlady seeing that she was Roma. We arranged a test, as the rental advert was still active. We asked for a meeting and stated our income as practically the same as the young woman. We were told that this would not be a problem. We saw that on Mil Anuncios that the advert was still active. Even though the test confirm that the woman was refused on discriminatory grounds, there was no intervention to perform because at that time there was no legal instrument to sanction the conduct from a private landlord. We hope that the new Comprehensive Law for Equal Treatment and Non-discrimination will mean that this kind of discrimination can be punished more effectively.

We are pleased to see that **section 20 of the Comprehensive Law for Equal Treatment and Non-discrimination bans these discriminatory practices**, by property sales, rental and brokerage providers and by advertisement websites. Such a ban also includes individuals who are renting or selling a home.

Moreover, in order to guarantee the effective exercise of Roma people's right to housing, we urge the authorities to take the following steps:

- The development of urban planning and housing policies that respect the right to equal treatment and prevent discrimination, including residential segregation, as stated in **section 201 of the new Comprehensive Law for Equal Treatment and Non-discrimination.**
- The inclusion in the **new Housing Law** of a more complete approach to residential segregation and slum settlements, and the establishment of short and long-term **housing alternatives** for families living in such settlements.
- **Respect for legally established procedures** in evictions and rehoming carried out by local authorities where the superior interest of the child prevails.

9 - Discrimination in other areas and anti-Roma hate crimes.

We cover other cases of discrimination in a final section; cases that do not correspond to a specific area (26 cases). They include cases of hate crimes, such as assaults or violent threats to Roma people in the public realm or incendiary attacks, and also threatening and anti-Gypsyist graffiti on buildings and in public spaces, which are examples of anti-Gypsyist hate speech.

We highlight an especially serious case in Extremadura: a Roma man reported that incendiary devices had been thrown at a settlement of Roma people in the town of Zahínos, Badajoz, to shouts of: "I'm going to kill you all". One of the men from the settlement was awake and raised the alarm, allowing them to put out the flames. We called the hate crimes prosecutor to inform them of what had happened. We contacted the police chief and the head of operations of the Badajoz police station to inform them of the incident, in case they were not aware, or to corroborate what they knew. We drafted a complaint with the public prosecutor to formally report the incident, in order to leave a written record of our complaint. We contacted the head of the Judicial Police Organic Unit to ask them to send us the complaint that the victims filed, but they failed to do so. As a result of meetings with the public prosecutor, we received a decision that it had opened an investigation and referred it to the court, due to finding the events to constitute a crime. We are currently awaiting a decision.

This is a clear case of a hate crime, **where the new aggravating factor of antigypsyism included in section 22.4**[6] **of the reformed Criminal Code** could apply, following the approval of the new Comprehensive Law for Equal Treatment and Non-discrimination.

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

Based on the inclusion of anti-Gypsyist motivation in aggravating factors in the Criminal Code, we recommend

- That **public prosecutors properly investigate suspected antigypsyism** in cases of hate crime, **free of prejudice and stereotypes**, and that judges and courts apply the aggravating factor under section 22.4 where applicable.
- That sections specialising in hate crime and discrimination in the provincial public prosecutors offices promote and coordinate investigation and prosecution of discriminatory behaviour, **as stated in section 32.1 of the new Comprehensive Law for Equal Treatment and Non-discrimination, on the Public Prosecutors Department.**
- **That members of the Public Prosecutors Department receive mandatory specialist training** on groups who may suffer discrimination, including the Roma community (section 32.3 of the new Comprehensive Law for Equal Treatment and Non-discrimination).

6- Basic Comprehensive Law 6/2022, of 12 July, additional to Law 15/2022, of 12 July, for equal treatment and non-discrimination, amending Basic Law 10/1995, of 23 November, on the Criminal Code:
"Section 22(4) is amended to read as follows: "4. Committing the crime for racist, anti-Semitic or anti-Gypsyist motivation, or another kind of discrimination relating to the ideology, religion or beliefs of the victim, ethnicity or nation to which they below, their sex, age, sexual orientation or identity, gender identity, gender, their situation of poverty or social exclusion, the illness they suffer from or their disability, irrespective of whether those conditions or circumstances apply to the person to whom the behaviour is targeted."

10 - Cases of discrimination and antigypsyism across Europe.

Lastly, we have reserved a section for the situation of antigypsyism in Europe. These are just a few cases to exemplify the difficult situation of many Roma people in a number of countries across Europe.

We cite the case of Stanislav Tomáš, a young Roma man who was forcibly detained by police in Teplice, Czech Republic and died after suffering health complications from the incident. The images of his arrest were shared on social media and widely criticised by activists and organisations in the Czech Republic and internationally, causing protests throughout Europe. The video showed a police officer kneeling over the body of Stanislav in a manner reminiscent of the actions that killed African American George Floyd in May 2020. The family of Stanislav Tomáš made a criminal complaint against the Czech police, with the support of the European Roma Rights Centre (ERRC), which has not yet been decided by the courts.

There have been numerous documented cases of excessive police force against Roma people in various European countries, and a failure by the courts to properly investigate. These cases have been scrutinised in a recently published report[7] on Hungary, Italy, Slovakia, Ireland, Romania and Bulgaria.

We must stress the fundamental role of European Union institutions in establishing a regulatory framework to combat discrimination and antigypsyism[8] This is why we are appealing to institutions to effectively apply the commitments recently made in Commission Communication "A Union of equality: **EU anti-racism action plan** 2020-2025[9], and that they, therefore:

- **Review of Directive** 2000/43/EC to broaden the scope of banned discrimination and to **expressly include the terms antigypsyism** and **intersectional** discrimination, as the new Spanish comprehensive law for equal treatment and non-discrimination.
- **Monitoring the application of national strategies for the inclusion of Roma people,** in order to ensure the proper deployment of **measures to counter discrimination and antigypsyism** in all EU Member States, in line with the EU Roma Strategic Framework for Equality, Inclusion and Participation 2020-2030.
- The application of the **new Council Recommendation** of 12 March 2021 on Roma equality, inclusion and participation (2021/C 93/01)[10], **which mentions numerous times the need to more effectively address cases of antigypsyism that occur in the majority of European countries, and to take specific action to combat anti-Gypsyist discrimination in all the areas where it occurs.**
- **The creation of the Independent Authority on equal treatment and non-discrimination in Spain, in line with European directives and the UN Paris Principles to have a broad and independent mandate to protect human rights.**

7 - http://www.errc.org/press-releases/errc-report-reveals-police-brutality-and-institutional-racism-against-roma-across-eu
8 - For more information on EU recommendations, see the Appendices to this Annual Report.
9 - https://eur-lex.europa.eu/legal-content/ES/ALL/?uri=CELEX%3A52020DC0565
10 - https://eur-lex.europa.eu/legal-content/ES/TXT/HTML/?uri=CELEX:32021H0319(01)&from=EN
"The in-depth assessment and conclusions drawn by the Council, the European Parliament and various Spanish and European civil society organisations shows the need to renew and reinforce the commitment to equality and the inclusion of the Roma population. This commitment must guarantee specific efforts to eradicate discrimination, including combating antigypsyism. Member states must double down their efforts to pass and apply measures to promote equality and effectively combat discrimination and antigypsyism.

Presentation of disaggregated data

Eln this section we will present disaggregated data for the **554 cases** collected by FSG during 2021.

Definitions of categorisation of cases:

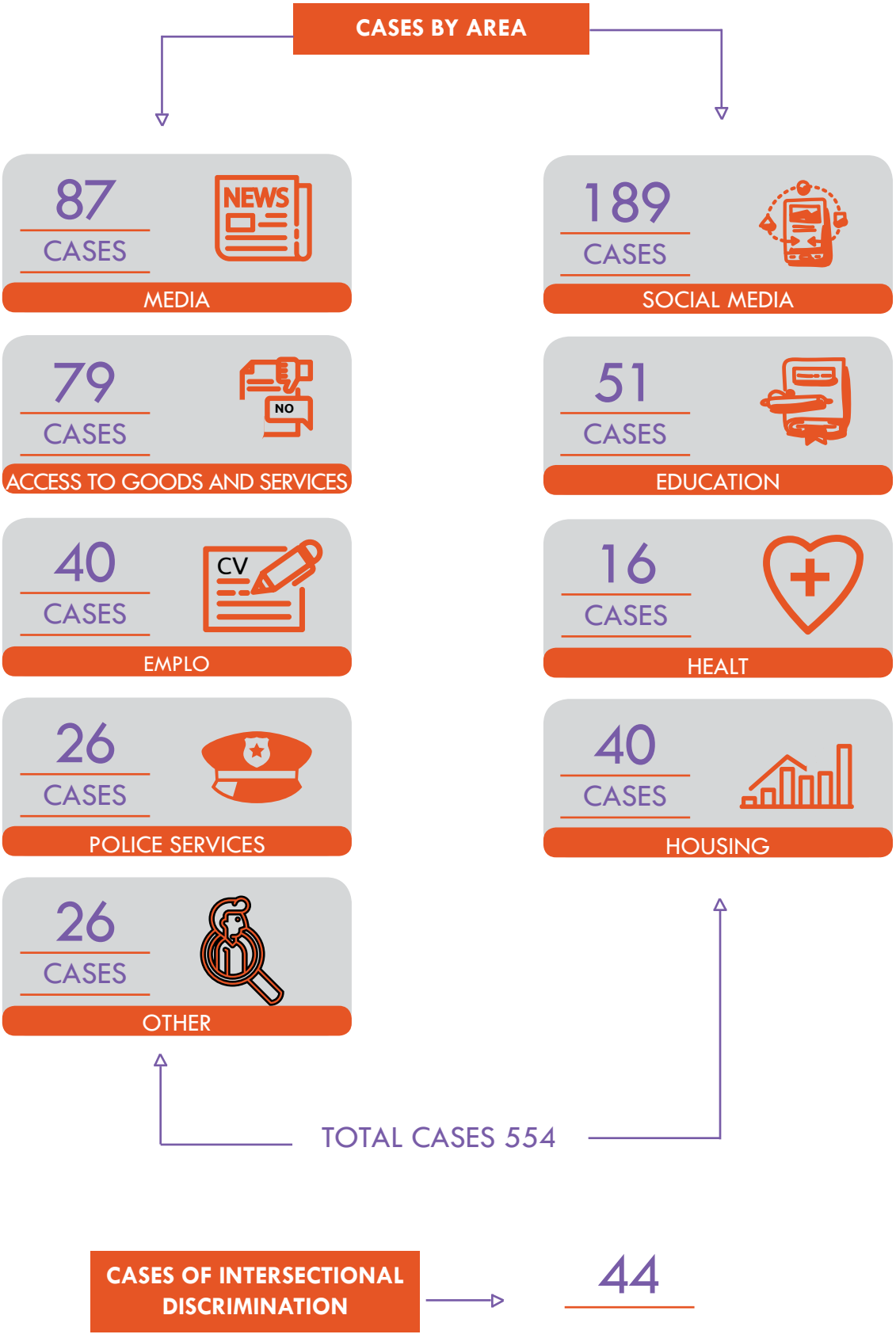
1) Individual Cases: When the discrimination or hate crime is exercised on a specific, identified person.

2) Collective Cases, three sub-categories:

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

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

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



CASES OF INTERSECTIONAL DISCRIMINATION → 44

ANALYSIS OF CASES

INDIVIDUAL AND GROUP FIGURES

185
INDIVIDUAL CASES

369
COLLECTIVE CASES

369 COLLECTIVE CASES

276
CASES ROMA COMMUNITY IN GENERAL

49
COLLECTIVE CASES WITH IDENTIFIED VICTIMS

44
COLLECTIVE CASES WITH UNIDENTIFIED VICTIMS

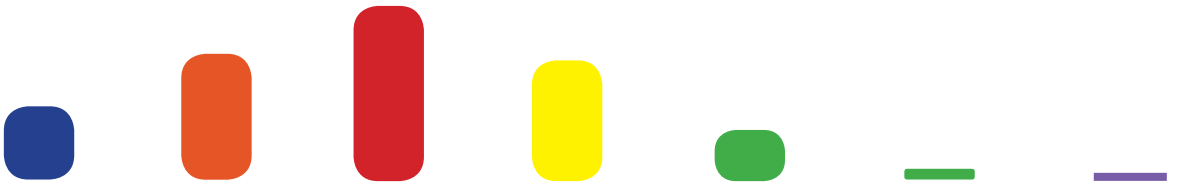
ANALYSIS OF VICTIMS

DATA BY GENDER
PERSONS IDENTIFIED 265

160
WOMEN

105
MEN

AGES OF THE VICTIMS IDENTIFIED



27	67	80	59	22	6	4
FROM 0 TO 18YEARS	FROM 18 TO 25 YEARS	FROM 26 TO 35 YEARS	FROM 36 TO 45 YEARS	FROM 46 TO 55 YEARS	FROM 56 TO 65 YEARS	OVER 65 YEARS

TOTAL NO. OF VICTIMS IDENTIFIED 265

Chapter 3

Strategic litigation undertaken in cases of discrimination, hate crime and antigypsyism

Introduction: the FSG focus on strategic litigation

At FSG we look at strategic litigation as a whole, not on an isolated basis, instead 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 that we bring 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 ombudsman, complaints with the labour inspectorates, etc.

