Racism and related discriminatory practices in employment in Spain

Andrea Spitálszky
Racism is a reality in the lives of many ethnic and religious minorities in the EU. However, the extent and manifestations of this reality are often unknown and undocumented, especially in official data sources, meaning that it can be difficult to analyse the situation and to establish solutions to it.

The ENAR Shadow Reports are produced to fill the gaps in the official and academic data, to offer an alternative to that data and to offer an NGO perspective on the realities of racism in the EU and its Member States. NGO reports are, by their nature, based on many sources of data - official, unofficial, academic and experiential. This allows access to information which, while sometimes not backed up by the rigours of academic standards, provides the vital perspective of those that either are or work directly with those affected by racism. It is this that gives NGO reports their added value, complementing academic and official reporting.

Published by the European Network against Racism (ENAR) in Brussels, March 2014, with the support of the European Union Programme for Employment and Social Solidarity - PROGRESS (2007-2013), the Open Society Foundations, and the ENAR Foundation.

PROGRESS is implemented by the European Commission. It was established to financially support the implementation of the objectives of the European Union in the employment, social affairs and equal opportunities area, and thereby contribute to the achievement of the Europe 2020 Strategy goals in these fields. The seven-year Programme targets all stakeholders who can help shape the development of appropriate and effective employment and social legislation and policies, across the EU-27, EFTA-EEA and EU candidate and pre-candidate countries. For more information: http://ec.europa.eu/progress

The Open Society Foundations work to build vibrant and tolerant societies whose governments are accountable and open to the participation of all people. For more information: http://www.opensocietyfoundations.org/

The information contained in this publication does not necessarily reflect the position or opinion of the European Commission or of the Open Society Foundations.

ENAR reserves the right not to be responsible for the accuracy, completeness or quality of the information provided in this report. Liability claims regarding damage caused by the use of any information provided, including any information which is incomplete or incorrect, will therefore be rejected.
Executive summary

This report provides information on the discrimination in employment against migrants, ethnic and religious minorities in Spain. The aim of this report is to contribute to knowledge and to provide insight from activists and professionals on the ground working to combat racism and discrimination in Spain as an advocacy tool by which to influence policy. This report takes a narrower focus than previous reports, by exploring the situation of racism and discrimination in the field of employment in Spain for the period of March 2012 to March 2013. The results will be used at national level to influence policy developments and will be further compiled into a European comparative report to influence European policies. With improved statistical and comparative data, the Shadow Reports will have a demonstrable impact for changing policy and bringing about necessary policy reforms.

The economic crisis in Spain affects more seriously migrants and the Roma community which have higher unemployment rates than the native population. Due to unemployment, many migrants have lost their residence and work permits and have been classified as irregular migrants. Many Roma people have restricted access to jobs or work in badly paid, temporary activities with poor working conditions due to their low level of qualifications.

Spanish legislation transposed the Council Directives\(^1\), but the law regulates only discrimination based on racial or ethnic origin, religion or belief, disability, age or sexual orientation, while discrimination based on nationality is not included in the Act. In 2012 the Congress of Deputies did not adopt the bill on a comprehensive anti-discrimination law.

Although the social acceptance of migrants has improved, there are still serious prejudices against the Roma and Muslim communities. Xenophobic political discourse and hate speech was on the rise in the covered period. The media often disseminates negative stereotypes against Roma and Muslims, linking the former with crimes and the latter with religious extremism.

Due to the prejudices and social stigma, migrants, Roma and Muslims are often discriminated in employment. Migrants often work in less qualified positions and have lower salaries than their native colleagues. Roma candidates are often rejected without considering their qualifications due to the negative stereotypes associated with them, and the discriminatory practices undermine their ambitions to find a job, having a negative effect on their self-esteem. Muslims, especially women, face difficulties in accessing employment since employers often reject candidates wearing religious symbols or are forced to take their veil off. Practicing Muslims have difficulties reconciling their religious customs in the workplace, particularly during the month of Ramadan.

In March 2012, the government adopted the National Roma Integration Strategy in Spain 2012–2020\(^2\); an ambitious policy tool for the inclusion of the Roma community, but unfortunately in 2012, no significant steps were taken for its implementation. Victims of

---


discrimination are often reluctant to report the grievance due to the complicated bureaucracy, the small number of convictions and the fear of reprisal. Neither victims, nor judges, are familiar with the non-discrimination legislation which is rarely applied in the jurisdiction. The Spanish equality body, the Council for the Promotion of Equal Opportunities and Non-Discrimination on the Ground of Ethnic and Racial Origin, is not independent and has a weak mandate. In 2012, the Network of Assistance Centres for Victims of Discrimination linked to the equality body was paralysed due to lack of funding.\(^3\)

**Recommendations:**

**Statistics:**
- The concept of “national minority” should be defined by law and official data should be gathered on the ethnic composition of the population.

**Legal framework:**
- A comprehensive anti-discrimination law should be adopted which would extend the prohibition of discrimination to all grounds, including nationality and origin.

**Perceptions of discrimination in employment:**
- Political parties should implement sanctions against its members who use racist or xenophobic discourse.
- The media should disseminate programmes on migrants, Roma and Muslims which would sensitise society and contribute to the mitigation of prejudices and negative stereotypes.
- Hate speech and xenophobic discourse disseminated on the Internet should be persecuted and punished.

**Incidence of discrimination in employment:**
- Data should be gathered on the incidence of discrimination in employment and a comprehensive and transparent database of the cases should be established by the State.

**Public policies:**
- The government should guarantee that the Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia and Related Forms of Intolerance is sufficiently financed and properly implemented.
- The government should guarantee the funding of the Forum for the Social Integration of Immigrants so that it can smoothly carry out its work.

**Judicial remedies:**
- Awareness-raising should be carried out so that victims of discrimination are aware of their rights.
- Trainings should be organized for the judiciary to enable familiarisation of the anti-discrimination legislation.

---

Non-judicial remedies:

- The Council for the Promotion of Equal Opportunities and Non-Discrimination on the Ground of Ethnic and Racial Origin should be reformed so that it becomes an independent body with an extended mandate to carry out investigation, issue binding decisions, intervene in litigation and assess cases of discrimination based on any of the foreseeable grounds.

- Awareness-raising campaigns should be launched so that victims of discriminations learn about the Council’s work.
# Table of contents

Executive summary .................................................................................................................. 2
Table of contents ................................................................................................................... 5
1. Introduction ......................................................................................................................... 6
   1.1 Definitions ......................................................................................................................... 6
   1.2 Statistical overview ........................................................................................................... 7
2. The context: labour market and legal framework .................................................................. 8
   2.1 Outlook of the labour market ............................................................................................ 8
   2.2 Legal framework ............................................................................................................... 11
3. Manifestations of racism and structural discrimination in employment .............................. 14
   3.1 Perceptions of discrimination in employment ................................................................. 14
   3.2 Incidence of discrimination in employment ................................................................. 15
   3.3 Patterns of inequality over the course of time ............................................................... 16
   3.4 Discrimination in access to employment ....................................................................... 17
   3.5 Discrimination in the workplace ..................................................................................... 19
   3.6 Economic sectors ............................................................................................................. 21
4. Tackling the challenges ........................................................................................................ 21
   4.1 Public policies ................................................................................................................ 21
   4.2 Access to effective remedies .......................................................................................... 24
   4.3 Civil society initiatives .................................................................................................... 29
   4.4 Individual employers’ initiatives ..................................................................................... 31
5. Conclusions and recommendations ..................................................................................... 31
   5.1 Political and societal developments related to racism and discrimination .................... 31
   5.2 Conclusions and recommendations ................................................................................ 33
6. Bibliography ......................................................................................................................... 34
1. Introduction

Racism is a reality in the lives of ethnic and religious minorities in Spain. The extent and manifestations of this fact are often unknown and undocumented, especially with regard to official data sources. As a consequence, it can be difficult to analyse the situation and to establish solutions. Even when there is extensive official data, NGOs offer a vital alternative data source which comes directly from the experiences of individuals and communities experiencing racism on a daily basis. The ENAR Shadow Reports have become a major tool for monitoring the situation of racism and xenophobia in EU Member States. Both ENAR’s national and European Shadow Reports have proved to be an invaluable documented starting point for strategic and coordinated action, particularly for anti-racist civil society advocacy towards national governments, the European institutions, bodies and the media.

The aim of this report, therefore, is to contribute to knowledge and to provide insight from activists and professionals on the ground working to combat racism and discrimination in Spain as an advocacy tool by which to influence policy. This report takes on a more narrow focus than previous reports, by exploring the situation of racism and discrimination in the field of employment in Spain for the period of March 2012 to March 2013 although developments initiated in an earlier stage which have an effect in the covered period are also mentioned in the report. The results will be used at national level to influence policy developments and will be further compiled into a European comparative report to influence European policies. With improved statistical and comparative data, the Shadow Reports will have a demonstrable impact for changing policy and bringing about necessary policy reforms.

The report has five main chapters. The first chapter provides an overview of the legal definitions of migrants, ethnic and religious minorities and of the composition of their communities. The second chapter gives a general description of the employment situation of the three groups and outlines the legal framework addressing discrimination and equal treatment in employment. The third chapter provides information on the manifestations of racism and structural discrimination in employment against migrants, the Roma and Muslims. The fourth chapter covers the different channels through which discrimination in employment is tackled in Spain and presents some good practices of the civil society in the fight against discrimination. Finally, after the conclusion, recommendations are enumerated for the different stakeholders.

1.1 Definitions

In the legal framework, migrants (foreigners) in Spain are those who do not hold the Spanish citizenship. The concept of “national minority” is not defined by the Spanish legislation. In Spain there is a significant Roma population who first arrived to this country in the 15th century. The Roma community has maintained its own culture although it is a culturally heterogeneous minority since it is made up of groups with different characteristics who still share common cultural features, such as family structure, value system, social organisation and language. Both the Constitution and the

---

7 Ibid.
Religious Freedom Act\(^9\) guarantees the freedom of ideology, religion and worship to individuals and communities and they state that no religion shall have a state character.\(^10\) Churches, confessions, the religious communities and their federations obtain legal status by registering in the Registry of Religious Entities of the Ministry of Justice.\(^11\) The registered religious entities enjoy full autonomy and they can establish their own rules of organisation, internal regime and rules for their staff.\(^12\) There are four religious communities which enjoy special status, namely the Catholic\(^13\), the Evangelical\(^14\), the Jewish\(^15\) and the Muslim\(^16\) religious entities, since the Spanish State has signed a State agreement\(^17\) with their respective federations and they are registered in the Special Section of the Registry of Religious Entities.

