

REFERENCE BOOK

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Project INSEROM

PREFACE

The Roma are Europeans

This “toolkit” can be used to better understand the Roma and work with them. It is aimed at helping to debunk received ideas which have persisted over time and which are causing, at the beginning of this 21st century, an unprecedented degree of marginalisation of a human community that doesn't quite fit into the “democratic mould” we are supposed to share.

The vast majority of Roma is European and has been for at least 600 years.

Although they make up **the largest cultural minority on the continent**, they are often overlooked or, conversely, seen as “too visible”, as strange and foreign, even when they have been living in the same country for centuries. If they are thus misjudged and little-known, it is because they have never staked a claim to a territory for themselves in a Europe of nation States. In short, the Roma are “strange citizens”, who have been set aside in our minds and in our environment, just because they live in mobile homes.

This very diverse people nonetheless has a history, traditions, a culture (*romanipen*) and a language (*Rromani*) which varies widely because of its spread across the whole of Europe. As **one of the constituents of Europe**, the Roma could easily adopt the European Union's motto, *United in Diversity*. Almost everywhere they live there is either an effective Europeanness or a promise of Europe. They live in all 28 European Union (EU) countries (including Croatia from 2013) and the last two enlargements in 2004 and 2007 considerably increased their representation. In the countries surrounding the EU, whether or not they are candidates for accession, the presence of Roma people is also very visible, be that in Turkey, Macedonia, Albania or Kosovo, or even in Switzerland, Ukraine and Russia. **Europeanness cannot be dissociated from the Roma identity, romanipen or “Romanitude”.**

The Roma were amongst the co-founders of the countries where they have lived for centuries. **They are our compatriots.** Within the European Union, as nationals of the different Member States, **they are our fellow citizens.** These obvious facts are barely recognized, and although they have a history in the European space predating the birth of entire States including Germany, Italy and Romania, **the Roma people have not yet been granted their own space**, if only because of the specificity of their “lifestyle”.

Wherever they go, they are invited to *integrate*: to live like other Europeans. **This is the main cause of the discrimination that the Roma people so often suffer.** Their mobility is not understood – it is confused with nomadism – and their practical philosophy, which excludes them from land ownership, nuclear families, salaried work in businesses and submission to non-Roma (*gadje*) administrative domination, is not accepted. In fact, populations with more or less the same lifestyle as the Roma (such as the Beas in Hungary, the Ashkali in Kosovo and the Yeniche in Switzerland and Germany) are subject to essentially identical rejection.

Whilst it is therefore important to uphold the law and demand compliance with texts, laws, directives and regulations ensuring the protection of minorities – including Roma people – it is easy to see that it is not sufficient. Human rights are consistently flouted everywhere, sometimes even where they have been proclaimed over and over again for decades. Without a constant and vigorous struggle on the part of citizens, universal rights no longer truly apply and are eroded, forgotten and violated.

The Roma have experienced – and continue to experience – **confinement** (behind separating walls or in prison), **exclusion** (at best in the outskirts of urban centres, sometimes far from any decent living area, without water, toilets or waste disposal) and **inclusion** (in specific areas in order to separate families considered more or less undesirable). The **societal inclusion** of Roma people can only be conceived as the right approach towards those for whom Europe is home, even if their “lifestyle” is not the same as that of most Europeans.

Even the vocabulary reserved for these citizens considers them as either assimilated and nameless – and thus not recognized in their culture – or on the contrary, sidelined, and then designated in a stigmatizing way. Never mind that “travelling people” no longer travel, or only rarely; they are still generally referred to as such, even though this expression has no singular or gendered form. Gypsies, Bohemians, Manouches, Roma and Tziganes (not to mention all the other local and popular expressions in each region of Europe) often go un-named or are named wrongly or imprecisely, because a given speaker is not familiar with the group in question. **What the Roma (the name adopted and accepted in the European institutions of Brussels) suffer from first and foremost is others' ignorance.**

Hopefully this set of document citations and references, ***Inserom***, will long serve the Roma people – and the friends of the Roma who support them voluntarily. It leaves out no aspect of the life of the Roma (equality of citizens, freedom of movement, suitable decent housing, education that respects the *romanipen*, access to employment without discrimination, access to health services, protection of the most vulnerable, access to social assistance, and the fight against Romaphobia). Like all guides, this **practical guide for action** is aimed at opening the way but will be of no use unless we as concerned citizens are committed to using it.

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ABBREVIATIONS AND ACRONYMS

AEDH: European Association for the Defense of Human Rights
AME: Aide Médicale d'Etat / State medical aid
APDHA: Pro-Human Rights Association of Andalucía
BEMIS: Black and Ethnic Minority Infrastructure in Scotland
BOE: Official Spanish Gazette
CASNAV: Centre Académique pour la scolarisation des élèves allophones / Academic centre for the education of new arrivals and Travellers' children
CESEDA: Code d'entrée et du séjour des étrangers et du droit d'asile / Code of Entry and Residence of Aliens and the Right to Asylum
CJEU: Court of Justice of the European Union
CHC: Czech Helsinki Committee
CMU: Couverture Maladie Universelle / Universal health coverage
Dalo: Droit au logement opposable / enforceable right to housing
DDD: Défenseur des Droits / Human rights defender
DNI: National Identity document
ECHR: European Convention on Human Rights
EU: European Union
EURES: European Employment Service
FRA: European Agency for Fundamental Rights
FSJ: Foundation for the Gypsy Secretariat
IAE: Tax on Economic Activities
ID: Identification Document
IMSERSO: Institute of elderly and Social Services
IPREM: Public Income Indicator of Multiple effects.
INSS: National Institute of Social Security
LDH (France): Human Rights League (France)
LOE: Organic Law of Education
NIE: Foreign Citizens Identification
NGO: Non-Governmental Organisation
OQTF: Obligation de Quitter le Territoire Français / Obligation to leave French territory
SAAD: System for Autonomy and Care for Dependency
SEPE: State Public Employment Service
TEU: Treaty on the European Union
TFEU: Treaty on the Functioning of the European Union
TSI: Individual Health Card
UN: United Nations
UNESCO: United Nations Educational, Scientific and Cultural Organization