Once again this year we have chosen for this chapter the most emblematic cases of discrimination and anti-Roma hate crime, due to their context and the situation of the persons affected, in which we have pursued a strategic litigation. In all instances we have pursued court proceedings either in the Provincial Public Prosecutors for Hate Crime and Discrimination or in the courts corresponding to the area in question.

The majority of cases were brought to court on the initiative of FSG, following an exhaustive examination of the facts, victims' testimony, evidence and likelihood of success. In all the cases we have chosen the most strategic cases to represent in court, using lawyers specialising in human rights and anti-discrimination law and in the proper legal matter according to the nature of the case.

Once again this year, we must stress the effort of our national teams, above all the Equality Officers specialising in equality of treatment and gender — more than 30 professionals, mostly female, who are part of the *Cali Programme, for the equality of the Roma woman*, and are precisely the focal points for attention and advice, as well as the detection of the most emblematic cases, accompanying victims of discrimination and anti-Roma hate in an informed and empathetic way.

We must also highlight the commitment, time and effort dedicated to each case of discrimination and antigypsyism, which is the driver behind the strategic litigation going further than the courts and entering forums and spaces in which these issues have previously been absent in public debate, public opinion and political agendas.

This is all for the purpose of changing mentalities in society; there are a great many stereotypes and prejudices that persist about the Roma population. It is important to publicly raise awareness and shine a light on situations of antigypsyism, so that society as a whole can respond to and condemn them, thus generating the social change needed to see the principle of equal treatment, human rights and social justice realised. We are also working to achieve an intersectional focus on case law, fundamentally where Roma women are affected, to get specific responses scaled to the type of discrimination.

Strategic litigation also provides the possibility of applying national legislation and international standards on human rights, European case law, especially from the European Court of Human Rights, and brings into question certain legal vacuums that have occurred when applying legal strategies. It is important to note that section 32.1 of the new Comprehensive Law for Equal Treatment and Non-discrimination, passed in July 2022 and whose practical application must enact the right to equality and non-discrimination. Antigypsyism has also been made explicit in the Criminal Code as an aggravating factor in section 22.4 and in the specific criminal offences of sections 510, 511 and 512 of the Criminal Code. This new regulatory framework offers the possibility, on the one hand, of a greater number of legal strategies, and on the other, of requiring judges and public prosecutors to apply the specific kind of racism that antigypsyism represents.

Finally, we must stress that strategic litigation would not be possible without the bravery and persistence of the people we support to report antigypsyism; they face lengthy processes that are not always successful, and they do it not just to defend their own rights but to defend those of people who may have suffered similar discrimination and violation of their rights.

Summary of strategic litigation cases brought in 2021 and follow-up of those pursued in previous years

In 2021 we advised and supported 19 cases through the courts, six of which were begun that year and the other 13 being cases begun in previous years. Of all these cases, we intervened and provided legal representation in a total of 10 cases, of which seven are ongoing and the other three had court hearings, two with a favourable ruling and one in which the Labour Court quashed a dismissal on the grounds that a young Roma girl had been discriminated against at work, and the company had to compensate her with 4,100 euros, and in the other three neighbours were found guilty of racist harassment of a Roma family. Both court rulings were fundamental in raising awareness in broader society and in sending a clear message to those who commit acts of antigypsyism, and also to make victims aware of the importance of reporting and combating impunity.

We have summarised all the cases below.

A. CASES REPORTED THROUGHOUT 2021

1. Case of refusal to pay widow's pension to a Roma woman

This case concerning the refusal to grant a widow's pension to a Roma woman in Jaen, due to finding no matrimonial link or common law marriage with the deceased, with whom she lived for more than 15 years and had five children. The woman's lawyer appealed at all levels of the courts up to the Constitutional Court which admitted the appeal but ultimately dismissed it. The lawyer turned to FSG for support, which assessed the case as strategic litigation and an opportunity to file a complaint with the European Court of Human Rights (ECHR) and seek a meaningful ruling on the issue of indirect discrimination and intersectional or multiple discrimination, since the impact of this case of indirect discrimination does not only have an ethnic component but a gender one (the claimant being a woman who has dedicated her life to raising her children and caring for a large family) and a social one, given the social exclusion present in this case and the claimant's low level of education.

FSG filed the complaint with the ECHR on 29 July 2021, on the grounds of indirect and intersectional discrimination. **On 9 December 2021 we received notice that the appeal had not been admitted for consideration by the ECHR because "there is no apparent violation of any rights under the Convention"**. In spite, of the ECHR's decision, FSG believes that this is a situation that affects many Roma women, and that there should be a solution to guarantee that these women have the right to a widow's pension.

2. Case of violation of a fundamental right to employment by discriminating against a young Roma woman.

This is a case of violation of a fundamental right to employment by discriminating against a young woman for being Roma. The young woman was hired for a cleaning job, and the first day that she attended the job, she was identified as a Roma woman. That afternoon, her manager asked her by WhatsApp if she was a Roma, and told her that her services were no longer required, because the person she was replacing had returned from leave. The young woman, who knew that she had been let go because she was Roma, posted about what had happened on social media, and the woman on leave responded to her, to tell her that she no longer worked there. FSG contacted the young woman, and we supported her through including ourselves in her court case and providing legal representation from two lawyers specialising in employment law and anti-discrimination.

On 2 November 2021, we received the conciliation appointment with the Jaen Arbitration and Mediation Service. The company did not respond and did not attend the conciliation appointment.

On 29 November 2021, we filed a complaint with the Jaen Labour Court, which was admitted to processing and a hearing date was set for 4 April 2022. The parties reach an agreement on that day, in which the **company recognised the invalidity of the dismissal on discriminatory grounds, and committed to pay the young woman compensation of 4,100 euros**[1]. It was possible to reach this outcome thanks to the bravery of the young woman and the support of FSG, which considered it a case of strategic litigation and engaged two lawyers who specialise in employment law and combating discrimination. The case made a considerable impact in media outlets in Andalusia[2].

3. Case of attempted murder aggravated by racism, due to arson in the settlement of a large Portuguese Roma family.

FSG filed a complaint with the Badajoz specialist hate crime public prosecutor on 1 July 2021, for attempted murder aggravated by antigypsyism due to arson on a settlement of a Portuguese Roma family of 18 people, six of whom were children, in a town in Badajoz. As the incendiary device was being thrown, shouts were heard of: **"I'm going to kill all your children too" and "You're all going to burn".**

Two members of staff from FSG in Badajoz went and interviewed the family to collect more information about what had happened, and to offer the victims the support of the Assistance and Guidance Service for Victims of Racial or Ethnic Discrimination. The events were corroborated and the victims expressed their fear following the incident, which had forced them to leave the town earlier than planned. **On 5 July, FSG extended the complaint with the specialist public prosecutor.**

On 16 July, the public prosecutor's office informed us that the case had been referred to the investigating court.

Since this was such a serious anti-Gypsyist hate crime, **FSG is pursuing a private prosecution using a lawyer specialising in criminal law and non-discrimination.** We are currently awaiting the conclusion of the investigation phase and the start of the oral hearing phase.

4. Violation of fundamental rights in Cañada Real.

EExamination and assessment of a serious case of violated human rights that continue to occur in sectors 5 and 6 of Cañada Real, Madrid, due to frequent blackouts. Since 2 October 2020, prolonged blackouts having been occurring to the electricity supply in Cañada Real. The blackouts affect nearly all sector 6 and sector 5. The vast majority of people living in sector 6 are Roma.

On 3 September 2021, **FSG submitted an expert report to the court as part of an ongoing court proceeding being heard by Examining Court no. 42** following a complaint from another organisation with whom we have been working. The report contains up-to-date information about the situation in Cañada, and was prepared in collaboration with FSG staff working on Cañada Real and legal reasoning around the violated rights and why we believe that they may constitute racial or ethnic discrimination, to support those who are suffering the effects of the blackouts in Cañada Real since the crisis began.

We are currently awaiting a decision from the Investigating Court.

1 - https://www.gitanos.org/actualidad/prensa/comunicados/135562.html

2 - See some examples;
https://www.ideal.es/jaen/jaen/indemnizada-4100-euros-20220404221046-nt.html
https://www.ondacerojaen.es/inicio/empresa-reconoce-despido-nulo-por-discriminacion-a-una-joven-gitana
https://www.canalsur.es/noticias/andaluc%C3%ADa/una-empresa-de-limpieza-tendra-que-indemnizar-a-una-mujer-en-jaen-tras-despedirla-por-ser-gitana/1817003.html

5. Case of anti-Gypsyist hate crime spread on social media. Complaint to the Madrid province public prosecutor's office.

On 12 July 2021, a thread of anti-Gypsyist comments was posted further to the conviction of a user of Burbuja.info. Some of the comments included:

- Bastards trying to silent the forum and throwing us in jail just for expressing ourselves. I won't be intimidated. FUCK THOSE GYPSY BASTARDS, BORN THIEVES, HUMAN GARBAGE. "LOS LIADORA" [the forum user] WAS RIGHT, SPAIN WOULD BE A LOT BETTER OFF IF THEY WERE EXTERMINATED. THAT WOULD SORT OUT THE PROBLEM ONCE AND FOR ALL. We need to deal with them, they're garbage with no hope, because they are an inferior race and the only reason they haven't ended up like los *menas* is that there aren't many of them. Even so, whoever ends up with them rehoused in their neighbour gets screwed over.

- I prefer the Gypsies I can shoot.

- Knocking them out is okay. So would firing squad / chainsaw / dumping in a ditch.

We are awaiting a decision from the specialist public prosecutor to refer the case to the Examining court.

6. Case of anti-Gypsyist hate crime spread on social media. Complaint to the Valencia province public prosecutor's office.

A complaint was made for hate speech on a video sharing social media website to the public prosecutor on 13 December 2021, consisting of anti-Gypsyist comments, which included:

- There are murky areas where the gypsies get in....

- What's with the gypsies, why aren't they vaccinated? Aren't they trying to integrate? They aren't

- Very pro-state people...

- In Romania only 32% are vaccinate

- And that's where there are the most gypsies...

- In Bulgaria it's 20% and they're stumped, the authorities don't know what to do

- (In Spain).... They don't want to be vaccinated, most haven't been

- They've tried to relegate the gypsies and given them whatever they want

- The gender laws don't apply to them

- I'm sure the majority won't be vaccinated

- Laws against the gypsies started in the 15th century because they don't follow the law

- The business of gypsies were social programmes to get money from the regions

- They're sectarian...if they need to screw you over they will

- Presenter: The US has bimbos, who go after the old, to screw over the whites.... they are a bit sectarian

- They are trying take advantage and steal the public money
- Presenter: They like a BMW, don't they?
- It's their connection to drugs.... They are on the take, living off the state
- I imagine that in Spain they don't want to be vaccinated either
- Some of them are very close to organised crime....creating mafias for drugs
- In the 90s, when the death rates of drug addicts was very high
- (A message appears on the screen: "The gypsies spend the morning stealing copper from industrial estates") Ferrer: yes, that's their criminal side
- If you contact FSG.... they are very pro-State and they love to get handouts
- Ay it's so good to get money from the gorgers, it's great to steal from them
- If four big Arabs arrived they'd kick their arse
- The worst bit of it is that they think that only the people in their own tribe matter...they'll wipe everyone else out because they are the only ones who count...
- They were radical Francoists
- The Flores had a chain of whore houses...
- The gypsies evict each other from their land

On 15 December 2021 we were informed by the specialist public prosecutor that an investigation was being opened. Since we were party to the proceeding, we called the court to inquire about the progress of the proceeding and were told that it had been provisionally shelved because the video had been taken down.

B. FOLLOW-UP OF CASES REPORTED BY FSG IN PREVIOUS YEARS [3]

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

This is case of a continuation of the proceeding opened by the complaint that FSG made with the Public Prosecutor in 2016 for an aggravated racist assault, under section 147.1 and section 22.4 of the Criminal Code. A Roma teenager was assaulted while eating dinner with their family on the terrace of a bar. The assailant began to shout anti-Gypsyist insults and threats: ***"exterminate the gypsy race"*** and ***"get out of our town".*** Due to the severity of the crime, FSG was a party to the case, representing the victim.

The oral hearing has been postponed various times, being first scheduled for 12 November 2020, then 6 July 2021, which then could not be held for reasons relating to the defendant, and finally for July 2022, which likewise was not held for reasons relating to the defendant and, in spite of our

3 - In this section we will remark on certain cases that we reported in previous discrimination annual reports. We will update on the latest developments of proceedings brought by FSG.

filing an objection that the delay to the proceedings was a defence strategy, the Court scheduled the oral hearing for 23 March 2023.

When it is finally held, seven years will have passed since the original complaint was made, which is an improper delay that damages the victims' right to justice.

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

This case is a continuation of the proceeding opened on 4 April 2019, when a complaint was made with the Albacete public prosecutor for hate crime and discrimination for assault under section 147.1 of the Criminal Code, aggravated by racism under section 22.4, when a women was assaulted for being Roma by her neighbours in Ontur, who stopped her as she was leaving a church service and assaulted her and told her: ***"You're not coming in here, fucking Gypsy", "Fuck all your race, Gypsy",*** **and hit her multiple times and threw her on the ground.**

The woman, convinced that what had happened to her was down to her ethnicity, reported it to the Guardia Civil, submitting a statement of her injuries. FSG advised the woman and supported her to extend the nature of her complaint to include anti-Roma hate crime within the assault. On 4 April 2019 a complaint was made to the **Albacete Provincial Public Prosecutor for an assault under section 147.1 of the Spanish Criminal Code, aggravated by racism under section 22.4 of the Criminal Code.** Due to the seriousness of the incident, the context and the documentary evidence gathered (photos and medical report), we decided to represent the case in court.