### 1.2 Statistical overview

2012 has been the first year that Spain’s population has decreased by 0.2% (113 902 people) and, as of 1 January 2013, it counted 46 704 314 inhabitants.\(^18\) 2012 was the second consecutive year when the number of migrants decreased (by 2.3%) although their number is still significant (5 118 112 people).\(^19\) The reasons behind the decline are various: due to the economic crisis, many of them might have decided to go back to their country of origin or to migrate to another country, while other might have obtained the Spanish nationality and therefore do not appear in the statistics as migrants anymore.\(^20\) The biggest migrant population in Spain are from Romania (773 122 people) followed by Morocco (756 946), Britain (319 163), Ecuador (286 964), Colombia (232 551), China (166 293), Bolivia (164 360), Germany (154 875) and Bulgaria (147 654).\(^21\) Although Romanian migrants make up the largest group in the migrant community, their number decreased significantly in 2012: 44.4% less Romanians migrated than the year before\(^22\) and 47% decided to leave Spain in 2012.\(^23\)

In Spain no official data exist on the ethnic composition of the population.\(^24\) As the Spanish legislation prohibits the collection of ethnically disaggregated data by the public authorities\(^25\), we can only rely

---

10. Article 16.3, Spanish Constitution.
19. Ibid., p.3.
22. Ibid., p.7.
23. Ibid., p.11.
25. Ibid.
on information gathered by NGOs, academics and research institutes. In Spain there is a significant Roma population. Due to the different calculation methods, estimates may range from 500,000 up to 1,000,000 people, although the Fundación Secretariado Gitano estimates the Roma population around 725,000 – 750,000 people. Although Roma people are distributed across Spain, 40% live in Andalusia and there is a more concentrated presence in Catalonia, Valencia and Madrid, where the majority settled down in urban areas. Due to the higher birth rates in the Roma community, their population is rather young; wherein minors aged below 16 years, amount to around one third of their community. There is a considerable migrant Roma population originating mainly from Romania and Bulgaria, although due to the lack of registries of ethnic origin of migrants, it is hard to estimate their number.

Catholicism has been deeply rooted in Spain throughout its history and in 2013 still 73.1% of the Spaniards consider themselves Catholic. In Spain, currently there are approximately 1,200,000 protestants, about two thirds of whom originate from abroad. Spain has a small Jewish community of about 40,000 members. In 2012, around 3% of the population belonged to the Muslim community (1,671,629 people), half of them were Moroccan citizens, while 20% were other migrants and only 30% were Spaniards. Muslim migrants mainly proceed from the Maghreb, West Sahara, and Middle East, while those who hold the Spanish citizenship might be nationals, nationalized, inhabitants from Ceuta and Melilla or natural descendents. The majority of the Muslims live in the autonomous communities of Andalusia, Catalonia, Madrid and Valencia, while the cities with the largest number of Muslim inhabitants are Barcelona, Ceuta, Madrid and Melilla.

2. The context: labour market and legal framework

2.1 Outlook of the labour market

The economy of Spain is still deeply affected by the economic crisis. One of the most tragic manifestations of it is the high unemployment rate that reached 27.16% by the beginning of 2013 (a total of 6,202,700 people are affected), the highest number since democracy was established and 2.3 lower compared to 2011, which is 2.5 times higher than the average EU-27 rate and one of

27 Ibid.
28 Ibid.
29 Ibid.
33 Unión de Comunidades Islámicas de España, Observatorio Andalusí, “Estudio demográfico de la población musulmana”, 2013, p.4.
34 Ibid.
35 Ibid., p.5.
highest in the European Union.\(^{38}\) At the end of 2012 over half of all unemployed people were classified as long-term unemployed, compared to 21.1% in 2008.\(^ {39}\)

The consequences of the economic crisis exacerbate its effects on migrants, Roma people and Muslims in Spain. Data for employment rates disaggregated by religion are not collected, but we can deduce the employment situation of migrant Muslims from the data available for migrants in general. Migrants’ activity rate is 75.19% which is 17 higher than the Spanish citizens’ (57.65%) due to the different age structure of the two groups,\(^ {40}\) but the unemployment rate of the migrant population is significantly higher than the native population: it reached 39.21% by the beginning of 2013 which is 14.1 higher than for Spaniards (25.11%).\(^ {41}\) The reasons are not rooted in their national origin but in the fact that they mainly work in the most affected economic sectors.\(^ {42}\) The migrant community is not homogeneous: African migrants are far more affected by unemployment (50%) followed by people originating from Latin America 29%.\(^ {43}\) Due to the scarcity of employment opportunities, there was a 54% decrease in the inflow of migrants in Spain compared with 2010.\(^ {44}\) It is noteworthy that more than 50% of those who work in the domestic service are migrants\(^ {45}\) as there are no quotas set for them in this sector.\(^ {46}\) The loss of employment had a further and more threatening effect on migrants of non-EU countries, mainly from Morocco and Latin America, who lost their residence and work permits and became irregular.\(^ {47}\)

Migrants working without a contract are exposed to exploitation and insecure labour conditions. In January 2013 Mutuma Ruteere, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance visited a greenhouse in Almería and discovered that many irregular migrant worked under inhumane conditions and that women, some of them victims of human trafficking, were exposed to violence and prostitution.\(^ {48}\) According to NGOs the terrible situation in Almería is part of a general pattern which characterise other provinces like Cordova, Huelva and Seville that have an extensive agriculture industry.\(^ {49}\) Migrant women face an even more difficult situation in the labour market where many of them are obliged to work in the informal economy. In fact 45.42% of the migrants working in the formal economy are female.\(^ {50}\) Many

\(^ {40}\)Instituto Nacional de Estadísticas, “Encuesta de Población Activa”, op. cit., p.5.
\(^ {41}\)Ibid.
\(^ {46}\)Interview with Dr. María Elósegui Itxaso, Professor of Philosophy of Law at the University of Zaragoza and Member of the European Commission against Racism and Intolerance (ECRI), 3 August 2013, by phone.
\(^ {48}\)Ibid., para.39.
\(^ {49}\)Ibid.
\(^ {50}\)Unión General de Trabajadores, “Población migrante en España: Más desigualdad, menos protección”, op. cit., p.6.
migrant women come to Spain as single mothers or as sole breadwinners in the family unit, which makes their situation even more difficult.  

Contradicting the stereotypes, Roma in Spain have a high activity rate as the population is younger and generally access the labour market earlier than the mainstream society, although due to their low level of qualifications, they mainly work in badly paid, temporary activities with poor working conditions. Although in 2005, 51% of the Roma were wage-earners, by 2012 this rate decreased to 36% and more than a quarter of the Roma families depended on the income gained from irregular jobs or the subsistence economy. Many Roma people have scarce access to jobs due to their technological illiteracy, lack of access to these technologies and difficulty in accessing transport infrastructure (costs of public transport or lack of own vehicle). Roma people have more difficulties in finding jobs in urban settings as there is more competition, for example with other migrants for the available jobs, while in the countryside, they can usually find some temporary work in agriculture.

The Roma community throughout its history has had traditional professions, such as mobile trading in which 36% of the families are involved, or solid waste collection which are still common professions in their community, but these are not enough to maintain their families. The legal regulation of both mobile trading and the collection of waste have become stricter which made it more difficult to practise them. Furthermore, mobile trading is highly affected by the decrease in consumption, while in the case of waste collection, the expensive maintenance of the vehicles makes Roma families’ lives more difficult, resulting in those families not being able to accommodate their business to the new regulations, leaving them with not enough income to maintain the family. What is more, in some regions non-Roma individuals also started to collect waste, generating competition between the two communities.

The Roma community, whose unemployment rate reached 42% by 2013, is hit harder by the economic crisis than the mainstream society. One of the main reasons behind the extensive unemployment of Roma people are the lack of qualifications. More than 80% of the Roma students do not complete the obligatory secondary education. Many Roma children are forced to leave school due to various reasons such as the family’s overprotection, lack of motivation, social isolation

---

51 Interview with Dr. María Elósegui Itxaso, Professor of Philosophy of Law at the University of Zaragoza and Member of the European Commission against Racism and Intolerance (ECRI), 3 August 2013, by phone.
54 Ibid., p.20.
56 Interview with Mr. Manuel Martín Ramírez, president of the National Association Presencia Gitana, 18 July 2013, via skype.
59 The Royal Decree 199/2010 regulating the exercise of trade on street markets only permits the issue of a certain number of licences per year in order to safeguard free competition. The licences have to be renewed every year and there is no guarantee that the permission will be extended.
61 Ibid.
62 Ibid., p.43.
63 Interview with Ms. Sara Giménez Giménez, Head of the Equality Department, Fundación Secretariado Gitano, 30 July 2013, by phone.
in the Roma settlements and the lack of support teachers at school due to the austerity measures. Due to the high dropout rate, a high percentage of the Roma people are functionally or purely illiterate.

Roma women are affected by unemployment even more than non-Roma women or Roma men and more often have seasonal or part-time jobs. Roma women often do not have qualifications and their role in the community is basically restricted to childcare at home or helping in the harvest of olives or fruits. Moreover those who live in Roma settlements have scarce access to public transport which further contributes to their social exclusion.

### 2.2 Legal framework

The Spanish constitution has a strong anti-discrimination provision. Article 1.1 defines freedom, justice, equality and political pluralism as the highest values of the legal system, which means that no law can supersede those entitlements. These principles are specified in further articles. While foreign citizens may enjoy the public freedoms guaranteed by the Constitution, equality before the law and the prohibition of discrimination based on birth, race, sex, religion, opinion or any other personal or social condition or circumstance is expressly guaranteed only for Spanish nationals. Finally the Constitution declares the responsibility of the public authorities to promote conditions ensuring that freedom and equality of individuals and of the groups to which they belong are real and effective, the removal of any obstacles preventing or hindering their full enjoyment, and the facilitation of the participation of all citizens in political, economic, cultural and social life. The Spanish legislation differentiates between regular and irregular migrants as the Act on the Rights and Freedoms of Aliens generally guarantees the equality of fundamental rights between Spaniards and migrants, provided that the migrant has obtained a residence permit; which means that migrants without the necessary papers do not have the same rights or freedoms as Spaniards, they have only certain rights related to human dignity.