The Court downgraded the proceeding to a case of minor assault, removing the aggravated racist element. We filed an appeal for reconsideration on 7 October 2020, asking for the aggravated racist element to be reintroduced, and on 24 November 2020 we submitted an extended complaint for anti-Gypsyist threats and insults by the defendants, and for some new incidents that had occurred after the proceeding had begun. On 7 June 20201, the Court dismissed our appeal, agreeing to continue to hear the facts as a minor offence. **We appealed that decision with the Albacete Provincial Court of Appeal on 18 June 2021**. We are currently awaiting a decision.

9. Caso de denegación de acceso a local a 14 jóvenes por ser gitanos en Jerez[4]

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

The nightclub owner denied that the incident or the discrimination had taken place and, accordingly, FSG filed a complaint with the Jerez Provincial Public Prosecutor for **refusal to access goods and services in the private sphere, under section 512 of the Criminal Code.**

Due to being one of the most common forms of antigypsyism, FSG decided to support the victims to jointly pursue a private prosecution, hiring a lawyer specialising in hate crimes.

Witness statements were taken and the pertinent evidence has been submitted. We were notified in a delay to the investigation due to its complexity, and we are currently awaiting a court order to conclude the examination stage and open the oral hearing

4 - https://cadenaser.com/emisora/2019/07/15/radio_jerez/1563187162_904253.html

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

This case concerns a young Roma woman who went to Carrefour with her sister in law, her baby and the sister in law's baby. When they were leaving, she was stopped by the security guard, who was certain that the toy that her baby was holding, worth €6.90, was stolen. The girl assured the security guard they she had not even been to the toys section of Carrefour that day, and that the toy was a free gift she received when a toy shop had opened. However, the girl heard the security guard tell his colleague: ***"They're Roma, of course they stole it".***

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

She left with a citation to appear in court for a speedy trial for one count of petty theft.

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

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

In the appeal we called for the trial to be void and repeated with all appropriate guarantees, and also for the girl to be acquitted. The appeal was eventually dismissed, in a ruling from the Provincial Court of Appeal that does not address one of the fundamental motives, the violation of the principle of equality and non-discrimination.

We filed an appeal with the Constitutional Court on 11 January 2021, which was refused on the basis of "lack of constitutional relevance".

FSG decided to pursue the case further, since it is such a representative case of intersectional discrimination, and due to the evidence, and **we recently wrote to the UN CEDAW Committee on the Elimination of Discrimination against Women, supported by a lawyer specialising in intersectional issue and the international protection of human rights. We are currently awaiting a decision from the CEDAW Committee.**

11. Complaint with the Santander public prosecutor for hate speech through WhatsApp audio files in Cantabria

FSG filed a complaint with the Santander public prosecutor specialising in hate crime relating to six audio files being shared on WhatsApp containing anti-Roma hate speech. One of the most serious audio files said:

-"Round them up and put them in jail, for fuck's sake, and leave them there in those four walls to do their singing and their dancing, locked up like a concentration camp til they're all dead, the fucking scum. They're infecting everyone, the gypsies, and they say we're racist. Well we are, we are fucking racist against them. Let's hope every single last fucking one of them die, the little ones, the kids, the grannies and fucking everyone."

We also included a **Twitter comment** in the complaint, which, relating to some comments by the Santoña Mayor, said:

-*"The transmission in Santoña of a Roma clan leaves 5 dead: the mayor calls for help. Here's your help, Mayor"*. The comment was accompanied by an image of gas cannisters.

FSG pursued a citizens' prosecution for hate crime under section 510.1 of the Criminal Code, due to severity of the comments, the evidence obtained, the repercussion of the audio files and their circulation across the countries, and the location of the author of the most serious comment.

The public prosecutor forwarded the complaints, and although the Examining Court shelved the matter because "the remarks made are not significant enough to be covered by hate crime under section 510.1 of the Criminal Code", **FSG filed an appeal for reconsideration, which was upheld on 3 June 2021**, with the Court agreeing to continue the investigation stage, which included sending a letter rogatory to Twitter to disclose information. We are currently awaiting a decision from the court to conclude the investigation phase and begin the oral hearing.

12. Complaint to the Madrid Public Prosecutor for anti-Roma hate speech in online forum Burbuja.info

FSG filed a complaint with the Vallecas National Police Station, in Madrid, concerning anti-Roma hate speech posted on an internet forum Burbuja.info, such as: ***"Exterminate the gypsies once and for all", "Send them back to where they came from. I here Kashmiri Punjab has room", "Send them all to the gas chamber and use them to make soap", "Not even that, burn them all and send their ashes to space—the further the better", "They make me want to grab my gun and shower them with bullets", "If there was really freedom of expression I'd say, with the conviction I'm not allowed in this country, that the Gypsies need exterminating", "This was never a problem under France", "Snatch a Gypsy and use it as a guinea pig", "This never would have happened under Hitler", "We're all at the mercy of this fucking sect that is dominating the world".***

FSG reported this to the Madrid specialist public prosecutor on the basis of anti-Gypsyist hate speech, which was then referred to the court, which opened an investigation stage. An FSG staff member made a statement in the Navalcarnero investigating court and another by video conference in the Villafranca del Penedés investigating court.

FSG decided to join the proceeding and to pursue a private prosecution, and engaged an expert lawyer specialising in hate speech, due to being once again anti-Gypsyist hate speech made on an online forum such as Burbuja.info, in which users are allowed to make and spread all kinds of racist and anti-Gypsyist statements without censure. We are currently awaiting a ruling from the court on the opening of the oral hearing phase.

13. Complaint to the Toledo Public Prosecutor for anti-Roma hate speech on Twitter

FSG made a complaint with the Toledo provincial public prosecutor on 8 April 2020, relating to a post on Twitter containing 36 anti-Gypsyist comments made further to the posting of a video in which the local police in the town of Talavera stopped some cars parked in a majority Roma neighbourhood of the town, while some local residents questioned them. Some of the most serious comments were: ***"They are a bunch of fucking street rats and deserve to be rotting in the gutter", "Let them line up for the firing squad; I'm sorry but they piss me off, especially what they did in Vitoria at the start of the pandemic", "Get them all to fuck off, they're a repulsive race", "The Führer was right about what to do with that garbage...", "That race is the pandemic virus", "The police do nothing, a shot to the head is what they need to get them in line. Those people".***

The public prosecutor referred the case to the Talavera de la Reina court. **FSG monitored the case and inquired with the court, which informed us that the proceeding had been provisionally shelved in April 2021.**

14. Complaint to the Cadiz Public Prosecutor for anti-Roma hate speech in WhatsApp audio files

Following the death of a Roma person in Cadiz hospital, a series of WhatsApp audio files circulated in which people in a h with a large Roma population were urged not to go to local supermarkets. In one of the most serious audio files, the voice said: *"A Roma man has died from COVID-19. He had diabetes, but he died from COVID, okay? He was supposed to be isolating, but he carried on going to the Mercadona in Los Junquillos.* **His whole family have it. He's dead and the family are still going out, they're not bothering to isolate.** *They're now all in hospital. What a mess. Tell everyone you know not to go to the Mercadona in Los Junquillos, because they're still doing their shopping there, ok? And be really careful, wear and a mask and gloves. Because with the Gypsies not giving a damn about isolating, it's going to spread like wildfire. Try not to go shopping. If you do, disinfect everything, every packet and tin, ok? I'm telling everyone the same, all my contact. Tell everyone you know, ok? Your family and everyone. This is real. I have a picture of the guy and the audio from a friend who is in the same hospital. It's a true story. I'm not kidding."*

FSG filed a complaint with the specialist provincial public prosecutor on 21 April 2020 for the three audio files circulated, arguing that they were a hate crime under section 510.1 of the Criminal Code. Following the complaint, the FSG Andalusia regional director gave a statement to the judicial police to contextualise the criminal comments. **The specialist public prosecutor sent the case files to the court on 14 May 2021,** and we are currently awaiting the conclusion of the investigation stage.

15. Complaint to the Jaen Public Prosecutor for anti-Roma hate speech on Twitter and Facebook

Following two different posts containing two videos of allegedly Roma ethnicity people dancing on a road in Jaen and Linares, anti-Roma hate comments were made, some of the most serious being: ***"They are human garbage. Then there's the problem of integration.... The majority who call themselves Roma aren't trying to be part of society. They're criminal wasters living off the state. It's incredible that we have to put up with this garbage on our streets", "Semi-human", "you can see their faces and the licence plate, what can you expect from the worst animals in Spain..." ? THE GYPSIES...", "Fucking gypsies... They're a cancer", "I hope they're the first to become extinct, those people aren't part of "humanity"", "Easy—fumigate them all like cockroaches..."***

FSG filed a complaint with the Jaen provincial public prosecutor on 5 May 2020, relating to the spread of 14 anti-Roma hate comments, 10 on Twitter and four on Facebook.

On 28 July 2020 we were informed that the court had **provincially dismissed the case because: "The commission of the crime has not been duly justified".** FSG examined the decision, which was not properly justified because it had only considered three of the 14 comments reported, and had considered them covered by freedom of expression. After examining the criteria referenced by the national public prosecutor and applicable European case law, we believe that the comments are criminal pursuant to section 510.1 of the Criminal Code[5]. **We passed on our comments to the public prosecutors, and were informed that they had already filed an appeal against the court order.**

5 - See Judgment of the ECHR dated 8 July 1999, Ergogdu & Ince vs. Turkey, of 4 December 2003, which stated "freedom of expression cannot cover hate speech, much less when the subject or recipients of such speech belong to a highly socially stigmatised population group".

FSG tracked the proceeding, and has heard from the investigating court that **the suspects' statements are being taken, as they are currently in different locations (Madrid, Leon, etc.).** This means that the investigation phase is somewhat complicated, and we are awaiting a court decision to begin the oral hearing.

16. Complaint to the Huelva Public Prosecutor for anti-Roma hate speech on social media

Following a news article published about the fatal shooting of a Roma man, featuring the photo of grieving family members, some anti-Roma comments were posted on social media, specifically YouTube and Twitter, for instance: "At the end of the day, the only ***good Gypsy is one that isn't alive.*** *Nobody gets hold of a Gypsy and shoots them just for a pot of beans, especially when this "ethnicity" are known for being spiteful and vindictive, among other things", "Not all heroes wear a cape, thanks for killing the weeds",* ***"A 75-year-old man has shot some Roma ethnicity criminal who was trying to steal a pot of beans. Not all heroes wear a cape",*** *"I'm pleased, cos all this vermin do is steal, kill, traffic and screw everyone else over, so* ***it's about time a bit of Gypsy blood runs down the street".*** *"I only know that once you show them you've got and go grab your gun, they back down.* ***Words and the law of the land don't mean anything to that scum", "Defending your property should never be a crime, so what if some vermin get killed.*** *If the ethnic in question had stayed at home or was out picking up scrap metal, he wouldn't have been shot",* ***"What a shame we can't impale thieves like Vlad did, or cut off their hand like Islam says. More than one parasite will think twice text time", "A good Gypsy is a dead Gypsy".***

FSG filed a complaint with the Huelva specialist public prosecutor on 21 April 2020, who informed us that the case had been forwarded to the court in for criminal actions. We are currently awaiting a decision from the court to conclude the investigation phase and begin the oral hearing.

17. Case of the police assault of a young Roma man in the town of Toledo

The events took place when two Roma girls were followed and harassed by an older man. When they arrived at the front door of the aunt of one of the girls, the aunt called the police for help. One of the girls also caller her boyfriend to ask for help because the man would not leave the lobby of the building. When her boyfriend arrived, the police were already on the scene. They pushed the boy to the ground, stamping on his neck and causing him injuries, to the point of stopping him breathing for a few moments. The boy was unconscious. When he regained consciousness, he was still lying on the ground, face down, very confused, not able to breath properly, while they told him "you're all so brave, but when the police arrive you're not so brave", in a generalised slur on Roma people. They then picked him up and sat him on the ground, they removed his mask and he spat blood. The officers asked him for his ID, and he gave them his ID card.

When the girls came out, who had hidden in the lobby as they were afraid of the older man, the police officers did not even advise them of their rights, and their right to make a complaint about the man who was harassing and following them.

FSG filed a complaint on 9 October 2020 for torture under section 174 of the Criminal Code, for the police attack to the boy, and for breach of the police's obligation to prosecute crime, under section 408 of the Criminal Code, due to their failure to inform the victims that a crime of coercion had potentially been committed against them. **The complaint also indicated that both offences could be racially aggravated, pursuant to section 22.4 of the Criminal Code,** since the excessive force and the comments from the police officers represent antigypsyism.

FSG helped the boy to seek free justice, and supported him in court, on 24 February 2021, when he gave evidence during the investigation phase, and we have been coordinating with the duty lawyer to prepare his legal strategy. **On 20 May 2022, the oral hearing was held for a minor offence and the police were eventually acquitted.** The young man did not want to appeal the ruling, and FSG did not consider there to be good appeal prospects

18. Case of harassment of a family by neighbours on anti-Roma grounds in Badajoz

A Roma family reported to FSG in Badajoz that they were being constantly harassed by one of their neighbours ever since they moved to their current residence. The harassment had an anti-Gypsyist element and was getting worse over time. Initially, they repeatedly called the police to complain for any reason, and insulted the mother and the children. But things got worse when the family when they found all four of their tyres slashed, and even graffiti on their car, which read in large letters: **"GYPSY PAY OR GET LOST".**

FSG filed a complaint on 27 October 2020 with the public prosecutor specialising in hate crime and discrimination, for criminal damage under 263.1 of the Criminal Code, aggravated pursuant to section 22.4 of the Criminal Code. We also believe that the anti-Gypsyist graffiti on the family vehicle, which is identifiable in their neighbourhood, may be a crime under section 510.2 of the Criminal Code.

Although the investigating court shelved the case on the basis of: *"Objective absence of minimal incriminating factors to continue pursuing the case",* this was appealed by the public prosecutor, invoking the legal arguments that FSG outlined. This was upheld by the court and evidence taking was agreed for October 2021. FSG will support the woman's testimony during the investigation phase. **On 28 March 2022, the investigating court issued an order to provisionally shelve the case, against which the specialist public prosecutor filed an appeal.** We are currently awaiting a decision from the provincial court of appeal.

19.Case of harassment of a family by neighbours on anti-Roma grounds in Burgos

The events concerned the anti-Gypsyist harassment suffered by a Roma family who moved into social housing by their neighbours (the mother and two sisters) in the housing complex, which was worsening over time.

The neighbours were calling the local police constantly to complain about noise from the Roma family's home, followed by anti-Gypsyist insults such as: ***"Fucking Gypsies"* or *"animals"*, graffiti on the entrance way about the family and anti-Roma hate speech about the family on social media.** The family considered moving home, as suggested by social services, and eventually left the home where they were being persecuted and harassed by their neighbours.

FSG filed a complaint with the specialist public prosecutor on 10 February 2020 for coercion under section 172.1 of the Criminal Code, aggravated by racism under section 22.4 of the Criminal Code and harassing the Roma ethnicity under section 510.2a) of the Criminal Code.

On 10 February 2021, the public prosecutor issued a decision to forward the proceeding to the Burgos presiding court, for racially aggravated coercion. **On 6 April 2021, FSG accompanied the parents to give witness testimony at investigation stage.**

Due to the severity of the events and the knowledge that these anti-Gypsyist acts have taken place more times in the neighbourhood where Roma families live, FSG decided to join the case by means of an expert criminal lawyer specialising in hate crime to pursue a private prosecution on behalf of the family.

The oral hearing was held on 31 May 2022 and the court a judgment was handed down[6] whereby the three woman acknowledged the events and were sentenced to three months in prison for coercion, aggravated by antigypsyism.

The case was widely covered by the media[7].

6 - https://www.gitanos.org/centro_documentacion/publicaciones/fichas/135932.html.es
https://www.gitanos.org/upload/05/88/NdP_Burgos_condena_por_conformidad.pdf

7 - The case was picked up by the media, including:
https://www.eldiario.es/castilla-y-leon/sociedad/condenadas-acosar-durante-cinco-meses-familia-gitana-burgos-les-gritaban-salvajes-e-hijos-puta_1_9042711.html
https://www.abc.es/espana/castilla-leon/abci-juicio-contra-tres-vecinas-llamar-gitanos-mierda-y-salvajes-familia-mudo-edifi- cio-202205311236_noticia.html
https://elcorreodeburgos.elmundo.es/articulo/burgos/sentencia-pionera-burgos-coacciones-odio-antigitano/20220531204243397170.html

Conclusions

1. **The strategic litigation cases that FSG has undertaken have achieved major steps forward:**

- The possibility of passing the standards of Interest human rights organisations in the fight against discrimination and racism to national case law, as well as case law of the European Court of Human Rights.

- Some of the current legal vacuums have been brought into question, and this has contributed to the passing of new regulatory frameworks (the Comprehensive Law for Equal Treatment and Non-discrimination and changes to the Criminal Code).

- Practice and experience in the years that FSG has been litigating has equipped us with tools and coordination networks with key players in the justice administration (specialist public prosecutors, judges and lawyers) and we have established synergies and alliances with organisations that work to tackle racism and discrimination.

- An important achievement is to reach people who have suffered an act of discrimination or hate and are not in a position to pursue litigation themselves, either due to fear of retaliation, lack of knowledge of the courts system or the high cost of legal representation. That is one of our main goals, to provide support in long and complex situations that are difficult for an individual to manage.

- When attackers respond in court, even when the eventual ruling is not in favour of the victim (frequently, through application of the principle of minimum intervention of criminal law), Roma people feel less of a sense of impunity, have greater trust in institutions, and the rate of reporting goes up.

- We shine a light on cases that perpetually arise, such as denial of access to goods and services or intersectional discrimination suffered by Roma women in shopping centres. These are cases that arise year after year, and we continue to denounce them.

- The people who we accompany and represent in court tell us that they feel empowered to be claiming and exercising their rights, as holders of these rights. Litigation empowers and gives a voice to Roma men and women who decide to report their case in exercise of their rights and that of their community.

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

- The lack of an appropriate response by the justice administration in cases of discrimination and antigypsyism generates a feeling of impunity among victims, with the result of retraumatising them. In spite of the creation of the provincial public prosecutors specialising in hate crime and discrimination, which was a momentous step forward to guaranteeing specialisation in this kind of crime, there is still no such specialism in the justice administration.

- We must emphasise that the complexity of these discrimination and anti-Roma hate crimes necessitates a comprehensive approach, with a focus on human rights, diversity and gender that is currently practically non-existent.

- Anti-Gypsy prejudice in the judiciary and police persists, as well as a lack of empathy with victims and continued ethnic bias, sometimes aggravated by gender prejudice.Todavía existen pre

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

- The slowness of trials, taking up to seven years to reach oral hearing stage (see the case of Castellon), which as well as having an undue delay and therefore violating the right to a fair trial, give a sensation of impunity and the system's failure to grant justice. It also takes an emotional toll on victims.

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

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

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

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

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

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

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

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

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

- 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 antigypsyism, which we have seen in many of the cases we have brought before the courts. However, it is important that more resources are poured in, and to continue to push coordination with the organisations we work with in the fight against discrimination and hate crime, to enable the continued tracking of reported cases.

- In spite of data on antigypsyism already being included in statistical reports produced by the Public Prosecutor's Office and the Ministry of the Interior, this data is not disaggregated to make it precise and comparable, and to allow is to effectively monitor the application of legal frameworks and thus better combat antigypsyism.

Chapter 4

In depth: Discriminatory bias in the use of artificial intelligence and impact on the Roma community.

Artificial intelligence, use of algorithms and ethnic-racial bias. Impact on the Roma community.

Cristina de la Serna and Javier Sáez

Department of Equality and Fight Against Discrimination - Fundación Secretariado Gitano

Basic premises

What we understand as artificial intelligence

Although it is widely used, the term "artificial intelligence" is not clearly defined. Artificial intelligence tends to be used to refer to increased independence, speed and magnitude related to computerised and automated decision making, or systems that simulate human intelligence. AI is a series of processes and technologies that allow computers to add to or replace specific tasks that would otherwise be carried out by humans, such as decision making and problem solving.

There are various examples of AI in systems control, automatic planning, response capacity to diagnostics and consumer queries, handwriting recognition, speech recognition and pattern recognition. AI systems are now routine in fields such as economics, medicine, engineering, transport and communications and have been used in a wide variety of software applications, strategy games, such as chess by computer and other video games.

What we understand algorithms to be

An algorithm can be defined as a series of defined and unambiguous, ordered and finite instructions or rules that can solve a problem, perform a calculation, process data and carry out other tasks or activities. A starting point and an entry are given, successive steps are followed to reach a final state and obtain a solution. A simple example of an algorithm is a recipe, where instructions have to be followed (ingredients, different stages, timings of each stage, etc.) in a certain order. This type of process can be programmed by a computer (in fact, often a software program is a series of algorithms, or series of programmed logical guidelines).

AI systems use highly complex algorithms that are combined with big data. This allows us to offer solutions to highly complex problems, or to simulate human behaviour such as certain conversations or the translation of texts. For example, an AI program that processes thousands of conversations and messages recorded by a person could mimic how they speak, or their responses in certain situations, or writing style.

Algorithms are also used in numerous social and economic fields: stock market predictions, economic trends, decision making on welfare benefits, insurance, illnesses, retail, marketing (for instance, to assess what kinds of books or authors will sell more), urban development, etc.

What is racial bias

Years ago a number of different studies[1] identified that racial bias is present in many AI systems and in the use of algorithms in decision making. The expression "racial bias" indicates that the final decisions made by these systems can prejudice or discriminate against certain ethnic or racial minorities, either deliberately (in the algorithm's own programming, for example, including typical surnames of a certain ethnicity and giving these surnames a negative evaluation, or include post codes where ethnic minoritiess live), or automatically, since these systems use big data (online news, websites, forums, social media) that may replicate the underlying bias already existing in society.

Other examples of racial bias can be seen in facial recognition systems, predictive policing, health insurance, urban planning, granting of welfare benefits and search engines.

1 - See, for example, Weapons of Math Destruction, de Cathy O'Neil, Automating inequality, by Virginia Eubanks, and Algorithms of oppression: How search engines reinforce racism, by S. U. Noble.

Although it is not the object of this report, the existence of gender bias in this kind of system has been studied in depth.

National and international standards on how to avoid discrimination in the use of artificial intelligence and algorithms.

For a number of years, various European and international bodies have addressed the use of these systems to try to prevent discrimination.

For example, the General Recommendation 36 (2020) of the CERD on the preventing and combating racial profiling by law and order officers, the section on artificial intelligence states:

"The Committee observes that the increasing use of new technological tools, including artificial intelligence, in areas such as security, border control and access to social services, **has the potential to deepen racism, racial discrimination, xenophobia and other forms of exclusion."**

In the section on racial profiling of the same CERD Recommendation, this important consideration is made:

"There are various entry points through which bias could be ingrained into algorithmic profiling systems, including the way in which the systems are designed, decisions as to the origin and scope of the datasets on which the systems are trained, societal and cultural biases that developers may build into those datasets, the artificial intelligence models themselves and the way in which the outputs of the artificial intelligence model are implemented in practice. In particular, the following data-related factors may contribute to negative outcomes: (a) the data used include information concerning protected characteristics; (b) so-called proxy information is included in the data, for example, **postal codes linked to segregated areas in cities often indirectly indicate race or ethnic origin;** (c) the data used are biased against a group; and (d) the data used are of poor quality, including because they are poorly selected, incomplete, incorrect or outdated."

The European Fundamental Rights Agency has published a detailed guide on this issue; in Opinion no. 4 it makes the following recommendation to EU Member States:

EU Member States should consider encouraging companies and public administration to assess any potentially discriminatory outcomes when using AI systems. The European Commission and Member States should **consider providing funding for targeted research on potentially discriminatory impacts of the use of AI and algorithms.** Such research would benefit from the adaptation of established research methodologies from the social sciences employed to identify potential discrimination in different areas.

Some variables used in **AI modelling can be proxies for race, ethnicity, gender and other protected categories. The complexity of the algorithms makes it harder to identify and remove such biases.** Instead of providing objective analysis, predictive policing software may turn into an 'echo chamber' cementing existing systemic flaws and injustices with the 'stamp' of what appears to be scientific legitimacy." FRA, *Getting the future right – Artificial intelligence and fundamental rights*[2] .

The European Commission is preparing a new Artificial Intelligence Law, which has numerous sections on risks of discrimination. For instance, paragraph 37 states:

"access to and enjoyment of certain essential private and public services and benefits necessary for people to fully participate in society or to improve one's standard of living. In particular, AI systems used to evaluate the credit score or creditworthiness of natural persons should be classified as high-risk AI systems, since they determine those persons' **access to financial resources or essential services such as housing, electricity, and telecommunication services.** AI systems used for this purpose may lead to discrimination of persons or groups and **perpetuate historical patterns of discrimination, for example based on racial or ethnic origins,**

2 - Getting the future right – Artificial intelligence and fundamental rights | European Union Agency for Fundamental Rights (europa.eu)

disabilities, age, sexual orientation, or create new forms of discriminatory impacts."[3].

Nationally, Spain has pioneered the inclusion of the human rights perspective and preventing discrimination in this field. For instance, priority 6 of the **Spanish R&D+i Strategy on Artificial Intelligence**[4] on ethics and AI, states:

"AI technological developments must avoid negative bias, gender prejudice and other forms of discrimination.

There are many ethical questions surrounding the role that AI plays or has played in society, at work and in the economy. The success of AI depends on how people and machines work together to offer better services—transparent, reasonable and ethics—to potential users, in a world where were will be increasingly more demanding of the quality of services provided. It is a condition in the development of AI technologies and applications related to this R&D+i Strategy to **avoid negative bias** and prejudices that blight our society, such as gender, **race and other forms of discrimination**, and must be absent from decision-making support systems.