The Council Directives 2000/43/EC and 2000/78/EC were transposed in the Spanish legislation by the Fiscal, Administrative and Social Order Act. Lorenzo Cachón defined it as the “hidden transposition” given that the Directives were not transposed by an independent legal act and the “equal treatment”

---

64 Interview with Mr. Roberto Moreno López, Coordinator of Llere Association, 10 July 2013 via skype.
65 Interview with Mr. Manuel Martin Ramírez, president of the National Association Presencia Gitana, 18 July 2013, via skype.
67 Interview with Mr. Roberto Moreno López, Coordinator of Llere Association, 10 July 2013 via skype.
68 Interview with Mr. Manuel Martin Ramírez, president of the National Association Presencia Gitana, 18 July 2013, via skype.
69 Interview with Mr. Roberto Moreno López, Coordinator of Llere Association, 10 July 2013 via skype.
70 Article 1.1, Spanish Constitution.
71 Article 13.1, Spanish Constitution.
72 Article 14, Spanish Constitution.
73 Article 9.2, Spanish Constitution.
75 Interview with Dr. Ferran Camas Roda, Professor of Labour and Social Security Law and Director of the Chair of Immigration, Rights and Citizenship at the University of Girona10 July 2013, Barcelona.
does not appear in the title of the act which would have made its dissemination easier.\textsuperscript{77} Furthermore, the law regulates only discrimination based on racial or ethnic origin, religion or belief, disability, age or sexual orientation, while discrimination, \textit{inter alia}, based on nationality is not included in the act. Spain’s legislation on racism and racial discrimination is fragmented as it is regulated by different laws in different areas and there is no comprehensive legal framework.

The Statute of Workers prohibits direct and indirect discrimination in access to employment and at work\textsuperscript{78} and it provides protection from harassment.\textsuperscript{79} Furthermore, the law considers null and void the discriminatory legislative provisions, the clauses of collective and individual agreements and unilateral decisions of employers which may contain unfavourable direct or indirect discrimination, \textit{inter alia}, based on racial or ethnic origin and religion or belief.\textsuperscript{80} The employer’s instructions to discriminate\textsuperscript{81} and his/her decisions, which constitute adverse treatment of employees as a reaction to a complaint within the company, or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment and non-discrimination, will also be null.\textsuperscript{82} The employer can dismiss a worker if he/she harasses another worker.\textsuperscript{83}

The employer’s discriminatory unilateral decision\textsuperscript{84} constitutes a very serious offence under the Infringements and Sanctions in the Social Order Act\textsuperscript{85} which could be sentenced with a fine, ranging from 6 251 to 187 515 Euros, depending on the seriousness of the offence.\textsuperscript{86} If an employer commits serious discrimination in public or private employment and does not restore the situation of equality before the law repairing the economic damage which arose, after it was demanded or an administrative penalty was sentenced, constitutes an offence under criminal law which shall be punishable by imprisonment from six months to two years or a penalty\textsuperscript{87} of 12-24 months.\textsuperscript{88} Furthermore, the law constitutes an aggravating circumstance if someone commits a crime motivated by racism, anti-Semitism or other type of discrimination.\textsuperscript{89}

Religious freedom is guaranteed in the Spanish legislation, which provides that religious beliefs shall not constitute a reason for inequality or discrimination before the law and it also declares that religious reasons may not be a ground for preventing anyone from performing any work or activity or holding any position of responsibility or public office.\textsuperscript{90}

---


\textsuperscript{78} Article 4.2. c), Statute of Workers, Royal Legislative Decree, 1/1995, 24 March 1995.

\textsuperscript{79} Article 4.2. e), Statute of Workers.

\textsuperscript{80} Article 17.1, Statute of Workers.

\textsuperscript{81} ‘Instructions to discriminate’ is when a person or an organisation orders another person or organisation to discriminate against someone. For example, a company has a policy to attract new customers which indicates not to process files if it is detected that the person is of North African or South American origin. See http://www.igualdadynodiscriminacion.org/discriminacion/queesDiscriminar/orden.htm, last accessed 29\textsuperscript{th} October 2013.

\textsuperscript{82} Article 17.1, Statute of Workers.

\textsuperscript{83} Article 54.2 g), Statute of Workers.

\textsuperscript{84} The employer’s unilateral decision of discriminatory nature is a measure which has been adopted by the employer and not by mutual agreement and which discriminates the employee.


\textsuperscript{86} Article 40.1.c), Infringements and Sanctions in the Social Order Act.

\textsuperscript{87} Article 50 of the Penal Code (Organic Act 10/1995, 23 November 1995) applies a ‘penalty per day’ system which means that the judge defines for how many days and how much the offender has to pay. The length varies between ten days and two years (five years for legal persons) while the daily quota varies between 2 and 400 euros (between 30 and 5000 euros for legal persons).


\textsuperscript{89} Article 22.4, Penal Code.

\textsuperscript{90} Article 1.2, Religious Freedom Act.
in Spain prohibits discrimination against a foreigner based on race, colour, descent or national or ethnic origin, religious beliefs and practices that intends to limit the exercise of human rights and fundamental freedoms in the political, economic, social and cultural fields. Such racial, ethnic, national or religious discrimination, provided that it does not constitute an offence, is considered a very serious infringement and is punishable from 10,001 to 100,000 Euros depending on the gravity of the discrimination.

One of the largest gaps in the Spanish legal framework is the lack of a comprehensive anti-discrimination law. Although the former government adopted the first version of the Comprehensive Bill for Equal Treatment and Non-discrimination in January 2011, after a thorough process of consultation with the relevant stakeholders and representatives of the civil society, and the Parliament discussing it, due to its dissolution on 27 September and the anticipated elections in November 2011, the law was finally not adopted. Beyond the grounds of discrimination defined by the European Directives, the bill introduced further grounds, namely disease, sexual identity and language, leaving open the list and introducing a generic formula ("any other condition or personal or social circumstance"). The bill defined the different forms of discrimination, including multiple discrimination and discrimination by mistake, and provided for one general regime for infractions and sanctions in cases of discrimination.

Unfortunately, in September 2012, the Congress of Deputies rejected the bill, leaving the gap in the legal framework unfilled, and in January 2013, the Spanish government informed Mutuma Ruteere, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance during his visit in Spain, that the adoption of a comprehensive law on racism was not a subject for debate in Parliament at that time. One of the consequences of the decision is that Spain still lacks a comprehensive anti-discrimination law which would ensure equal treatment, equal opportunities and non-discrimination on any grounds, including origin and nationality. These groups are invisible in the political arena and they only enjoy a weakened citizenship. There is little probability that such law will be adopted in the near future.

---

91 Article 23.1, Act on the Rights and Freedoms of Aliens in Spain and their Social Integration.
92 Article 54.1.c, Act on the Rights and Freedoms of Aliens in Spain and their Social Integration.
93 Article 55.1.c, Act on the Rights and Freedoms of Aliens in Spain and their Social Integration.
98 Interview with Dr. Fernando Rey Martínez, Professor of Constitutional Law at the University of Valladolid and President of the Council for the Promotion of Equal Opportunities and Non-Discrimination on the Ground of Ethnic and Racial Origin, 13 August 2013, by phone.
3. Manifestations of racism and structural discrimination in employment

3.1 Perceptions of discrimination in employment

Racism and discrimination is a reality in the life of many migrants, Roma and Muslims in Spain. The opinion of the Spaniards are somewhat divided as 58% think that discrimination on the basis of ethnic origin is widespread, while 40% consider it rare. The public opinion is different regarding the occurrence of discrimination based on religion or belief: only 32% of the population consider it widespread, while more than half of the respondents (64%) say that it rarely happens in Spain. The social acceptance of migrants differs depending on their country of origin: while Latin American and Romanian migrants enjoy a greater acceptance due to their language of Latin origin, Moroccans experience more rejection. Generally there is a higher acceptance of migrants originating from the European Union than third country citizens. The most typical stereotypes against migrants are that they steal the jobs from the native population, light border control resulting in easy entrance into Spain, attracting therefore many migrants, who do not want to integrate in the society and want to keep their customs.

The majority of the Roma people consider discrimination as the main barrier to social inclusion. Currently 66% of the Roma people whose appearance differ from the majority consider themselves the object of strong discrimination, although Roma people with higher economic, social and educational level suffer from discrimination to a lesser extent, which clearly indicates that the prejudices against the socially excluded often prevail in the discrimination patterns. A significant part of society think that Roma are mainly of foreign origin and many people are not aware of the fact that there is a significant native Roma community in Spain. Currently 40% of Spaniards consider the skin colour and ethnic origin of the candidates for a job as a disadvantage, 23% think that the candidate’s accent might make the employer hire someone else, and only 18% think that the expression of one’s religious belief, for example wearing a visible religious symbol, might put a candidate in a disadvantageous situation in a job interview. Only 34% of the population consider the measures regarding the promotion of religious diversity in their workplace sufficient. The majority of Spanish society (67%) thinks that the economic crisis is contributing to an increase in discrimination on the basis of ethnic origin in the labour market.

Xenophobic discourse and hate speech was on the rise in the covered period, targeting mainly the migrant and Roma communities, the former group usually blamed for the consequences of the
economic crisis, while the latter one was often criminalised.\textsuperscript{111} Mutuma Ruteere, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance noted with concern that representatives of the Popular Party had made some xenophobic comments against these two groups. He reported that the local leader of the same party in Badalona (Catalonia) associated Romanian and Roma migrants with criminality.\textsuperscript{112} The Platform for Catalonia (Plataforma per Catalunya, PxC) is a Catalan extremist far-right political party which showed an openly hostile attitude against the Muslim community.\textsuperscript{113}

The media plays a significant role in the sensitisation of the public opinion or on the contrary in the dissemination of stereotypical images and deepening of the existing prejudice against migrants, ethnic or religious minorities. The media spreads negative stereotypes against Roma often associating them with criminality which reinforces their social stigmatisation.\textsuperscript{114} The television programme “Palabra de Gitano” (Gipsy Word) broadcasted by Chanel Four (Cuatro) highlighted the stereotypes associated with the Roma community and contributed to the further deterioration of the social image of Roma people.\textsuperscript{115} The media is also responsible for the dissemination of negative perceptions and prejudices against Muslims who are often linked to religious extremism.\textsuperscript{116} The spread of hate speech and xenophobic discourse has also increased in the electronic media and in social networks, and neo Nazi groups are present on different blogs and forums.\textsuperscript{117} Although cybercrime is punishable under the Spanish legislation, NGOs reported that most crimes of this nature remain unpunished.\textsuperscript{118} In November 2012, the Spanish government reinforced the existing systems of data collection and obliged the security forces to record crime statistics on racist and xenophobic offences, as well as on offences motivated by religious intolerance, sexual orientation, gender identity and disability.\textsuperscript{119} The statistics contain data on the characteristics of the victims and offenders, on the type of the crime and their location.\textsuperscript{120}

### 3.2 Incidence of discrimination in employment

Strong prejudices and stigma were described above, and in many cases, these have been furthered by stereotypes transmitted by the media, often escalating in discrimination in the employment against migrants, Roma and Muslims. The colour of one’s skin or the wearing of visible religious symbols, such as the veil (hijab), might cause rejection and discrimination in access to employment or in the workplace. There is a huge difference between the salaries of the Spaniards and the migrant population which is particularly conspicuous in the case of migrant women who earn 52.26% less than the average annual wage.\textsuperscript{121} Many migrant women provide domestic service which is maybe

\textsuperscript{111} Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere, “Visit to Spain”, op. cit., para.54.
\textsuperscript{112} Ibid.
\textsuperscript{113} Unión de Comunidades Islámicas de España, Observatorio Andalusí, “Informe Anual 2012”, 2013, p.3.
\textsuperscript{114} Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere, “Visit to Spain”, op. cit., para.55.
\textsuperscript{115} Fundación Secretariado Gitano, “El impacto de la crisis en la comunidad gitana”, July 2013, p.35.
\textsuperscript{116} Interview with Mr. Gbril Jairodín Riaza, Director of the Observatorio Andalusí, 31 July 2013, by phone.
\textsuperscript{117} Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere, “Visit to Spain”, op. cit., para.55.
\textsuperscript{118} Ibid.
\textsuperscript{120} Ibid.
\textsuperscript{121} Unión General de Trabajadores, “Población migrante en España: Más desigualdad, menos protección”, op. cit., p.7.
one of the sectors where the most irregularities could occur, resulting in discrimination more frequently.\(^\text{122}\)

The UN Committee on the Economic, Social and Cultural Rights in its concluding observations for Spain, noted with concern that migrants and gypsies continue to suffer from discrimination, *inter alia*, in the employment sector.\(^\text{123}\) Mutuma Ruteere, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, was also concerned because of the discrimination suffered by migrants and Roma people, emphasising the particularly vulnerable situation of undocumented migrants.\(^\text{124}\) The negative perceptions of mainstream society regarding the Roma community is the main obstacle to their integration in the labour market\(^\text{125}\) and Roma people themselves feel discriminated particularly in access to employment.\(^\text{126}\) According to the Fundación Secretariado Gitano, the Roma population is the minority “suffering the highest degree of discrimination and rejection by the majority population”.\(^\text{127}\)

Migrant, Roma and Muslim women are in an especially vulnerable situation given that they run the risk of double or even multiple discriminations in the field of employment. This is the case of Roma women who are often in a disproportionately difficult situation especially in light of the fact that they are women, belong to an ethnic group that historically suffered from social exclusion and that in their patriarchal community they are primarily assigned the role of mother and wife which impedes their social progress.\(^\text{128}\) Those who pull down these internal barriers sometimes face rejection in society because of their gender, ethnic origin and poverty.\(^\text{129}\) Roma women who finally find a job are the ones who may bring about change in their community.\(^\text{130}\) Muslim women often suffer double discrimination in access to employment particularly those who choose to wear a veil.\(^\text{131}\) According to the Observatorio Andalusí the hijab as a Muslim religious symbol is not accepted in the workplace, and other visible features associated with Islam like race, language and dress, although to a lesser extent, are also rejected by the Spanish society.\(^\text{132}\)

### 3.3 Patterns of inequality over the course of time

Society in general has become more tolerant with migrants (only 2.5% consider migration as the main problem in Spain\(^\text{133}\) compared to 6.5% in 2012\(^\text{134}\)), although expressions of racism and

\(^\text{123}\) Committee on Economic, Social and Cultural Rights, Concluding observations of the Committee on Economic, Social and Cultural Rights, Spain, E/C.12/ESP/CO/5, 6 June 2012, para.11.
\(^\text{124}\) Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere, “Visit to Spain”, op. cit., points 28 and 34.
\(^\text{125}\) Ibid.
\(^\text{126}\) Ibid., p.7.
\(^\text{128}\) Ibid., p.7.
\(^\text{129}\) Interview with Ms. Sara Giménez Giménez, Head of the Equality Department, Fundación Secretariado Gitano, 30 July 2013, by phone.
\(^\text{130}\) Ibid.
\(^\text{133}\) Centro de Investigaciones Sociológicas, “Barómetro de enero, Estudio nº 2.976”, op. cit., p.3.
intolerance have increased towards them even in the media.\textsuperscript{135} As a consequence of the economic crisis in Spain, migrants are exposed to a greater risk of discrimination, particularly in access to employment.\textsuperscript{136} Due to the economic crisis, the hostility against the Roma community (including Roma migrants) has increased in some regions, while in other places, Roma are rejected not because of their ethnic origin but due to their poverty or social exclusion.\textsuperscript{137}

The Council for the Promotion of Equal Opportunities and Non-Discrimination on the Ground of Ethnic and Racial Origin was created in 2007\textsuperscript{138} and it began operating only in October 2009. As a consequence of the crisis and the lack of financial resources the Council had to suspend its work in 2012.\textsuperscript{139} Due to the scarcity or lack of official data it is difficult to compare the level of discrimination across the years.

### 3.4 Discrimination in access to employment

In 2011, Spain’s equality body, the Council for the Promotion of Equal Opportunities and Non-Discrimination on the Grounds of Ethnic and Racial Origin, expressed its concern for the lack of systematic data collection on the implementation of the legislation prohibiting discrimination based on race or ethnic origin.\textsuperscript{140} Unfortunately, there has not been any improvement in the data collection since then; therefore it is difficult to gain a clear and reliable view of the situation of discrimination based on race or ethnic origin. NGOs play an indispensable role in data gathering, although it cannot substitute a comprehensive and transparent database on cases of discrimination that should be established by the State. Due to the scarcity of the available data on discrimination cases, we can only have an approximate image of reality.

It is obvious that the three vulnerable groups covered by this report face discrimination in access to employment. The community of migrants is not homogenous and there are differences in their acceptance based on their country of origin. Employers usually prefer hiring Latin Americans or people originating from Eastern Europe.\textsuperscript{141} The discrimination against migrants in access to employment may manifest in different forms. Qualified migrants often have to face administrative barriers to recognise their foreign university degrees: the process is long and expensive due to the necessary fees, apostil, legal translation etc., therefore many of them have access only to less qualified positions.\textsuperscript{142}

\textsuperscript{134} Centro de Investigaciones Sociológicas, “Barómetro de enero, Estudio n° 2.927”, January 2012, p.3.
\textsuperscript{135} Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere, “Visit to Spain”, op. cit., para.38.
\textsuperscript{137} Fundación Secretariado Gitano, “El impacto de la crisis en la comunidad gitana”, op. cit., p.35.
\textsuperscript{138} Royal Decree on the composition, competence and operation of the Council for the Promotion of Equal Opportunities and Non-Discrimination on the ground of ethnic and racial origin, 1262/2007, 21 September 2007.
\textsuperscript{140} Consejo para la promoción de la igualdad de trato y no discriminación de las personas por el origen racial o étnico, “Informe anual sobre la situación de la discriminación y la aplicación del principio de igualdad de trato por origen racial o étnico en España 2011”, November 2012, p.33.
\textsuperscript{141} Interview with Dr. Maria Eldsegui Ibañez, Professor of Philosophy of Law at the University of Zaragoza and Member of the European Commission against Racism and Intolerance (ECRI), 3 August 2013, by phone.
\textsuperscript{142} Interview with Ms. Janette Vallejo Santes, Spokesperson and Coordinator of the Communication Department, Association of Mutual Aid to Immigrants in Catalonia, 18 July 2013, Barcelona.
Prejudice and racism makes it especially difficult for the Roma to enter the labour market. Historically, the Roma have had to face stereotypes on behalf of the majority society who considered them deceitful, lazy and incompetent, causing them difficulties in finding a job. The Fundación Secretariado Gitano (FSG) provides assistance for Roma victims of discrimination. Although data for 2012 is still not available, in 2011 they recorded 16 discrimination cases in the field of employment, 87.5% of which occurred at the access to employment stage. Candidates were often rejected without any consideration of their qualifications: they were either not even interviewed or were rejected later when, due to their surnames or physical appearance, the employer learnt that they were of Roma origin. Due to a series of negative experiences, many Roma, especially youngsters, lose their motivation and say things like “they will see my surname and they won’t want to hire me” or “why should I do this training if afterwards they will choose another person for the position?”

Discrimination in access to employment undermines Roma people’s ambitions to find a job and has a negative effect on their self-respect. An efficient way to fight against discrimination is to promote the employment of Roma people. For example those who were hired in a supermarket, through FSG’s ACCEDER programme, managed to break the barriers of discrimination and proved that professionalism is what really matters. Employers often prefer hiring a non-Roma worker or are reluctant to employ Roma for positions where clients may see them. The generally low level of skills is another obstacle for Roma people to find a job, although in many cases employers hire someone with a higher educational level even if it is not necessary for the position.

Victims are often reluctant to file a complaint fearing that it would hinder their chances to find a job.

Muslims, especially young people and women, also have to face discrimination in access to employment. A study carried out in Ceuta revealed that one in four young people between the ages of 15-19, of Arab cultural origin, have felt discriminated in the city at least once in their life which is 7 points higher than in 2001. Discrimination most typically occurred in relation with employment. Religious symbols, such as the hijab, often cause rejection and antipathy against Muslims. Gibril Jairodín Riaza, Director of the Observatorio Andalusí, said that even highly qualified young Muslims are often rejected when due to their appearance (bearded men or women wearing a veil) employers identify them as Muslims even on the photo in their curriculum vitae. Mr. Riaza told the story of a young Muslim woman, who finished her university studies in pharmacology with the second best grade, and she could not find a job for two or three years because she did not want to take off her veil. Another Muslim woman was rejected from a position in a laundry service because she was wearing a veil. Employers often ask Muslim women if they would be willing to take off their hijab if they were hired. Instead of direct rejection, in many cases employers say to Muslim candidates that

143 Interview with Mr. Manuel Martín Ramírez, president of the National Association Presencia Gitana, 18 July 2013, via skype.
145 Ibid.
146 Interview with Ms. Sara Giménez Giménez, Head of the Equality Department, Fundación Secretariado Gitano, 30 July 2013, by phone.
147 Ibid.
149 Ibid.
150 Interview with Ms. Sara Giménez Giménez, Head of the Equality Department, Fundación Secretariado Gitano, 30 July 2013, by phone.
152 Ibid.
153 Interview with Mr. Gibril Jairodín Riaza, Director of the Observatorio Andalusi, 31 July 2013, by phone.
154 Interview with Ms. Janette Vallejo Santes, Spokesperson and Coordinator of the Communication Department, Association of Mutual Aid to Immigrants in Catalonia, 18 July 2013, Barcelona.
they already filled the vacancy. In one occasion a candidate was told that the person from the Human Resources department was not there although he saw other candidates entering for the interview. Due to the prejudice, stigma and discrimination Muslims are often not hired for positions where they would be visible, as employers think that it would negatively impact clients, therefore they are commonly employed in the back shop or in the warehouse.