From the European perspective, trustworthy and ethical AI made in Spain must be built on the basis of decades of consensual application of fundamental rights in the EU, to offer clarity, readability and foresight for users, investors and innovators. **This requires an adapted legal framework so that AI is used fairly, transparently and responsibly".**

Chapter VII of the **Digital Rights Charter**[5] on the right to equality and non-discrimination in the digital environment states as follows:

"The right to and principle of equality of people will apply in digital environments, including that of non-discrimination and non-exclusion".

At the end of 2021, the parliamentary party Grupo Parlamentario Confederal Unidas Podemos—En COMÚ Podem—Galicia en COMÚN presented a "Motion to debate in the Interior Affairs Commission the permitted uses of artificial intelligence (AI) tools in relation to mass surveillance systems and technologies that assess and predict the behaviour of people", which proposes a series of measures to avoid the potential discriminatory use of these systems.

The various texts and recommendations quoted above point to potential dangers of artificial intelligence to reproduce or feed discriminatory practices or decisions based on ethnic or racial origin, sexual orientation, beliefs, etc. The new Comprehensive Law 15/2022, of 12 July, for equal treatment and non-discrimination[6] , includes in section 23 the need to enforce or sanction potential discriminatory bias in the use of artificial intelligence and algorithms.

Potential impact on Roma people of discriminatory bias in artificial intelligence and algorithms

For instance, the use of algorithms to decide on urban planning and the development of certain areas can lead to the decision not to invest in a certain neighbourhood because, according to the algorithm, the neighbourhood has certain criminality and a local authority may decide not to invest in that neighbourhood based on the decision taken by the artificial intelligence. In reality, there may be bias, because that neighbourhood is primarily populated by Roma people, something that the algorithm does not know directly but, rather, indirectly makes a decision that discriminates against potential public investment in a neighbourhood that needs it.

Algorithms are used to decide whether to give a job, a home, health insurance, police practices, crime prevention, and it is proven that at times they are biased by replicating racial prejudice already in the system. Given antigypsyism is a deeply rooted phenomenon in society, it is possible that these biases

3 - https://eur-lex.europa.eu/legal-content/ES/TXT/HTML/?uri=CELEX:52021PC0206&from=EN

4 - https://portal.mineco.gob.es/es-es/ministerio/areas-prioritarias/ Paginas/inteligencia-artificial.aspx

5 - https://www.lamoncloa.gob.es/presidente/actividades/Documents/2021/140721-Carta_Derechos_Digitales_RedEs.pdf

6 - https://www.boe.es/buscar/pdf/2022/BOE-A-2022-11589-consolidado.pdf Artículo 23

filter down or are replicated in automated systems (certain surnames, certain post codes, streets or neighbourhoods, or certain physical attributes in the case of facial recognition).

At FSG we have identified at least three areas that might affect Roma people:

1. The granting of welfare benefits: the decision to grant electricity vouchers[7], transport, meal vouchers, etc., often uses algorithms, and bias may occur in certain cases that affect Roma families in particular.

2. The use of predictive policing[8] could also lead to hyper-surveillance in certain neighbourhoods considered dangerous or with high rates of crime. Some of these neighbourhoods are populated mainly by Roma people, who may be exposed to excessive control, discriminatory practices or racial profiling.

3. Automated spreading of jokes and fake news stigmatising or criminalising Roma people. It has been proven that this kind of news is spread far more greatly than objective or truthful news, so how this phenomenon arises should be studied further. There is a series of algorithms that prioritise this kind of messages and jokes, and bots designed to create and spread them[9].

Algorithms often work by collecting patterns, but blindly, i.e. without the ability to understand why certain selections are being made to create the pattern. For instance, an algorithm may decide that the Roma community is especially dangerous or criminal, since when searching news articles to find patterns it will often find news about violence and crimes associated with the Roma ethnicity or the word "Roma". This same algorithm could then be used to discriminate against Roma people.

7 - A case of this type was reported by the foundation CIVIO: https://civio.es/novedades/2019/07/02/que-se-nos-regule-mediante-codigo-fuente-o-algoritmos-secretos-es-algo-que-jamas- debe-permitirse-en-un-estado-social-democratico-y-de-derecho/

8- Report on predictive policing in the Netherlands and its impact on Roma people: https://www.amnesty.org/en/documents/eur35/2971/2020/en/

9 - https://www.elperiodico.com/es/internacional/20170211/anatomia-de-los-bulos-5800799

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Artificial intelligence, the police and radicalised communities.

David Martín Abánades

Fuenlabrada Inspector of Local Police and Expert Consultant of the Council of Europe.

Tools that use algorithms and mathematical calculations to make decisions come with the promise that historical and real-time data analysis can predict when where it is most likely that a crime is committed, or who is most likely to be involved or be a victim of an illegal activity in the near future. In theory, this should allow the policy to more efficiently deploy their limited resources and carry out preventive interventions, acting before a crime is committed and, therefore, being more effective at reducing crime.

The belief that technology will improve decision making is the core argument that predictive policing can be used effectively, fairly and legitimately. However, critical research has shown that predictive policing tools can perpetuate, reinforce and conceal existing inequalities, and the ethical debates have explored how to evaluate these technologies and the conditions in which these tools should be used. What is often missing in these debates is the context in which the police are using these tools and the understanding of the reasons why they invest in them.

Artificial intelligence and science fiction. It is not *Minority Report*, yet some police chiefs think that we are in science fiction

In the film Minority Report, there is a department called "Precrime" that arrests criminals where the crimes are going to happen, based on advanced knowledge provided by three psychics called "Precogs". The crime was anticipated by advance analysis.

This was science fiction, yet some police chiefs seem to think that algorithms offered by private firms or developed with public financing can predict where the crimes will take place, but the idea that this predictive policing model reduces crime is not real.

Police in Kent in the United Kingdom cancelled their contract with the predictive policing software provider Predpol. When explaining the decision, the Kent Police Superintendent said: "PredPol had a good record of predicting where crimes were likely to take place. What is more challenging is to show that we have been able to reduce crime with that information."[1]

In Germany there are clear signs that predictive police tools produce disappointing outcomes. In Stuttgart, the Ministry of the Interior explained that, after trying Precobs, they found that real crime rates were too low for the instrument to make predictions. At the same time, it stressed that the use of new technologies offer clear advantages and that the police should embrace them in future[2].

This position is shared across German policing: an in-depth study[3] found that the most significant change for the police force trying predictive policing tools was not linked to the effectiveness of these tools or how they changed the nature of policing from reactive to preventive. The use of these tools mainly reinforces the police's belief in the data and their desire to work with them.

When organisations such as the police adopt new technologies, they tend to be motivated by a combination of curiosity and fear of missing out and not modernising, especially when they see other countries using them. This culture among police has made them more receptive to promises made by the private sector. Firms sell effective technology to decision makers in the police, as a way of selling modernity.

1 - https://www.telegraph.co.uk/technology/2018/11/27/kent-police-stop-using-crime-predicting-software/

2 - https://www.stuttgarter-nachrichten.de/inhalt.aus-fuer-die-einbruchvorhersage-software-strobl-entscheidet-sich-gegen-precobs.19a18735-9c8f-4f1a-bf1b-80b6a3ad0142.html

3 - EGBERT S., Predictive Policing. An ethnographic study of new crime prediction technologies and their effects on police practices, Surveillance and Society, 2019.

The use of predictive policing is stigmatising and is responsible for excessive surveillance and pressure on society

Beyond trying to predict where and when a crime will be committed, another element of predictive policing tools is trying to determine how likely it is that someone will perpetrate or be the victim of a crime. There is a whole series of programmes that offer this feature. For instance, the Top X lists in the Netherlands focuses on identifying the most prolific high-impact criminals; the integrated offenders model in the UK purports to predict which criminals will go from a low-impact crime to a high-impact crime; there are also models such as RADAR-iTE in Germany that purport to attempt which potentially dangerous people are most likely to commit a violent Islamist terror attack.

It is important to recognise that being flagged on such lists often stigmatises the individual and their families, and creates and additional interference by the state in their personal life. The focus on coordination means that all the state's force is directed at an individual or their family, which exacerbates the asymmetrical relationship between them. The question of how legitimate predictive policing is cannot focus just on technology but on deciding whether this interference by the authorities into an individual's private life is proportionate to the severity of the crimes committed and their impact on society.

Artificial intelligence is used to justify discrimination

This type of predictive policing interventions run the risk of creating constructed identities, such as "gang member" or "terrorist", which link certain radicalised communities to a complex process of criminalisation. In this case, "Black young men, "Islamic young men" and "Roma young men" are identified as being linked to crime phenomena in police's political discourse, in schools and on the street.

We wonder, what would happen if predictive policing were used for economic or white collar crime? Is it socially acceptable for the police and other public authorities to apply the preventive and compelling measures currently applied to individuals identified in predictive policing tools to while collar criminals and their families?

This could include more stops and searches in financial districts for middle aged, suit-wearing white men, who typically fit the profile of a white collar criminal. Most likely, the answer is no.

What is the idea of justice that works on developing predictive policing?

The type of crime to which predictive models are applied is that prioritised by the police both now and historically, which are informed by politics and society. This is an important point. By choosing to profile certain areas of crime but not others, or by grouping criminals according to data attributes, society runs the risk of criminalising people and families of people belonging to a certain radicalised community or lower socio-economic level.

Historically, the police have been considered the branch of the judicial power that apprehends criminals. This would be a group of people to whom other citizens have given the ability to legitimately exercise force in order to keep order and peace in society. As such, they are the group of citizens that ensure compliance with the law, especially criminal law.

EThis enforcement of compliance with the law has meant that the majority of police forces and trained, equipped and designed to detain criminals. However, in these police forces, a small part of services are dedicated to solving problems. An even smaller percentage of services are dedicated to protecting people's rights.

This forces us to ask certain questions such as: What should the role of the police services be in contemporary society? Are police forces accessible to citizens? Do they share their actions to enable oversight? What are the majority of resources dedicated to? Do they protect people or the interests of the majority?

For some years now we have been dealing with a crisis in the prevailing policing model in the majority of police organisations. There are an

increasing number of movements demanding change, arguing that their roots are based in managing race and class inequalities.

The majority of modern police forces are also in complex situations of managing large urban areas, where these two variables of race and social class are more closed interrelated between different social groups, both the oppressors and oppressed.

For these reasons, it may be the case that the algorithms used in predictive policing, or other systems aimed at preventing criminal conduct, should be designed to protect people's rights, particularly the historically victimised groups.

It would surely be more efficient for the software to tell the decision maker in the police where it is most likely that a gay man or Roma boy will be assaulted, to design police resources to avoid such crimes being committed in the first place.

When predicting crime, AI does not work very well

Trial after trial shows that there is no clear relationship between the use of predictive policing tools and reducing crime. However, many police forces continue to jump on the bandwagon, because they want to appear modern and are curious about new policing technology or because they simply relent to sales techniques.

Data, representation and artificial intelligence.

Antoni Lorente

Senior Researcher at Eticas Research and Consulting

Introduction

All academic articles on what is commonly known as "artificial intelligence ethics" share the same prologue: progress in this field in the last few years has brought progress and opportunities for society, but also dangers and threats that cannot be ignored. Although we might want to think that opportunities carry more weight, books such as *"Weapons of Math Destruction"* (Cathy O'Neil), *"Privacidad es Poder"* (Carissa Véliz), or with a slightly more technical focus *"The alignment problem: machine learning and human values"* (Brian Christian) capture the dangers and threats associated with AI, with a rather unfavourable outlook.

What is certain is that in spite of ethics being a very broad branch of philosophy, often distanced from conversation around AI, including humanistic notions in a highly technical field allows language to be developed that facilitates social discourse on the development and implementation of this technology. Whether they are problems of regulation, inequality, equity or simply disclosure, talking about ethics is now crucial to understand the impact of these systems on our lives.

In fact, based on work carried out by consultancy firm Eticas, over time we have seen that some of the most widespread problems in this field are easily recognisable. However, they are almost always ignored by developers, not in bad faith or incompetence but due to ignorance. But **identifying whether an AI system suffers obvious bias problems is easily, through a stratified performance analysis that evaluates performance for different population groups.** This strategy is not costly or technically complex, but failure to design and implement control measures to mitigate the problems in an AI system ends up being a design decision.

This is when we need to talk about ethics: including the impact of a technology in the design and development process is an "ethical" aspect that is not strictly necessary to make the technology work, but it is indispensable for the safe inclusion of AI in our society.

On the other hand, AI problems also result from a lack of consideration of how automating a solutions affects the problem itself. If we take the example of a CV assessment system, the— albeit tedious—function that human resources officers used to do is now done by algorithms to select the "best candidate". But although the job is the same (reviewing and sifting CVs), the change in person performing it changes the morality of the scenario. Where before a responsible person with their own criteria made the decision, there is now an algorithm that learns from historical data. **If it is necessary to ask for explanations to understand the reasoning behind a decision, the introduction of systems that automate the decision-making process makes transparency more difficult.** In this context, it is easy to understand why a model that is fed by a database in which women, for example, are less represented, will tend to choose a man before a woman if both are as qualified as each other. History (data) tells the algorithm that there have always been more men, and that will for a reason.

Induction and data

One of the major difficulties associated with AI predictions consists of ascertaining that what it is predicting is what it really wants to predict. This is particularly difficult for models that learn from data since, in the majority of cases, the nature of learning is inductive: rather than based on general premises to reach specific conclusions on specific cases, patterns are inferred from specific cases to create general rules. In other words, the predicting future cases depends on past events— something that David Hume already dealt with as

the problem of induction, or the question of how we can draw a general conclusion for the future based on past occurrences.