3.5 Discrimination in the workplace

The different forms of discrimination against migrants, Roma and Muslim are frequent in employment. The most disadvantaged groups are Moroccan migrants who generally work under the worst labour conditions and Roma people originating from other countries who mainly work in rural areas. Harassment and bullying, such as racist comments, derogatory and humiliating treatment, low-level tasks which do not correspond with their professional category against migrants in employment are not rare. It is not unusual that colleagues discriminate against migrants or express racism against them. Migrants whose residence and work permits depend on their employment may endure worsening work conditions and even injustice in order to keep their legal status in Spain. In other cases, migrants are reluctant to report racism and discrimination for fear of losing their jobs. M.B., a Senegalese citizen, arrived in Spain 4 years and 7 months before with a labour contract, and started to work in a firm where he suffered constant racist mobbing and harassment. Although he reported the case to SOS Racism, he did not want to take further legal steps, fearing losing his job. Migrants often have to work under worse conditions than their native colleagues or receive a lower salary for doing the same job. Ms. Janette Vallejo Santes, Spokesperson and Coordinator of the Communication Department of AMIC (Association of Mutual Aid to Immigrants in Catalonia) said that it had been reported that a migrant had carried out the same tasks as his colleague, who had the position of cook, although the complainant had been hired as an assistant cook and therefore was being paid less. Migrant women providing homecare service are particularly vulnerable as they often live with their employer. As a result, many times they perform overtime and their working hours are not respected. Moreover, as in these cases, the relationship between an employer and an employee is rather based on trust, as victims are often reluctant to report discrimination.

Socially there is a perception that migrants are less qualified and that is why they work in low-skilled positions. On the contrary however, in many cases it is due to the complicated and expensive process of recognising foreign university degrees that migrants are forced to work in less qualified positions. In other cases, qualified migrants do have a good position at work, but it is not paid as well as it should, corresponding with the fact that they may not have had their foreign degrees

155 Interview with Mr. Gbril Jairodín Riaza, Director of the Observatorio Andalusí, 31 July 2013, by phone.
156 Ibid.
157 Interview with Dr. Lorenzo Cachón Rodríguez, Professor of Sociology at the Complutense University of Madrid and member of the European Network of Legal Experts in the Non-discrimination Field, 16 July 2013 via skype.
159 Interview with Mr. Ghassan Saliba, Responsible of Social Cohesion, National Workers’ Commission of Catalonia, 17 July 2013, Barcelona.
160 Ibid.
161 SOS Racismo, “Informe Anual 2013 sobre el racismo en el estado Español”, op. cit., p.129.
162 Interview with Ms. Janette Vallejo Santes, Spokesperson and Coordinator of the Communication Department, Association of Mutual Aid to Immigrants in Catalonia, 18 July 2013, Barcelona.
163 Ibid.
Due to the economic crisis and the scarcity of job opportunities, the cases of discriminatory behaviour against Roma at work have also increased.

Discrimination against Muslims is also frequent in employment usually due to the practising of religious customs and use of religious symbols. Those who want to follow these customs have to ask for a free day for their “own affairs” (asuntos propios) to be able to enjoy feasts, while in other cases, they can only get permission to leave for some hours in order to be able to attend religious ceremonies, and are often criticised or recriminated against for exercising their rights as recognised and guaranteed by the law. The month of Ramadan is also a challenging period as employers do not often take into account the fasting hours, therefore those who work in the evening hours face difficulties in arranging their meals and prayers. As the labour legislation does not regulate these issues, it depends on the good will and capacity of the employer. Moreover, due to the stigma and prejudice, qualified Muslims often work in lower positions. In many cases Muslims are forced to work in “invisible positions” where clients do not see them as the employer fears that their rejection would negatively affect the business but as these employees have less contact with managers their promotion is less probable.

Muslim women often experience hostility and harassment at work where the employer or colleagues make derogative or humiliating comments about their religion or their appearance. Many of them are obliged to take off their hijab and impeded from asserting their identity. Mariam El Moden, a woman of Moroccan nationality, reported harassment and even physical aggression in her place of employment. She worked as a nurse in the Sant Camil Hospital where she was obliged to remove her veil. Official sources of the hospital denied the existence of a special policy for the prohibition of the veil and referred to the requirements of uniformity and hygiene as a justification. Mariam also complained about the constant rejection of her colleagues on account of her religion. Other women, who preferred to stay anonymous, said that they had to hide their religious identity at their workplace as they feared of rejection.

In Spain, the absolute majority, 86% of the population, support the monitoring of the composition of the workforce to evaluate the representation of groups at risk of discrimination, which is the highest support rate in the European Union, while 88% support trainings on diversity issues for employers and employees to foster diversity in the work place.
3.6 Economic sectors

Migrants typically work in the construction sector, tourism and catering and household service (elderly care, patient care etc.) therefore it is not unusual that as a result they suffer from discrimination while working mainly in these economic sectors. Many migrant women work as domestic workers, often as internals, which is an especially vulnerable situation and which may lead to a great number of abuses. In 2012 out of 153 internal domestic workers who were assisted by Etxe Barrukoak – Asociación de Trabajadoras de Hogar de Bizkaia 152 were migrants, 25% of whom did not have documents. In case of 77% of them, their weekly working time exceeded 60 hours, defined as the maximum in the legislation, 38% of them did not have daily rest time and 39% earned less than they would have been entitled to according to the completed working hours.

4. Tackling the challenges

4.1 Public policies

Spain has a decentralised governance structure which means that the central government has exclusive competence in certain areas, while the rest of the issues belong to the competency of the autonomous communities. The central government determines general guidelines, common framework and minimum criteria regarding the employment policy, while the autonomous communities and the municipalities are responsible for the planning, implementation and monitoring of these policies. Equality policy is designed, promoted, regulated and implemented on the national level, while in administrative terms the autonomous communities and municipal governments can launch anti-discrimination and equality initiatives within their jurisdiction.

The central government has developed and implemented three-year integration strategies which set the framework for the integration and equal treatment of migrants. The II Strategic Plan for Citizenship and Integration 2011-2014 was adopted by the Council of Ministers on 23 September 2011, and this was preceded by a broad social consultation. One of the objectives of the Strategic Plan is to promote equal treatment and combat racism and discrimination in the labour market and in companies.

The Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia and Related Forms of Intolerance was adopted by the Council of Ministers in November 2011. The Comprehensive Strategy does not target specific groups of the population, although the available data in this area

---

177 Interview with Ms. Janette Vallejo Santes, Spokesperson and Coordinator of the Communication Department, Association of Mutual Aid to Immigrants in Catalonia, 18 July 2013, Barcelona.
179 Ibid.
180 Ibid., p.2.
181 Ibid., p.2.
182 Ibid., p.3.
183 Ibid, p.38.
185 Ibid, p.38.
186 Consejo para la promoción de la igualdad de trato y no discriminación de las personas por el origen racial o étnico, “Informe anual sobre la situación de la discriminacion y la aplicacion del principio de igualdad de trato por origen racial o étnico en España 2011”, op. cit., p.27.
demonstrates that people belonging to ethnic or racial minorities, such as migrants and Roma, are particularly vulnerable and easy targets for discrimination.\textsuperscript{185} The Comprehensive Strategy sets up multiple objectives and measures to guarantee equal treatment in employment. It prohibits any limitations, segregations or exclusions on any grounds in access to employment, training, labour conditions or dismissal.\textsuperscript{186} The second objective is to promote the access and permanence in the labour market for racial or ethnic minorities on equal terms with others.\textsuperscript{187} Finally, the Comprehensive Strategy promotes the monitoring and reporting mechanisms of racist and xenophobic attitudes in the field of employment.\textsuperscript{188} Unfortunately, due to the crisis, the government decided on budget cuts which adversely affected the policies and the programmes for the integration of migrants.\textsuperscript{189}

The Forum for the Social Integration of Immigrants is a consultative, informative and advisory body in the field of the integration of migrants, which promotes the participation and integration of migrants in Spanish society.\textsuperscript{190} The Forum consists of representatives of the public administration, migrants' associations and social support organisations, with an interest in the field of immigration, offering a space for cooperation and dialogue between the civil society and the government on integration policies for migrants. Unfortunately the Forum lacks adequate financial support which limits the efficiency of its work.\textsuperscript{191} In May 2012 Joaquín Arango, its director, resigned\textsuperscript{192} and since then no director has been appointed.\textsuperscript{193}

The Action Plan for the Development of the Roma People 2010-2012 is the most recent programme in line with the Programmes for the Development of the Roma People which the government has developed since 1989. The Action Plan aims to mitigate the consequences of the economic crisis on the employment of the Roma people and it undertakes to promote the training of the Roma population to facilitate their access to employment, retention and advancement; to establish the priority action guidelines for the access of the Roma population to self-employment and to the labour market; to improve information and data collection, disaggregated by gender, on the employment situation of the Roma population; and to mainstream gender, equal treatment and non-discrimination in all policies on employment access, retention and advancement of the Roma population.\textsuperscript{194}

\begin{flushleft}
\textsuperscript{185} Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia and Related Forms of Intolerance, 3 November 2011, p.14, \url{http://www.oberaxe.es}, accessed 28\textsuperscript{th} August 2013.
\textsuperscript{186} Ibid, p.76.
\textsuperscript{187} Ibid.
\textsuperscript{188} Ibid, p.77.
\textsuperscript{189} Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere, visit to Spain, op. cit., para.33.
\textsuperscript{191} Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere, visit to Spain, op. cit., para.33.
\textsuperscript{193} Interview with Dr. Lorenzo Cachón Rodríguez, Professor of Sociology at the Complutense University of Madrid and member of the European Network of Legal Experts in the Non-discrimination Field, 16 July 2013 via skype.
\end{flushleft}
The National Roma Integration Strategy in Spain 2012–2020 was adopted by the Council of Ministers on 2 March 2012. The National Strategy fits in the Common European Framework set up by the European Commission in 2011. The National Strategy is an outstanding programme given that it sets up specific objectives and indicators of progress in the mid and long terms. The adoption was preceded by an extensive consultation process between the public administration and the civil society. The National Strategy is based on the so-called “Spanish model of the inclusion of the Roma” which focuses on four main fields that have a major impact on inclusion (employment, education, health and housing), setting up general policies combined with specific measures. In the field of equal treatment and non-discrimination, the National Strategy promotes the effective application of the European and national legislation against discrimination, supports the programmes and services offered for the victims of discrimination and puts a special emphasis on Roma women and Roma people originating from other countries. The National Strategy is an ambitious policy tool for the inclusion of the Roma community but unfortunately in 2012 no significant steps were taken for its development. Roma NGOs welcome the National Strategy and consider it a good framework, although some of them expressed concerns regarding its financing or criticised it for setting up too vague objectives regarding the fight against discrimination.

The inclusion of the Roma community appears on the institutional level as well. The State Council of Roma People is a consultative and advisory body under the Ministry of Health and Social Policy. The Council consists of representatives of all the Ministries and the main Roma associations, creating a space for cooperation between the public administration and the civil society for the development of social welfare policies. Among other functions, the Council issues reports on those bills which affect the Roma population, particularly on the development of equal treatment. The civil society criticised the Council for its limited powers as its opinions are not binding and they complained that its composition was not representative of all the Roma population.

There are various policies and institutions for the migrant and Roma population on the regional level as well. The regional government of Catalonia elaborated the Citizenship and Immigration Plan 2009-2012 and the Comprehensive Plan of the Roma Population 2009-2013 and set up the Catalonia Roma Advisory Council to promote the integration of migrants and Roma people.


198 Ibid.


201 Interview with Mr. Roberto Moreno López, Coordinator of Llere Association, 10 July 2013 via skype.

202 Interview with Ms. Sara Giménez Giménez, Head of the Equality Department, Fundación Secretariado Gitano, 30 July 2013, by phone.


204 Ibid.

205 Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere, visit to Spain, op. cit., para.27.
Other autonomous communities, such as Extremadura, the Basque Country, Andalusia and Navarre, adopted plans and established specialised institutions for the Roma community.

The Muslim civil society regrets the lack of a national strategy or plan for the integration of this religious minority which is currently not on the government’s agenda.

### 4.2 Access to effective remedies

#### 4.2.1 Judicial remedies

Victims of discrimination in employment can initiate labour or, in certain cases, even criminal judicial proceedings. In cases of discrimination in employment the Constitution guarantees the right for citizens to assert a claim by means of a preferential and summary procedure (principios de preferencia y sumariedad) before the ordinary courts, and after exhausting these remedies by lodging an individual appeal for protection (recurso de amparo) to the Constitutional Court. Victims who prove that they lack sufficient resources to litigate have the right to receive legal aid, but if they appeal against the first instance decision they have to pay procedural fees. Trade unions and public and private entities whose aim is to promote and protect the affected legitimate interests can intervene in the case, although they could not intervene, appeal or continue the procedure against the plaintiff’s will. In discrimination cases, the burden of proof is shifted - although the victim has to present some evidence to demonstrate that s/he suffered discrimination, it is the defendant who has to provide sufficient proof to show that the measures adopted are proportionate and can be objectively and reasonably justified. It might be very difficult to prove the discrimination if there is no material evidence or any witnesses. Situation testing is not regulated under Spanish legislation, but it is not forbidden therefore it can be used as evidence in discrimination cases. The provision of statistical evidence is permitted by the law.

This procedure provides certain guarantees: it has an urgent and preferential character for all purposes and allows for interim measures when the plaintiff requests the suspension of the effects of the discriminatory measures. If the court rules in favour of the plaintiff, it can declare the existence of the discrimination; it can declare null the employer’s measures; it can order the immediate cessation of the discriminatory measures, it can prohibit interrupting the behaviour in question or oblige the employer to realise an omitted activity, when these are enforceable; or it can

---

206 Regional Council for the Roma Community of Extremadura and Plan of Extremadura for the Promotion and Social Participation of Roma.
208 Andalusia Roma Secretariat, Andalusia Roma Socio-Cultural Centre and Andalusia Roma Integral Plan.
210 Interview with Mr. Gbril Jairodín Riaza, Director of the Observatorio Andalusi, 31 July 2013, by phone.
211 Article 53.2, Constitution.
212 Legal Aid Law, 1/1996, 10 January 1996.
213 Interview with Dr. Ferran Camas Roda, Professor of Labour and Social Security Law and Director of the Chair of Immigration, Rights and Citizenship at the University of Girona, 10 July 2013, Barcelona.
216 Interview with Mr. Ghassan Saliba, Responsible of Social Cohesion, National Workers’ Commission of Catalonia, 17 July 2013, Barcelona.
order the employer to restore the plaintiff in the integrity of his/her rights and the replacement of the situation before the discrimination happened, as well as the reparations of the consequences, including a compensation.\(^{220}\) For example, in a case involving a discriminatory unfair dismissal, the tribunal can force the employer to rehire the plaintiff, although victims often do not want to return, in which case they can push the employer to pay them a significant compensation.\(^{221}\) When the judgment declares the existence of discrimination it should establish a compensation for the victim on the basis of moral damages and the additional damages and harm.\(^{222}\) This compensation is compatible with other indemnifications which may correspond to the worker for the amendment or termination of the labour contract or other circumstances set forth in the Statute of Workers and other legal acts.\(^{223}\) The average length of the proceedings at the first instance stage can be between three months and one year, while at the second instance proceedings, it may take even two or three years.\(^{224}\)

The Penal Code regulates the offences of serious discrimination against someone for his or her ideology, religion or belief, ethnicity, race or nationality etc. in public or private employment, which may be punished with a penalty of 12-24 months or in serious cases with imprisonment from six months to two years\(^ {225}\), although it is unusual to apply the latter sanction in discrimination cases, therefore it is not considered an effective sanction.\(^ {226}\)

As the anti-discrimination legislation is relatively new, an extensive jurisprudence has not yet developed.\(^{227}\) Despite the frequency of discrimination, the State does not collect data systematically in its policy monitoring schemes and victims face barriers in accessing justice as they are not provided with the necessary information on the available channels to seek appropriate remedy.\(^ {228}\) Neither victims, nor judges, are familiar with the non-discrimination legislation\(^ {229}\) which is not applied in the jurisdiction.\(^ {220}\) Generally there are few decisions on racial discrimination, as the offences are treated more as violations of other rights, without taking into account the racist motivation. Victims are normally reluctant to initiate cases due to the complicated bureaucracy and to the small number of convictions.\(^ {231}\) The fear of reprisal or of further discrimination is another obstacle that often hinders victims from reporting the case.\(^ {232}\) According to a survey in cases of discrimination, 43% of the victims would report the case to the police, 16% would turn to a lawyer, 10% would denounce it in the tribunal, while only 7% would ask for help from the equality body or a

---

221 Interview with Dr. Ferran Camas Roda, Professor of Labour and Social Security Law and Director of the Chair of Immigration, Rights and Citizenship at the University of Girona, 10 July 2013, Barcelona.
224 Interview with Dr. Ferran Camas Roda, Professor of Labour and Social Security Law and Director of the Chair of Immigration, Rights and Citizenship at the University of Girona, 10 July 2013, Barcelona.
225 Article 314, Penal Code.
227 Interview with Dr. María Elósegui Ibañez, Professor of Philosophy of Law at the University of Zaragoza and Member of the European Commission against Racism and Intolerance (ECRI), 3 August 2013, by phone.
229 Interview with Dr. Fernando Rey Martínez, Professor of Constitutional Law at the University of Valladolid and President of the the Council for the Promotion of Equal Opportunities and Non-Discrimination on the Ground of Ethnic and Racial Origin, 13 August.
231 Ibid.
An insignificant percentage of the respondents, only 2%, would report it to an NGO, while 12% would not know where to turn to.\(^{233}\)

The public prosecutors specialised in discrimination and hate crimes carry out very important work in this field. The first specialised prosecutor, Miguel Ángel Aguilar, was appointed in Barcelona in 2009. Later on, two other prosecutors specialised in discrimination and hate crimes were nominated in Madrid and Malaga and in 2011 the Attorney General appointed a Deputy Attorney General of the Supreme Court with the same mandate.\(^{234}\)

\section*{4.2.2 Non-judicial remedies}

\subsection*{4.2.2.1 Ombudsman or equality body}

The 2000/43 European Directive was transposed in the Spanish legislative framework by the Fiscal, Administrative and Social Order Act in 2003 which regulated the establishment of the Council for the Promotion of Equal Opportunities and Non-Discrimination on the Ground of Ethnic and Racial Origin.\(^{235}\) Finally the Council was created in 2007\(^{236}\) and it began its operations two years later in October 2009. The Council is currently attached to the Directorate-General for Employment Equality and Anti-Discrimination of the Ministry of Equality.\(^{237}\) As a collegiate body, it has a multi-stakeholder composition of 30 members emanating from different ministries, administrations of some autonomous communities and cities, the most representative business organizations and trade unions and organizations and associations whose activities are related to the promotion of equal treatment and non-discrimination of persons based on their racial or ethnic origin.\(^{238}\)

One of the main functions of the Council is to assist victims of discrimination. To this end, in June 2010 the Council set up the Network of Assistance Centres for Victims of Discrimination in all autonomous communities.\(^{239}\) The aim of the network is to detect cases of discrimination, provide legal assistance to the victims and prevent possible situations of discrimination.\(^{240}\) Members of the network carry out their work following a common action protocol so that comparative information can be gathered.\(^{241}\) Despite its successful work in its two initial years, the Network had to suspend its work in 2012 due to the lack of financial resources.\(^{242}\) In comparison, in 2010 the Network responded to 235 complaints and found clear evidence of discrimination in 212 of them.\(^{243}\) 17\% of the individual cases and 32\% of the collective complaints were related to employment.\(^{244}\) In 2011, the Network

\begin{footnotesize}
\begin{itemize}
  \item European Commission, “Discrimination in the EU in 2012”, op. cit., p.76.
  \item Article 33, Fiscal, Administrative and Social Order Act.
  \item Royal Decree on the composition, competence and operation of the Council for the Promotion of Equal Opportunities and Non-Discrimination on the ground of ethnic and racial origin, 1262/2007, 21 September 2007.
  \item Council for the Promotion of Equal Opportunities and Non-Discrimination on the ground of ethnic and racial origin, http://www.igualdadynodiscriminacion.org, accessed 21 August 2013.
  \item Ibid.
  \item Ibid.
  \item Ibid., p.31.
  \item Consejo para la promoción de la igualdad de trato y no discriminación de las personas por el origen racial o étnico, “Informe Anual sobre la situación de la discriminación y la aplicación de igualdad de trato por origen racial o étnico en España 2010”, June 2011, p.68.
  \item Ibid., p.71.
\end{itemize}
\end{footnotesize}
attended to over twice as many cases then the previous year (590 complaints). The incidence of discrimination in employment remained unchanged compared to the previous year (17%), while the ratio decreased to 22% in cases of collective complaints. Due to the paralysis of the Network in 2012, no data is available for that year. In 2013, the Ministry of Health, Social Policy and Equality published a call for public procurement in order to re-launch the assistance for the victims of discrimination. Unfortunately, victims are not familiar with the work of the Council which might be attributed to the fact that it is a relatively new redress mechanism in Spain.