But as any good student of logic (and data science) knows, "correlation does not imply cause". As much as there may be an almost perfect correlation between two variables or events, it is not possible to determine that one causes the other. Although scientists that develop AI systems are aware of this (this is why statistics are used), when AI is applied to real life to make decisions, the distribution of probabilities are no longer useful: for practical ends, the statistical confidence must be translated into a yes or no.

This need to turn a probability into a decision is problematic for a number of reasons: determining the limit between yes and no, or ensuring that the variables in play to obtain the results are robust and useful for all population groups is not easy. B**ut this is even more problematic if we think about the system discrimination patterns and what is commonly known as historical bias.** There are marginalised and historically discriminated against groups in all countries and societies. But beyond the features that unify or justify the treatment of these groups as groups (a language, a culture, etc.) there are a series of practices and patterns surrounding them that set the terms of the relationship of the minority with the rest of the population.

In this regard, data science does not just capture the causal relationship but also the correlations that result from systemic discrimination patterns: the data captures the discrimination, and the systems learn to replicate it. This, together with lack of representation in the data (or a smaller representation due to the minority nature of the population group) leads to poorer results and, therefore, a greater risk of error for

those groups. For historically discriminated against groups and, specifically, for Roma people (with a culture that is not written down by passed down by word of mouth), tackling lack of representation in data and, above all, the lack of mechanisms to affect how databases are built, is very difficult.

EThis, however, poses a dilemma: Should minorities use and expose themselves to new technologies to prove their limitations, or should they avoid that technology to avoid the errors that they cause? Although the answer to this question is neither simple nor obvious, the first (exposing themselves) can be understood as a form of activism, and not just technological but political. It is true that the price is high, but exclusion is unacceptable. On the other hand, avoiding using and active engagement with certain technologies might be right in the short term. But the adoption of facial recognition, profiling or classification in various areas by organisations that may end up using them without explicit consent, represents a greater threat to minorities in the medium and long term.

Partial representation and case studies

Following this reasoning, one of the greatest dangers of AI lies in disproportionate confidence in the data. But it is the case that databases, however large, are only a partial representation of the world in which we live, both in the positive and the negative sense. In addition, there are many points of entry for bias in the lifecycle of an AI system. From the data to the decisions made by developers, or how results are presented, technical and cognitive limitations affect how fair AI is.

A good example of the limitations of data science can be seen in predictive policing. There are a great many systems in the world designed with the intention of predicting reoffending, but these systems use historical data that does not capture reoffending. If we stop and think (which is as necessary as it is dangerous), what police data captures

Following this reasoning, one of the greatest dangers of AI lies in disproportionate confidence in the data. But it is the case that databases, however large, are only a partial representation of the world in which we live, both in the positive and the negative sense. In addition, there are many points of entry for bias in the lifecycle of an AI system. From the data to the decisions made by developers, or how results are presented, technical and cognitive limitations affect how fair AI is.

A good example of the limitations of data science can be seen in predictive policing. There are a great many systems in the world designed with the intention of predicting reoffending, but these systems use historical data that does not capture reoffending. If we stop and think (which is as necessary as it is dangerous), what police data captures is not repeating offending but the repeat arrest and conviction of a crime. This distinction is crucial because the data reflects police and judicial activity, which indirectly reflects only part of criminal activity.

The vagueness of the true reference, together with AI's following of statistics patterns in data, frequently leads to poor models that clearly discriminate against certain groups. However, in many areas discrimination is more subtle. Social media may be one of the fields in which AI has a lesser impact, particularly towards traditionally discriminated against groups.

Content recommendations, for example, are filters that observe behaviour on social media to try to predict the kind of content that best suits a certain user. These filters are based on statistical data on the user, and above all on the type of interaction and the nature of the content with which they interact. This, on the one hand, encourages social media addiction—not to the telephone as an item of technology but the content consumed—as well as the creation of echo chambers that allow certain discourse to evolve in an apparently agreeable environment. This, together with the anonymous spreading of fake news, tends to compulsively conserve and amplify stereotypes and discriminatory patterns towards minority groups.

This is the age of data: this is, in fact, one of the main reasons why the proliferation of artificial intelligence is so effective both in academia and in industry. Even so, artificial intelligence systems have a very particular way of coming into our lives, precisely due to their relationship to the data. Greater production of data, through mobile applications, tracking devices, our online footprint, leads to greater capacity to correlate between elements that, at first sight, may appear unconnected. And to a greater or lesser extent, the introduction of systems able to learn through data in our lives—whether voluntarily or otherwise—seems inevitable.

This interaction affects everyone, although not necessarily in the same way. Women such as Timnit Gebru and Frances Haugen decided to uncover the ins and outs of the big companies such as Google or Facebook respectively to boost the performance of AI. In both cases, the researchers discovered various problems within both products, such as racial discrimination in the first, or the notorious effect of content recommendation on teenagers in respect of eating disorders or suicide ideation, respectively.

The structural problem is not the use and development of artificial intelligence. **The problem that we have to deal with and try to solve is managing AI models and their impact on our lives. Finding ways for various social groups or individuals to exercise their fundamental rights in respect of the use of this technology, establish the limits of sophistication of these technologies and determine the scope of applications and essential channels of supervision.**

Looking towards the solution

Various initiatives contribute to the sustainable development of products that include artificial intelligence. We need to go beyond the ethical principles to find operational and practical channels to ensure that affects groups and person can intervene in the use and evolution of this technology.

Transparency is essential in this. It is important to understand that transparency alone does not guarantee justice or equity. However, a transparent process or system allows for evaluation, which is the basis of building confidence in it. Transparency must be considered instrumental to tracking the responsibility of the various players involved in an AI system. A practical way of implementing different transparency requirements could be an algorithm register containing basic information on the various systems, as well as the parties responsible for them.

Since transparency is just an instrument, we also need to think about ways to evaluate the impact of AI on groups, in this case from a socio-technical point of view. To that end, **elements such**

as auditing or evaluating the impact of these systems by third parties facilitates a sustainable technological future, in which the rights of everyone are preserved.

However, in order to develop a holistic vision of the effect of these systems, involving civil society is crucial. Experiencing discrimination transcends performance or equity metrics of the various AI evaluation methods. Independent organisation in civil society are essential to evaluation from the perspective of the affected groups, rather than performance and equity metrics.

Data, representation and artificial intelligence.

Ella Jakubowska

EDRi Policy Advisor

Twitter: @ellajakubowska[1]

For communities that have been historically sidelined, the promises of digitalisation can instead become a vessel for yet more discrimination and unequal treatment. Facial recognition in particular has a sinister and dark history which links to the persecution of Romani communities

In April 2021, EDRi and the Reclaim Your Face campaign (RYF) hosted a webinar on "Facial recognition, Resistance and Roma & Sinti rights". The purpose of this event was to explore, alongside Roma and Sinti rights activists/ researchers who are also experts in data and digitalisation, the intersection of Romani rights with the rise of facial recognition and other forms of biometric mass surveillance across Europe.

The phrase of the day was "paradigm shift", as Benjamin Ignac (a Romani researcher and activist from Croatia, living and working in Berlin) and Roxanna-Lorraine Witt (a Sinti person, formerly working for the Council of German Sinti and Roma until last year and the founder of Save Space e.V.) took attendees through a powerful exploration of how technological developments are transforming every aspect of our lives, and why this matters for Romani and non-Romani people alike.

From criminal justice systems to policy-making, they urged everyone that cares about equality and justice to educate themselves about the risks of automation and artificial intelligence technologies to embed and further perpetuate systemic biases; of the need to tackle digital literacy divides; why we should empower Romani people to take up technical and leadership roles in STEM and policy fields; and the need to build radical coalitions across intersectional lines that will help us challenge facial recognition's discriminatory gaze, and shift the paradigm in order to tackle digital exclusion in its many inter-connected forms.

Romani rights are digital rights

Roma and Sinti rights are important for the digital rights community because whilst there are many experts within Romani communities working on issues of data and digitalisation, other parts of the digital rights field often have little to no awareness of this important work. And as Benjamin points out, digitalisation can pose an additional challenge for Romani people that have long faced prejudice and marginalisation. He adds that if we don't address this gap as a policy priority soon, it will only serve to keep Romani people on the sidelines:

"Roma and Sinti people are not only socially and economically excluded, but also digitally excluded, in Europe…. The pandemic has exacerbated this. The EU is neglecting the fact that the majority of Roma … are still poorly connected to the internet, we have reduced access to digital technologies, lower levels of digital literacy. … It still baffles me how Roma people who are disconnected digitally from these new technological threats, how these people are not part of the conversation at the European level, at the national level, the NGOs level. The lack of investment in this digital aspect in Roman and Sinti rights is just going to keep us at the bottom, in a way. In the race of growth and development, we will be lagging behind if we are out of the loop."

Roxy adds that this lack of understanding of digital technologies and what they can mean for our societies affect not just Romani individuals, but often the groups that represent them, as well as politicians:

1 - EDRi -European Digital Rights- is the largest European network of defense of rights and freedoms online. The EDRi network is a collective of more than 47 NGOs, as well as people experts, advocates and academics working to defend and promote digital rights in Europe and worldwide.

"When we are talking about digital literacy, it is not only the average Romani person, but also big organisations representing us at an international level … high level politicians. It's a lot of burden of shame to admit that you have no clue about this – but it's not only Romani people but also Gadjo people [non-Romani people]…How to access the least privileged people among our communities. … as well as high-profile politicians in international politics who are not really engaged in such important topics, and how to give them digital literacy."

Facial recognition and the legacy of historical oppression

In the first part of the webinar, we examined how facial recognition reproduces and gives a false legitimacy to techniques that come from eugenics, sometimes referred to as Nazi "race science". As Roxy explains:

"The premise of facial recognition technology and biometric data collection is that you can tie certain facial features […] to an identity. But identity is a social construction, a political, social, economic construct that is not exclusively tied to facial features. You cannot tie this to the mathematics of your face or of your genes.

"I should mention the history of biometric data collection […] It has always touched discrimination and even the mass murder of Romani people. When we think about the history of biometric data collection, we have to go back to the Holocaust. […] The first human experiments were done on Roma and Sinti people in Auschwitz. How were these people identified? People […] who they estimated to be Romani and then measuring their faces with rulers. And then suddenly people were taken into concentration camps […] [as part of] an ideology and a regime that aims to completely erase Romani people from earth. […] The use of certain technology [like facial recognition] is based on premises that are – and I'm sorry to say it – but are just bullshit."

Uses of biometric mass surveillance today – like facial recognition in public spaces – are reproducing these same assumptions and prejudices. Marginalised and minoritised groups are repeatedly used as the 'testing grounds' for new technologies. Benjamin continued by explaining how these sorts of false assumptions about identity are linked to wider issues of discrimination and persecution, including on the basis of people's personal data:

"I hate that I need to live in a world where I feel like I have to hide my Roma identity because this very identity can be used against me […] Having governments using this identity or data about Roma in that way is totally unacceptable. We should be proud of our identity […] [But] we have plenty of examples that in the wrong hands, data about Roma will be used against us."

He also tied this mass gathering of people's facial and bodily data to structural issues of government surveillance and informed by the philosophy of the "panopticon":

"European governments have a fetish, let's say, for surveillance. In Germany, police retrospectively identified footage from the G20 protests to identify protesters. Why have the freedom to go to a protest if this can be used against you? Control is easier if you watch people and they know they are being watched.

"The scary thing is that the infrastructure is already here….it's already being used … in many cases, we do not even know it is happening."

This is leading to a perfect storm of racialised policing and racist justice systems; a recent report has shown the extent of anti-Roma discrimination in European criminal justice systems.

Whose safety are we talking about?

Another key issue exposed in this webinar was the fact that whilst discourse about the need for public facial recognition is often centered on "safety" and "security", this framing exacerbates existing structures of inequality, in which certain lives are assigned less value, less importance, less deserving of safety – and even constructed as a threat to other people's safety.

Everything from facial recognition tech to search algorithms are coded to tie Romani identities

to criminality showing that the proliferation of biometric mass surveillance technologies does not have Romani people's safety in mind. In fact, it can exacerbate structural racism and other forms of discrimination against marginalised groups. Roxy explains:

"The argument for the collection of the data, for that surveillance … is safety. Whose safety are we talking about? Romani people's safety it isn't. … We are not the perpetrators in history.

"[These practices are] based on the premises of the developers and the safety definition of the developers. … This is why the intersectional perspective is so important, [otherwise] it will always be based on the safety of white people. … We need to start to discover and dismantle the ideologies underlying the technology… "The whole system is made for white people and white people's safety. … We have to shift the paradigm of who is criminal and who is not"

This allowed us to think through some really deep structural questions: what does a non-biased world look like? Is it possible? What does non-biased even mean in reality, and how would we get there? Both Benjamin and Roxy used this opportunity to flag how issues of biometric mass surveillance intersect with other structural inequalities: Ben, for example, has researched the problems relating to algorithmic risk scoring and deciding of prison sentences. And Roxy pointed to the inhumanity of using facial recognition technology at borders to refuse safe transit for people fleeing from threats to their lives – and this can include Romani people if they are marked out as 'criminal' by facial recognition algorithms.