The creation of the Council only formally complies with the EU Racial Equality Directive 2000/43/EC as it lacks both independence and efficiency. Its heterogeneous composition makes the effective management difficult, although it has the advantage of involving the key stakeholders. It has a more limited mandate as it was established by the EU Racial Equality Directive 2000/43/EC and lacks the power to carry out investigation, issue binding decisions and intervene in litigation. The Council is not authorised to assess cases of discrimination based on any grounds other than ethnic or racial origin.

Another way to seek redress in cases of discrimination is the Office of the Ombudsperson (Defensor del Pueblo) whose mandate is to defend the fundamental rights and civil liberties of citizens by monitoring the activity of the administration and public authorities. The Ombudsperson can carry out an independent investigation, ex officio, or upon complaints by any citizen for free. The Ombudsperson has competency only on discrimination committed by the public administration and, as there are only an insignificant number of migrants, Roma and Muslims who are employed by the public administration, the incidence of discrimination cases is very low. The Office of the Ombudsperson acknowledges the lack of data on many forms of discrimination.

246 Ibid., pp.13-14.
248 Interview with Dr. Fernando Rey Martínez, Professor of Constitutional Law at the University of Valladolid and President of the Council for the Promotion of Equal Opportunities and Non-Discrimination on the Ground of Ethnic and Racial Origin, 13 August 2013, by phone.
252 Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere, visit to Spain, op. cit., para.20.
255 Article 9.1., Ibid.
256 Interview with Dr. Lorenzo Cachón Rodríguez, Professor of Sociology at the Complutense University of Madrid and member of the European Network of Legal Experts in the Non-discrimination Field, 16 July 2013 via skype.
In summary it can be said that Spain has certain mechanisms for the remedy of discrimination on national, regional and local levels, although the efficiency of these institutions might be questionable in some cases.

4.2.2.2 Mediation or conciliation

In the labour judicial procedure the legislation regulates the conciliation. After the admission of the claim, there is a time limit of five days, which is inextensible, to cite the plaintiff and the defendant to the court for conciliation. In any case, the court has to mediate between the parties at least for two days between the citation of the parties and the conciliation. In cases of labour disputes resulting from discrimination, the Labour and Social Security Inspectorate (Inspección de Trabajo y Seguridad Social, hereinafter ‘ITSS’) can also provide arbitration, conciliation or mediation if parties agree to it.

The Office for Non-discrimination (Oficina per la No Discriminació, OND), based in Barcelona, is a pioneer initiative of its kind. It is a service provided by the Department of Civil Rights of the City Council. The OND provides personalised and confidential services for the victims of discrimination, such as conflict resolution through mediation or conciliation, and psychological or legal support, although it does not have competency in litigation. Ms. Guadalupe Pulido Bermejo, Director of the OND, explained that it aims to solve discrimination cases between individuals, companies or the public administration. If the discrimination amounts to a crime, the case is forwarded to the public prosecutor specialised in discrimination and hate crimes, while in other cases, the OND tries to mediate between the victim and the perpetrator, aiming to find a tailor-made solution in each case. Over 70% of the cases belong to this latter group. The OND has competency only if the victim resides in Barcelona or if the discrimination occurred in Barcelona. The process normally takes about three months. The OND organises reflection workshops for the perpetrators which aim to change their discriminative behaviour through discussion, inter alia, on how to prevent a situation of discrimination. The OND assesses between 500 and 600 cases annually. In 2012, the reports of discrimination in employment decreased the most: only 8% of all discrimination cases were related to employment, 20% of which were committed against migrants. It does not mean that the incidence of this type of discrimination reduced but that people are rather reluctant to report them, fearing reprisals and the difficulties in finding another job under the current circumstances of the economic crisis.

4.2.2.3 Labour inspectorate

The ITSS falls under the competence of the Secretary of Labour and Immigration. The ITSS is responsible for the monitoring of the implementation of the equality plans which only prohibit gender discrimination, while discrimination based on other grounds are not specifically highlighted in its work. The main problem of the system is that there are few inspectors; therefore the control in employment is not sufficient. In Girona, for example, there are about 30 000 companies and there

262 Interview with Ms. Guadalupe Pulido Bermejo, Director of the Office for the Non-discrimination, 29 July 2013, Barcelona.
263 Ibid.
264 Oficina per la No Discriminació, “Resum d’activitats 2012”.
265 Interview with Ms. Guadalupe Pulido Bermejo, Director of the Office for the Non-discrimination, 29 July 2013, Barcelona.
are less than 15 inspectors who have to control the working conditions. In cases of discrimination in employment, the victim can report the case to the ITSS, while in parallel; s/he can initiate a judicial procedure as well. Earlier the victim could report discrimination anonymously but under the current legislation it is no longer possible. One of the biggest advantages of this procedure is that it only takes some months, while judicial proceedings may take even years in some cases.

4.3 Civil society initiatives

4.3.1 Trade Unions

The Confederation of Workers’ Commissions (Confederación Sindical de Comisiones Obreras, CCOO) is a trade union particularly active in the fight against racism and xenophobia. To this aim, CCOO promotes non-discrimination in companies, fosters the active participation of migrant workers and encourages migrants to join the trade union. The CCOO operates the Information Centre for Foreign Workers (Centre d’Informació per a Treballadors Estrangers, CETI) in Catalonia which provides free advice for migrant workers and elaborates proposals for the social integration of migrants. It has almost 40 offices in Catalonia and assists 15 000-16 000 clients annually. The CETI organises campaigns against racism jointly with other NGOs, such as SOS Racisme or the Federation of Neighbour Associations of Barcelona (Federació d’Associacions de Veïns i Veïnes de Barcelona, Favb). The CCOO promotes agreements of diversity management between the workers’ committees and the employers. Currently there are 10 agreements in Catalonia, although in 2012 no agreements were signed.

The Association of Mutual Aid of Immigrants in Catalonia (Associació d’Ajuda Mútua d’Immigrants a Catalunya, AMIC) is a non-profit organisation founded at the headquarters of General Workers Union (Unión General de Trabajadores, UGT), which is one of the biggest Spanish trade unions. The mission of the NGO is to promote the full social and political integration of migrants. To this end, AMIC promotes equality in employment and the improvement of workers’ rights, providing information on the legal framework regulating labour rights in Spain and in Catalonia. AMIC provides legal advice for migrant workers in discrimination cases and processes these claims. It provides support to migrants for the recognition of their qualifications obtained in their country of origin to foster equal opportunities between native and foreign workers. The recognition of foreign qualifications makes it easier to access the job market, which requires more skills or the promotion of migrants in employment. AMIC assists about 14 000 clients annually. Furthermore, AMIC promotes diversity management and the standardised application of integration plans in firms. For this purpose, AMIC sensitises and advises trade union representatives and those who are responsible for the

267 Interview with Dr. Ferran Camas Roda, Professor of Labour and Social Security Law and Director of the Chair of Immigration, Rights and Citizenship at the University of Girona, 10 July 2013, Barcelona.
268 Ibid.
269 Ibid.
270 Ibid.
272 Interview with Mr. Ghassan Saliba, Responsible of Social Cohesion, National Workers’ Commission of Catalonia, 17 July 2013, Barcelona.
273 Ibid.
275 Interview with Ms. Janette Vallejo Santes, Spokesperson and Coordinator of the Communication Department, Association of Mutual Aid to Immigrants in Catalonia, 18 July 2013, Barcelona.
implementation of equality policies, as well as employers and human resource managers, on the benefits and advantages of the implementation of the integration plans.276

4.3.2 NGO activities

Etxe Barrukoak – Asociación de Trabajadoras de Hogar de Bizkaia is an NGO which promotes the rights of domestic workers. Etxe Barrukoak advocates for a change in the legislation which would guarantee decent working conditions for domestic workers. It provides free legal aid in order to inform domestic workers on their rights and how to enforce them.277 Between January and November 2012 Etxe Barrukoak registered 457 clients in their record, 73% of whom (333 people) were migrants out of which 21% (70 people) were in an irregular administrative situation.278

The Fundación Secretariado Gitano plays a key role in the fight against discrimination of Roma people. In 2012 the FSG registered 114 complaints of discrimination and provided advice in 60 cases.279 A significant number of these complaints were related to the employment.280 The FSG solves these cases through dialogue or mediation or ultimately through litigation.281

Another outstanding initiative of the FSG is a labour mediation programme called ACCEDER. The aim of the programme is to improve the employability of the Roma community, developing their professional qualifications, providing professional trainings, establishing direct linkages between Roma people and companies, generating initiatives of protected employment, providing services that reinforce the prevention of early school leaving and permanence in the educational system.282 Currently FSG operates 49 employment offices in 14 autonomous communities.283 Due to the high rates of unemployment and the social stigma in many cases, the ACCEDER programme becomes the only opportunity for the Roma to receive training and have access to jobs.284 In 2012, the FSG, in the framework of the ACCEDER programme, assisted almost 15 000 people, organised 265 training courses and 2 571 people found a job. Altogether 3 700 contracts were signed, 400 less than the year before, but given the disadvantageous effects of the crisis, it can still be considered an outstanding achievement.285

The Fundación Diversidad promotes the application of diversity charters to foster employers’ engagement to a diverse workforce. The signatories of the charter undertake to respect fundamental principles of equality and the right to inclusion of everyone, irrespective of their diverse profile, to implement specific policies to promote a prejudice-free work environment and foster programmes of

279 Ibid.
280 Interview with Ms. Sara Giménez Giménez, Head of the Equality Department, Fundación Secretariado Gitano, 30 July 2013, by phone.
4.4 Individual employers’ initiatives

The Fundación Secretariado Gitano has a fruitful relationship with various social enterprises which, besides offering quality services for the public, also promote the employment of Roma and socially excluded people in general. In 2012, three companies participated in the programme: Vedelar, a social enterprise located in Avilés (Asturias), provides gardening, forestry, maintenance and environmental services; Nabut, based in Pamplona (Navarre), offers cleaning and laundry services, and Uzipén, located in Madrid and León (Castille and León), provides cleaning and maintenance for its clients.