We also know that biometric mass surveillance repeatedly focuses on identifying and persecuting petty crimes (parking fines, littering, loitering), over serious state and white-collar crimes (financial crimes, genocide, war). By unpacking this, we may be able to start shifting the discriminatory gaze that has been encoded through the use of facial recognition tech.

The Future

Through this conversation we were able to identify many threats and risks posed by facial recognition technology, the discussion about discrimination and inequality also allowed us to look at the points at which we might be able to drive positive change. Benjamin notes that one way to do this could be by resisting the use of algorithms for criminal justice purposes and other harmful uses (as EDRi has also advocated):

"There's a lot of strain on the legal system in Europe … which makes justice not always fast. With the technological boom that we're in, this paradigmatic shift, it's going to make things slower. [The criminal justice system is] not ready to deal with the incoming cases. Roma NGOs and civil society are equally disconnected from the decision-making, which makes us in a way sitting ducks in this situation. We are just waiting for the things to happen, and it's particularly challenging. Technological racism, technological discrimination is particularly challenging for realising Roma rights"

Roxy further points to the opportunities offered by taking an intersectional approach, from which the digital rights community can learn:

"Romani people can be black, can be LGBTIQ people, can be women, can be children, can be whatever. So there is a broad range of communities tied to this issue when we are talking about Romani rights and the digital environment"

"So whose responsibility is it to include the Romani communities? It's the responsibility of those who are privileged enough. So tech experts, tech companies, maybe from the side of private companies, maybe from the side of policy-makers, they need to empower Romani communities to have a say in this, and everything that that means: to give up resources – or to share resources with them – share privileges, share digital literacy resources, support those communities and legislators in their digital emancipation and take away the shame from it. … [It's ridiculous that] Elon Musk is trying to get to Mars while other people are like 'I barely know how to use my iPhone!'"

So why should anyone that cares about equality and justice care about the rise in facial recognition and biometric mass surveillance? Benjamin draws a comparison to the climate crisis, which humans have known about for 100 years

and have only recently started to act upon en masse, but should have done so much sooner:

"Now is the time to protect our communities, build our justice system, contribute to legislation. We all need to have a voice in which direction we want technology [to go]: efficiency-centred, or human-centred with fundamental rights as a cornerstone?"

Benjamin and Roxy concluded that there are many tangible steps that we can take to achieve this. From ensuring that Romani people are in policy positions and leadership roles, to increasing digital literacy and removing the shame for those that currently feel left behind. From more research to truly understand the gaps, to funding, coalition-building, education and empowerment of Romani NGOs. By better understanding the issues facing Romani communities, we will all be better equipped to fight for digital rights.

For more information see our blog "Roma rights and biometric mass surveillance" for all this and more".

Chapter 5

Best practice and case law

6.1. Best practice

National Strategy for Equality, Inclusion and Participation of Roma People 2021-2030

This Strategy, which was passed by the Council of Ministers in November 2021, is the principal political framework for Roma people, which includes objectives, indicators and goals, as well as guidance for the various public administrations responsible for ensuring equality and socio-economic inclusion of Roma people; a specific framework that responds to the need to tackle the situation of disadvantage, inequality and discrimination bearing down on the Roma population.

We applaud the comprehensive approach to the strategy compared with the previous version, bolstering social inclusion objectives and **fully including the fight against discrimination, gender equality and participation of the Roma people.**

Education, employment, health and housing remain key areas for the social progress of the Roma people. One of the key new features of the strategy, and something that we have defended at Fundación Secretariado Gitano, is that the socio-economic inclusion of Roma people can only be achieved through combating the persistent poverty rates, including child poverty. We are pleased to see the inclusion of these objectives and their corresponding indicators in this document.

Fundación Secretariado Gitano has argued that priorities must be addressing academic failure and school segregation, eradicating slum living, raising the employment rate, particularly among young people, reducing precarious employment, supporting street selling and making it more professional, promoting gender equality and helping Roma women to join the labour market.

We are particularly pleased that the Strategy has a **specific axis on Equality (Axis 2.4) dedicated to combating discrimination and antigypsyism,** and to promote equality between men and women and to recognise the Roma culture.

As a member of the State Council for Roma People, we have been actively involved in preparing the Strategy, and we are grateful to the Ministry of Social Rights and the 2030 Agenda to establish the channels for engagement. We are confident that there are necessary resources to implement the Strategy, particularly in a framework of financing opportunities such as the present one, and a joint governance system led by the Ministry of Social Rights and the 2030 Agenda, where the commitment of the regional and local administrations will be galvanised, as well as the role of the Roma associative movement. It is expected that the Strategy will crystallise in two Operational Plans spanning the period (2021-2025, 2026-2030), where we hope to see the necessary measures to meet the 2030 targets developed.

The Strategy can be read at:

https://www.mdsocialesa2030.gob.es/derechos-sociales/poblacion-gitana/docs/estrategia_nacional/Estrategia_nacional_21_30/estrategia_aprobada_com.pdf

[The #CMin approves the National Strategy for Roma Equality, Inclusion and Participation 2021-2030]

Protocol to combat illegal hate speech online

EThe "Protocol to Combat Illegal Hate Speech Online" was published in March 2021, as a guide for cooperation and collaboration between civil society institutions and internet service providers to prevent, eradicate and combat illegal hate speech online.

The Protocol is inspired by the Code of Conduct signed by the European Commission in 2016 with internet companies in Commission Recommendation (EU) 2018/334 on measures to effectively tackle illegal content online, and is based on Spanish legislation in force in this area.

It was created through cooperation with all signatories, on the institutional side: the General Council of Judicial Power, the State Public Prosecutor's Office, the Ministry of Justice, the Ministry of the Interior, the Ministry of Education, the Ministry of Social Rights and the 2030 Agenda, the Ministry of Equality and combating gender violence, the Ministry of Culture and Sport and the Ministry of Inclusion, Social Security and Migration.

The following civil society platforms were involved in preparing it: Forum for the Social Integration of Immigrants.

The Protocol aims to make a contribution to combating hate messages that muddy public debate and the exchange of information, opinions and ideas online. It will help to make the internet a safer place where racism, xenophobia and intolerance having an ever decreasing platform.

The Protocol can be read here:

https://www.inclusion.gob.es/oberaxe/ficheros/ejes/discursoodio/PROTOCOLO_DISCURSO_ODIO.pdf

The EU publishes the 6th evaluation of the Code of Conduct for countering hate speech online

In October 2021, the European Commission published the results of its sixth evaluation of the Code of Conduct to counter illegal hate speech online. The results offer an ambiguous outlook, since internet companies (such as Twitter, Facebook, YouTube, etc.) reviewed 81% of reports in 24 hours and removed an average of 62.5% of reported content. These results are lower than the average recorded in 2019 and 2020. Although certain companies have improved, the results of others have clearly worsened. Akin to monitoring rounds in previous years, one of the main weaknesses continues to be the lacklustre response to reporting from users. New in the evaluation this year is the information provided by internet companies on the measures taken to counter hate speech, including actions to automatically identify this content.

The sixth evaluation shows that, on average, internet companies evaluated 81% of reports in less than 24 hours, which is lower than the 2020 average of 90.4%.

Internet companies removed 62.5% of content reported, which is lower than the average figure of 71% recorded in 2019 and 2020.

The removal rates changed according to the severity of the hate content. Only 69% of content calling for murder or violence against specific groups was removed, and 55% of content using defamatory words or image directed at certain groups. On the contrary, in 2020 these figures were 83.5% and 57.8%, respectively. Interestingly, this year Facebook and YouTube removed less content than the previous year, and Twitter, which used to be known for removing very few hate messages, removed more than last year, rising from 36% in 2020 to 50% in 2021.

IT companies responded to 60.3% of notifications received, which is lower than the previous year monitored (67.1%).

In this monitoring round, sexual orientation is the most common motivation for inciting hate (18.2%), followed by xenophobia (18%) **and antigypsyism (12.5%).** This data shows two things: on the one

hand, **antigypsyism hate speech continues to be broadly present throughout Europe (the previous year, it was the third cause of hate), and this kind of hate speech has increased form 10% of cases to 12.5% (i.e. 568 of reported cases were anti-Roma hate speech).**

In the case of Spain, **Fundación Secretariado Gitano (FSG) has taken part in the monitoring round once again, greatly building on the results from previous years, with 177 reported cases**[1] (108 in 2020), a caseload only beaten by OBERAXE, which reported 290 cases. This Spanish Ministry of the Interior, which was involved in the monitoring round for the first time, reported 150 cases, FELGTB 85 cases and Plataforma Khetané, which also joined this year, 37 cases. The removal rate of the Spanish cases is 68.2%, i.e. 6 points higher than the European average (62.5%), and 22 points more than the previous year, which is a vast improvement. **FSG managed to remove 72% of its cases, 4 points higher than the Spanish average.**

FSG is pleased with how these monitoring rounds are carried out, because they are a tool for companies to improve their policies of controlling online hate speech and to offer **greater visibility to the reality of antigypsyism on social media,** making companies and wider society more aware of this reality and helping to improve how hate content is managed, one of the greatest discrimination issues in the present day.

Summary of results:

https://ec.europa.eu/commission/presscorner/detail/en/fs_21_5106

1 - See the Social Media section of the Discrimination Cases section of the online version of this report.

CEDRE recommendation on encouraging the reporting of racism, racial discrimination, xenophobia, anti-Semitism, anti-Black racism and related forms of intolerance and special protection of vulnerable victims

The Recommendation on encouraging reporting of racism, racial discrimination, xenophobia, anti-Semitism, anti-Black racism and related forms of intolerance and special protection of vulnerable victims was approved by the Plenary of the Council for the Eradication of Racial or Ethnic Discrimination on 17 December 2021. Fundación Secretariado Gitano was involved in its drafting, as a member of the CEDRE Study and Analysis Group.

The Recommendation aims to guarantee the protection of victims of racial or ethnic discrimination and hate crime by public administrations, particularly in five areas:

1. **In social and judicial action,** it should be easier to report vulnerable people when they are victims of discrimination and hate crime, whether due to racist, xenophobic, anti-Semitism, antigypsyism, anti-Black racism or other forms of tolerance, and particularly people who are social excluded, in an irregular administrative situation or in the process of renewing their official documents.

2. **In the security forces,** progress should continue to provide training to police officers on racial, ethnic and cultural diversity in Spanish society, placing special focus on people from vulnerable groups who report hate crimes or discrimination.

3. **In legislation,** we urge reform to Spanish Basic Law 4/2000, of 11 January, on the rights and freedoms of foreign nationals in Spain and their social integration, to give victims of hate crime who are in an irregular administrative situation special protection from sanctions proceedings.

4. In terms of **public policy against discrimination** and hate crime, we recommend that the authorities intensify their efforts to promote awareness campaigns.

5. The Recommendation urges special attention to be paid to multiple and **intersectional**

discrimination in all areas, especially services that deal with discrimination or hate crime, and members of the legal sector (public prosecutor, judiciary).

The Recommendation can be read at:

https://igualdadynodiscriminacion.igualdad.gob.es/novedades/novedades/2021/pdf/Recomendacion_del_CEDRE_sobre_fomento_de_la_denuncia_y_especial_proteccion_de_victimas_aprobada_en_el_Pleno_del_Consejo_del_17_de_diciembre.pdf

Council Recommendation of 12 March 2021 on Roma equality, inclusion and participation (2021/C 93/01)

This important recommendation, prepared following evaluation of the European framework for national Roma inclusion strategies for 2020, explains the need to renew and reinforce the commitment to Roma equality and inclusion. The recommendation is focused on **guaranteeing specific attention to eradicating discrimination**, including fighting antigypsyism and in the four areas of socio-economic inclusion: education, employment, health and housing. It also proposed reflecting on the needs of specific groups and the diversity of Roma people, involving them in the design, application, monitoring and evaluation of equality and inclusion strategies for Roma people; improve target setting, data collection, monitoring and presentation of reports, and making general policies more sensitive to Roma equality and inclusion. It also proposes special attention to the gender perspective.

More specifically, in terms of effectively preventing and combating discrimination, **antigypsyism and social and economic exclusion, and their profound causes, it proposes the following measures:**

a) Measures to effectively combat direct and indirect discrimination, such as **facing harassment, antigypsyism, stereotypes, anti-Gypsyist rhetoric, inciting hate, hate crime and violence against Roma people, including inciting violence.**

b) Measures to develop and promote a global support system for victims and to **offer assistance to Roma people who are victims of hate crime and discrimination.**

c) Measures to **combat intersectional and structural discrimination against Roma people** and, in particular, against women, young people, children, LGBTQI people, the elderly, disabled people, stateless people and displaced Roma people within the EU

d) Measures to raise awareness about the relationship between efforts to combat anti-discriminatory practices and efforts to **combat antigypsyism and socio-economic exclusion**, as part of a common effort to promote the general aim of equality

e) Measures **to analyse and acknowledge the existence of antigypsyism** and discrimination against Roma people and to raise awareness about these phenomena.

f) Measures to promote multicultural awareness campaigns and activities in schools.

g) Measures to promote knowledge of Roma cultures, language and history, including commemorating the Roma Holocaust and sharing the process of reconciling society.

h) Measures to encourage positive narratives about Roma people and Roma reference models, as well as a better understanding of the difficulties facing Roma people, also through support for intra-Community meetings and intercultural learning.

The Recommendation can be read at:

https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32021H0319(01)&from=EN

Materials on Roma History and Culture for Secondary Education. Educating to combat antigypsyism. Ministry of Education and Professional Training, 2021.

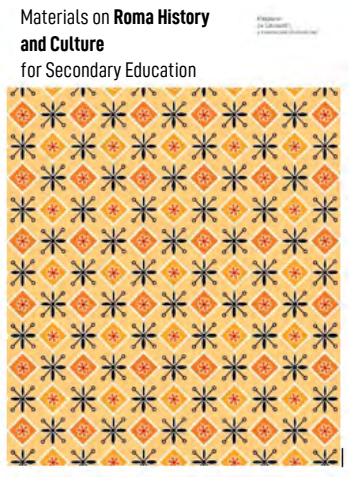
This material, together with prior publications on education and Roma people published by the Ministry of Education and Professional Training, is the product of the initiative of the Education Group of the Roma State Council, which includes representatives of the Roma associative movement, in conjunction with the Ministry itself. The Education Working Group, in conjunction with the National Roma Inclusion Strategy 2014-2020, has been calling for the appropriate inclusion of Roma history and culture in the school curriculum to highlight their contribution to Spanish society and reinforce a positive view of Roma people, counteracting and eradicating prejudice and stereotypes. They have been promoting learning resources to help facilitate this goal.

We are pleased to see that this material,

which is part of teachers' basic reference material, particularly for secondary education and professional training, there is an extensive chapter on educating against antigypsyism, with full analysis of this kind of racism and plenty of exercises to do with pupils.

The Guide can be read here::

https://sede.educacion.gob.es/publiventa/materiales-sobre-historia-y-cultura-del-pueblo-gitano-para-educacion-secundaria-educar-frente-al-antigitanismo/educacion-secundaria-mundo-gitano/25684



CONSEJO PARA LA ELIMINACIÓN DE LA DISCRIMINACIÓN RACIAL O ÉTNICA

Activities and impact of the Assistance and Guidance Service for Victims of Racial or Ethnic Discrimination in 2021.

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

Its objectives are:

1. To provide technical assistance 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.

On 26 March 2020, a new contract signed with the state to provide the service, with the coordination of Fundación Secretariado Gitano, for a two-year period. Between 1 January 31 and December 2021, Fundación Secretariado Gitano coordinated the service together with eight other organisations (ACCEM, CEAR, the Spanish Red Cross, Fundación Cepaim Acción Integral con Migrantes, Movimiento contra la Intolerancia, Movimiento por la Paz, MPDL, Red Acoge and Asociación Rumiñahui) through a network of 20 official offices and more than

100 points of contact (present in all autonomous regions and in 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 860 cases of racial or ethnic discrimination, of which 528 were individual cases and 332 were group cases. Of these cases, 360 women were identified and 256 men.**

During 2021, 128 actions were organised and implemented, with a total impact of around 3,200 people. Of these 128 actions, 87 were principally for potential victims of racial or ethnic discrimination (2,475 people), and 41 actions were for key professional agents (725 professionals). In addition, the Service organisations implemented generic communication and awareness activities for different audiences (web information, distributing leaflets and posters, posting on Twitter, making a video about the Assistance Service, taking part in interviews and press, radio and state television events, the scope of which is difficult to determine in terms of the exact number of people or organisations reached.

In order to encourage more reporting of discrimination, the Victims' Assistance Service of the Council for the Eradication of Racial or Ethnic Discrimination (CEDRE) launched a **#DenunciaElRacismo** [report racism] for the purpose of raising awareness of the ways that the Council provides for reporting: their offices, the free telephone line [+34] 900 2030 41 and WhatsApp on [+34] 628 86 05 07. The campaign was focused on drawing attention to the new posters that are available in 10 language (Spanish, English, French, Chinese, Arabic, Romanian, Galician, Basque, Valencian and Catalan). Along with the posters they distributed stickers with the free telephone number [+34] 900 20 30 41and the WhatsApp number [+34] 628 86 05 07.

The campaign distributed 15,000 posters with the aim of encouraging more reporting across the country, and making it easier for potential victims to identify racial or ethnic discrimination. The target audiences of these posters were health centres, bar associations, public prosecutors' offices, police stations and colleges and schools.

All the **#DenunciaelRacismo** posters are available to download for free on the website of the Council for the Eradication of Racial or Ethnic Discrimination:

https://igualdadynodiscriminacion.igualdad.gob.es/novedades/novedades/2021/Carteles_denuncia_el_racismo_Consejo.htm

6.2. Case law

In this section we choose a selection of judgments handed down by the European Court of Human Rights in 2021 in cases of discrimination against Roma people.

LACATUS V. SWITZERLAND

In this case, the applicant, a Romanian citizen from the Roma community, was ordered to pay a fine of 500 Swiss francs (approximately €464) for begging in a public place in Geneva, and was detained in prison for five days due to failure to pay the fine. The applicant argued that the ban on begging in public places was an unacceptable encroachment into her private life, since they had rendered her with no means to survive.

The court found that article 8 of the Convention (the right to respect for private life) had been violated, and that the fine had violated the human dignity of the applicant and undermined the essence of the rights protected by article 8 and that, as a result, the state had been excessive in its margin of appreciation in this case.

The Court observed that the applicant, who was illiterate and came from an extremely poor family, was not employed and did not receive benefits from the state. For her, begging was a survival method. Since she was clearly in a vulnerable situation, the applicant had the inherent right to her human dignity and to be able to transmit her situation and try to satisfy her basic need by begging.

The court also found that the penalty imposed on the applicant was not proportionate to the aim of combating organised crime or of protecting the rights of pedestrians, residents and businesses.

PASTRAMA V. UKRAINE

The applicant in this case alleged that officers of the state were involved in the destruction of a Roma camp where she lived and that there had not been an effective investigation.

The Court upheld that article 8 of the Convention had been violated (right to respect for private life), due to finding that the Ukrainian authorities had not reacted appropriately to the incident by conducting an investigation that fulfilled their obligation to guarantee the effective respect for the applicant's private life. However, it found that the minimum severity level required for the issue to be within the scope of article 3 of the Convention (freedom from inhuman or degrading treatment) had not been reached. As a result, it declared that the applicant's complaints under article 3 were inadmissible, due to being manifestly unfounded.

TERNA V. ITALY

The applicant in this case complained that she had been separated from her granddaughter, who was taken to social services (the child had lived with her since birth), and who had prevented her from exercising her right of access to visit her, as granted by the national courts. We believed that her situation was the result of the stigmatising of the child's family, because they were a Roma family.

The Court upheld that article 8 of the Convention has been violated (the right to respect of private and family life), and recognised that the Italian authorities had not made sufficient effort the ensure that the applicant's rights were respected, and that her right to respect of her family life had been undermined. It was stressed that the applicant had constantly tried to made contact with the child since she was placed in a children's home in 2016, and in spite of various court rulings, she was not able to exercise her right to visit the child.

The Court found that the authorities allowed a de facto situation to take place for a certain amount of time, contrary to the decisions made by the courts, ignoring the long-term effects that permanent separation of the child from her caregiver—the applicant—may have.

However, in this case the national courts did not use motives relating to the ethnic origin of the child and her family to justify the decision. As such, the Court held that there was no violation of article 14 (prohibition of discrimination).

MEMEDOV V. NORTH MACEDONIA

In June 2021, the European Court of Human Rights (ECHR) ruled in favour of a Romani man who was physically assaulted by police officers in a racist attack during a violent raid in Topana, a Romani neighbourhood of Skopje, North Macedonia. The incident took place in 2013 when specialist police units carried out a raid using force that the complaint described as "excessive and arbitrary". Around 50 police officers used force against the Romani people on 5 May, attacking people indiscriminately, including women, during the operation to locate a single suspect. The Romani people in Topana explained that the officers forcefully entered various homes and shops without offering any explanation, harassing and pushing people, even in the presence of children. The Romani people said that the police officers kicked them, punched them, and hit them with batons. Around 10 Romani people were attacked, including three women. The Romani man complainant was in a shop when the police entered suddenly and attacked him. He was kicked and hit by various officers, who also proffered anti-Gypsyist racist slurs.

The court concluded that the state authorities violated article 14 (no discrimination) interpreted in conjunction with article 3 of the Convention, since the applicant's allegations of racially motivated police brutality were not investigated. The Court ordered the State to pay the applicant €3,000 within three months.

This is one of many cases of police brutality against Romani people in North Macedonia. The evidence in this case showed that, once again, rather than protecting the rights of Romani people, the Macedonian police are entrenched in institutional discrimination and violence against them. This case contains two of the most common failings of public order forces when it comes to Roma people throughout Europe: racist violence and failure to conduct an effective investigation. These are the most visible and common manifestations of antigypsyism in all of Europe.

ECHR rulings in cases that have affected Roma people can be found at:

https://www.echr.coe.int/documents/fs_roma_eng.pdf

Chapter 6

Appendices

Appendix I:

Current legislation on equal treatment and non-discrimination

Domestic

- Act 15/2022 Comprehensive Law for Equality of Treatment and against Discrimination
- Act 4/2015, of 27 April, on the Statute for victims of crime.
- Basic Act 1/2015, of 30 December, amending Basic Act 10/1995, of 23 November, on the Criminal Code.
- Act 19/2007, of 11 July, against violence, xenophobia, racism and intolerance in sport.
- Basic Act 3/2007, of 22 March, on effective gender equality.
- Act 62/2003, of December 30, on tax, administrative and social order measures. (Chapter III: "Measures to apply the principle of equality").
- Royal Legislative Decree 5/2000 of 4 August, approving the consolidated Act on Social Infractions and Sanctions.
- Basic Act 4/2000, of 11 January, on the rights and freedoms of foreign nationals in Spain and their social integration.
- Practical protocol for Security Forces when dealing with Hate Crime and Conduct that Violates Statutory Discrimination Rules. Official Bulletin of the Civil Guard, no. 1, section 1, page 51-108, 7 January 2015.
- Action plan to combat hate crime. Ministry of the Interior. 2019.

https://www.interior.gob.es/opencms/pdf/servicios-al-ciudadano/Delitos-de-odio/descargas/PLAN-DE-ACCION-DE-LUCHA-CONTRA-LOS-DELITOS-DE-ODIO-english-version.pdf

European Union

- Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law.
- Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).
- Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services.
- Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.
- Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

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

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

International

- Instrument of Ratification of the Convention on the Rights of Persons with Disabilities, made in New York on 13 December 2006, ratified by Spain on 23 November 2007. (Official State Gazette no. 96, of 21 April 2008).

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

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

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

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

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

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

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

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

- Convention on the Elimination of All Forms of Discrimination against Women, Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979 (CEDAW).

- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by General Assembly resolution 45/158 of 18 December 1990.

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

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

- Convention concerning Discrimination in Respect of Employment and Occupation, adopted on 25 June 1958 by the General Conference of the International Labour Organisation in its forty-second session.

- Declaration on Race and Racial Prejudice, approved by the General Conference of the United Nations Educational, Scientific and Cultural Organisation on 28 November 1978.
- Convention against Discrimination in Education, adopted on 14 December 1960 by the General Conference of the United Nations Educational, Scientific and Cultural Organisation.
- World Conference against Racism, 2001 (Declaration and Programme of Action).
- Declaration on the human rights of individuals who are not nationals of the country in which they live, adopted by General Assembly resolution 40/144 of 13 December 1985.

Appendix II

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

- Amnesty International

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

- Council of Europe. Roma Unit.

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

- Equinet

http://www.equineteurope.org/

- ENAR

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

- ECRI

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

- ERIO

http://www.erionet.eu/

- EUROMA

http://www.euromanet.eu/

- EU DG Justice

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

- European Roma and Travellers Forum http://romapolicy.eu/

http://www.ertf.org/

- European Roma Policy Coalition

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

- European Roma Rights Centre

http://www.errc.org/

- Fundamental Rights Agency FRA

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

• International Roma Women Network

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

• Open Society Foundations

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

• Osce-Odhir Roma and Sinti

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

• Policy Center

http://www.policycenter.eu/

• Roma Education Fund

http://www.romaeducationfund.hu/

• Roma Youth Action Plan

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

• Roma women

http://romawomen.org/

• Romed

http://coe-romed.org/

• Romea news

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

• Lengua Romaní

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

• European Court of Human Rights http://www.echr.coe.int/Documents/FS_Roma_ENG.pdf

• Heidelberg University Department of antigypsyism Studies.

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

• Romani Studies Program. Central European University. https://romanistudies.ceu.edu/

APPENDIX III

Legal texts and documents adopted by European and international institutions on antigypsyism and papers on antigypsyism

Council of Europe:

Thematic report on combating antigypsyism, hate speech and hate crime against Roma

Declaration of the Committee of Ministers on the Rise of antigypsyism and Racist Violence against Roma in Europe

ECRI:

Recommendation n°. 3 on combating racism and intolerance against Roma people

Recommendation 13 on antigypsyism:

https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/recommendation-no.13

European Parliament:

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

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

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

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

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

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

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

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

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

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

United Nations

CERD General Recommendation XXVII on Discrimination Against Roma

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

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

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

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

Books and papers on antigypsyism

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Fundación Secretariado Gitano

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

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