Grupo Vinotium is a family-run business which operates various bars in Spain. Since its inception in 2005, Grupo Vinotium has placed importance to the employment of migrants. Currently about half of its staff consists of foreigners of 12 different nationalities, some of which have been working in the company since the beginning. Representatives of the firm affirmed that professionalism is the priority for the management and that employees are offered flexibility, for example, if they would like to accumulate their annual leave to go on holiday to their home country.

NH Hoteles, a multinational company, is also committed to corporate social responsibility. It gives utmost importance to diversity management, which is why in 2012 it counted 73 different nationalities in its staff in Spain and elaborated an Integration Code on non-discrimination and equal opportunities.

5. Conclusions and recommendations

5.1 Political and societal developments related to racism and discrimination

Since the last ENAR report, the economic crisis has worsened in Spain. The unemployment rate reached an unprecedented 27.16%, which affected more severely migrants (39.21%) and the Roma community (42%). The loss of employment has had serious consequences for migrants, many of whom have lost their residence and work permits and have become undocumented. Due to the scarcity of job opportunities, many migrants decided to leave the country and, in 2012, the
migrant population decreased by 2.3%. The grave economic situation and the stricter legal regulations forced many Roma people to give up their traditional professions and find work in the irregular economy. In 2012, only 36% of the Roma worked in the formal economy.

Spanish society has become more tolerant with migrants as only 2.5% of the population consider migration as the main problem in Spain, compared to 6.5% in 2012. However, xenophobic discourse and hate speech was on the rise in the time period covered by this report, where it was found that people usually blamed migrants for the consequences of the economic crisis and associated Roma with crime. The media has also contributed to the dissemination of stereotypes related to certain groups as it was in the case of the television programme “Palabra de Gitano” (Gipsy Word), broadcasted by Chanel Four (Cuatro). Hate speech and xenophobic discourse have also been spread through electronic media, social networks, blogs and forums. Gbril Jairodín Riaza, Director of the Observatorio Andalusí, said that some politicians use anti-Muslim discourse, while the press often projects a negative image of Muslims associating them with extremism.

As a consequence of the economic crisis and the widespread prejudices migrants, Roma people and Muslims also experience discrimination related to employment. Women often face double or multiple discriminations due to their ethnic origin or religion. Many migrants are obliged to work in less qualified positions or under worse working conditions than their native colleagues. Prejudice and social stigma makes it especially difficult for the Roma to enter the labour market. Discriminatory practices of employers harm Roma people’s ambitions to find a job and it has a negative effect on their self-respect. Muslim people, particularly women, face rejection in employment due to the wearing of religious symbols, such as the veil, and they are often forced to take it off or work in ‘invisible positions’ where clients do not see them.

In March 2012 the Spanish government adopted the National Strategy for the Social Inclusion of the Roma Population in Spain 2012–2020, which is an outstanding programme, given that it sets up specific objectives and indicators of progress in the mid and long terms. It is commendable that the adoption was preceded by an extensive consultation process between the public administration and civil society. Unfortunately, in 2012 no significant steps were taken for its implementation. Roma NGOs welcome the National Strategy, and consider it a good framework, although some of them expressed certain concerns. The Llere Association fears that its implementation can be problematic due to the lack of sufficient finance while the Fundación Secretariado Gitano criticised the National Strategy for setting up too vague objectives regarding the fight against discrimination.

The Spanish government failed to adopt a comprehensive anti-discrimination law which would cover all the grounds including discrimination based on nationality or origin. It is regrettable that neither victims, nor judges are familiar with the non-discrimination legislation which is rarely applied in the jurisdiction. The Spanish equality body, the Council for the Promotion of Equal Opportunities and Non-Discrimination on the Ground of Ethnic and Racial Origin, only formally complies with the EU Racial Equality Directive 2000/43/EC as it lacks both independence and efficiency and it has a more limited mandate given that it lacks the power to carry out investigations, issue binding decisions and

---

298 Centro de Investigaciones Sociológicas, “Barómetro de enero, Estudio nº 2.976”, op. cit., p.3.
299 Centro de Investigaciones Sociológicas, “Barómetro de enero, Estudio nº 2.927”, January 2012, p.3.
300 Interview with Mr. Gbril Jairodín Riaza, Director of Observatorio Andalusí, 31 July 2013, by phone.
301 Interview with Mr. Roberto Moreno López, Coordinator of Llere Association, 10 July 2013 via skype.
302 Interview with Ms. Sara Giménez Giménez, Head of the Equality Department, Fundación Secretariado Gitano, 30 July 2013, by phone.
intervene in litigation. The Council has a somewhat limited competency as it can assess cases of discrimination only based on ethnic or racial origin. Dr. Fernando Rey Martínez, President of the Council, regretted that people hardly know about the existence of the equality body.\textsuperscript{303}

5.2 Conclusions and recommendations

Equality for all, in both society and in the employment sector, is a good indicator of democracy. Spanish legislation needs to be improved in order to guarantee equal treatment and opportunity in employment for everyone. The economic crisis cannot be used as an excuse to cut the funding of national policies which promote the integration of migrants, the Roma and the equality body, which has been paralysed since 2012 due to the lack of funding.

Recommendations:

Statistics:
- The concept of “national minority” should be defined by law and official data should be gathered on the ethnic composition of the population.

Legal framework:
- A comprehensive anti-discrimination law should be adopted which would extend the prohibition of discrimination to all grounds, including nationality and origin.

Perceptions of discrimination in employment:
- Political parties should implement sanctions against its members who use racist or xenophobic discourse.
- The media should disseminate programmes on migrants, Roma and Muslims which would sensitise society and contribute to the mitigation of prejudices and negative stereotypes.
- Hate speech and xenophobic discourse disseminated on the Internet should be persecuted and punished.

Incidence of discrimination in employment:
- Data should be gathered on the incidence of discrimination in employment and a comprehensive and transparent database of the cases should be established by the State.

Public policies:
- The government should guarantee that the Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia and Related Forms of Intolerance is sufficiently financed and properly implemented.
- The government should guarantee the funding of the Forum for the Social Integration of Immigrants so that it can smoothly carry out its work.

\textsuperscript{303} Interview with Dr. Fernando Rey Martínez, Professor of Constitutional Law at the University of Valladolid and President of the Council for the Promotion of Equal Opportunities and Non-Discrimination on the Ground of Ethnic and Racial Origin, 13 August 2013, by phone.
Judicial remedies:
- Awareness-raising should be carried out so that victims of discrimination are aware of their rights.
- Trainings should be organized for the judiciary to enable familiarisation of the anti-discrimination legislation.

Non-judicial remedies:
- The Council for the Promotion of Equal Opportunities and Non-Discrimination on the Ground of Ethnic and Racial Origin should be reformed so that it becomes an independent body with an extended mandate to carry out investigation, issue binding decisions, intervene in litigation and assess cases of discrimination based on any of the foreseeable grounds.
- Awareness-raising campaigns should be launched so that victims of discriminations learn about the Council’s work.

6. Bibliography

European Union


International organisations


Committee on Economic, Social and Cultural Rights, Concluding observations of the Committee on Economic, Social and Cultural Rights, Spain, E/C.12/ESP/CO/5, 6 June 2012,


**Governmental sources**


**National legislation and case law**


Agreements between the Spanish State and the Holy See, 3 January 1979.

Comprehensive Bill for Equal Treatment and Non-discrimination, 2011.


Law 25/1992 which approves the Cooperation Agreement between the State and the Federation of Jewish Communities of Spain, 10 November 1992.
Law 26/1992 which approves the Cooperation Agreement between the State and the Islamic Comission of Spain, 10 November 1992.


Legal Aid Law, 1/1996, 10 January 1996.


Royal Decree 199/2010 which regulates the mobile or non-sedentary trading, 26 February 2010.


Spanish Constitution, 29 December 1978.


**Non-governmental organisations**


Media reports


Other sources


Consejo para la promoción de la igualdad de trato y no discriminación de las personas por el origen racial o étnico, “Informe anual sobre la situación de la discriminación y la aplicación de igualdad de
trato por origen racial o étnico en España 2010”, June 2011,  
http://www.igualdadynodiscriminacion.org/recursos/publicaciones/2011/informeAnual2010.htm,  
accessed 5th September 2013.

Consejo para la promoción de la igualdad de trato y no discriminación de las personas por el origen racial o étnico, “Informe anual sobre la situación de la discriminación y la aplicación del principio de igualdad de trato por origen racial o étnico en España 2011”, November 2012,  
http://www.igualdadynodiscriminacion.org/recursos/publicaciones/2012/informe_2011.htm,  
accessed 5th September 2013.


Office for the Non-discrimination,  

Oficina per la No Discriminació, “Resum d’activitats 2012”.

Red de centros de asistencia a la víctima por origen racial o étnico, “Memoria anual de resultados 2011”, 20 July 2012,  


Ventosa García-Morato, M., “Gestión de la Diversidad Cultural en las empresas”, 2012,  

Unión General de Trabajadores, “Población migrante en España: Más desigualdad, menos protección”, 21 March 2012,  
List of experts interviewed

Dr. Lorenzo Cachón Rodríguez, Professor of Sociology at the Complutense University of Madrid and member of the European Network of Legal Experts in the Non-discrimination Field, 16 July 2013 via skype.

Dr. Ferran Camas Roda, Professor of Labour and Social Security Law and Director of the Chair of Immigration, Rights and Citizenship at the University of Girona, 10 July 2013, Barcelona.

Dr. Maria Elósegui Itxaso, Professor of Philosophy of Law at the University of Zaragoza and Member of the European Commission against Racism and Intolerance (ECRI), 3 August 2013, by phone.

Sara Giménez Giménez, Head of the Equality Department, Fundación Secretariado Gitano, 30 July 2013, by phone.

Gbril Jairodín Riaza, Director of Observatorio Andalusí, 31 July 2013, by phone.

Manuel Martín Ramírez, President of the National Association Presencia Gitana, 18 July 2013, via skype.

Roberto Moreno López, Coordinator of Llere Association, 10 July 2013 via skype.

Guadalupe Pulido Bermejo, Director of the Office for the Non-discrimination, 29 July 2013, Barcelona.

Dr. Fernando Rey Martínez, Professor of Constitutional Law at the University of Valladolid and President of the Council for the Promotion of Equal Opportunities and Non-Discrimination on the Ground of Ethnic and Racial Origin, 13 August 2013, by phone.


Janette Vallejo Santes, Spokesperson and Coordinator of the Communication Department, Association of Mutual Aid to Immigrants in Catalonia, 18 July 2013, Barcelona.