GLOSSARY

Amicable procedure: legal procedure to reach, without judgement, a mutual agreement following to a dispute between two parties

Application for amparo: It can be filed by all individuals or legal persons, national or foreign, as well as the Public Prosecutor and the Ombudsman, before the Constitutional Court in defense of the rights recognized in Articles 14-29 of the Constitution.

Autonomous communities: Spain consists of 17 autonomous communities, plus Ceuta and Melilla which are autonomous cities. In education, the autonomous communities have capacity to develop state regulations and adapt it to its territory in non-core aspects of the education system.

Autonomous competencies: The autonomous competencies are the aspects on which the Autonomous Community can legislate and govern. The Autonomous Community laws can not contradict the Spanish Constitution.

Be registered: Registration of a person in a census from a public authority.

Biometric passport: a passport which contains detailed information about someone's body to prove who they are (e.g. fingerprints, colour of the eyes...)

Binding legislative act/text: European/international laws that States which agreed on it have to transpose in their national law as well as to apply them. In case they do not do it, bodies in charge of controlling their application can sanction them. On the principle, these texts can be used before a national court.

Care and custody of the children: This is the duty of cohabitation, care and attention of the minor sons and daughters.

Case law: a law based on trials decisions made by judges in the past.

Central Register of Foreigners: Citizens of the European Union, Member States of the Agreement on the European Economic Area (Iceland, Liechtenstein and Norway) and Switzerland and their families. They will be required to register with the Central Register of Foreigners, when they want to stay for more than three months in Spain.

Certificate of Registration: It is the document through which a national of a member country of the EU, certifies their legal residence in Spain (only required if they are going to reside in Spain for more than three months).

Charter of Fundamental Rights of the European Union: gives certain political, social, and economic rights to European Union (EU) citizens and residents into EU law. Since the Treaty of Lisbon, the Charter has the same legal value as a EU Treaty. The Charter does not extend the competences of the EU. The rights contained in the project INSEROM are issued of this Charter. (See Treaty of Lisbon, Hierarchy of norms, EU law)

Citizen's Office: It gives to citizens the necessary administrative information that allows them access to knowledge of their rights and obligations as well as the use of public goods and services. It can be contacted via email: oiac@msssi.es, by phone 901 400 100 or by the office network sectoral (addresses: <http://www.msssi.gob.es/oficinaInformacion/home.htm>)

Citizen of the European Union: a person holding the nationality of one of the European Union Member States (See Member States)

Competency (of the European Union): refer to the ability of the EU to take action by making laws, for example. The EU cannot take action in everything it wants and can be restricted when it has the right to act. Member States have set in the treaties the areas where it can have a power of action (e.g. custom union, environment, internal market, area of freedom, security and justice...). According to the area, the power of the EU can be:

- **exclusive competency** that-is-to-say full power - Member States gave to the EU the power to decide and therefore to make law that they will apply
- **shared competency** – As the action of the EU is regarded as more efficient, therefore Member States have decided to give the EU the power to act in some areas. Only if the EU does not act, Member States can act. The EU can also make law. Several areas are under shared competencies
- **supportive/coordination competency** - Member States decide, the EU can only support or coordinate their action.

All European Union directives, regulations and decisions have been created because the European Union had the competencies on these areas. If the European Union does not have competencies on an area it cannot make laws: among the areas of the reference book, this is the case on topics such as housing (File 3), education (File 4), health services (File 6) and social assistance (File 8). Still regarding the reference book, the EU has shared competencies on the freedom of movement and residence (File 2) as well as on employment (File 5) since it has the power to make law in the framework of the internal market.

Concerted School: This means that is ownership and private management, but works through agreements or grant funds from the state. "They must comply with the same legislation, calendars, programs and organization that the public school and the mandatory levels have to be free. In practice, they often have monthly fees related to certain activities, complementary activities or extracurricular classes.

Conseil des prud'hommes (Labour Court): it is a jurisdiction of first instance about the matter of labour contract between employers and employees in the private sector.

Contentious divorce: In case of failure to reach mutual agreement of separation or divorce, they must go to the Court to fix the measures relating to the declaration of separation or divorce, according to the requests and justifications made by each spouse.

Contributory benefit: The contributory unemployment benefit is a benefit for those who lose their job and are discharged at social security. It is a financial benefit given to those workers who can and willing to work, lose their jobs or are reduced temporarily ordinary workday.

Convention/Treaty: Contract between several international bodies (e.g. States by their own or the European Union). To be binding a Convention must be ratified by these bodies and not only signed. (See Ratification, Signature, UN, UNESCO)

Council of Europe (CoE): European Institution, distinct from the EU and independent from it, which works on promoting democracy and protecting the human rights and the rule of law. In comparison to the EU, where member states gave some of their sovereignty away to the EU to take decisions on common interest's topics, the CoE is strictly an intergovernmental institution where involved states are not forced to ratify all treaties neither all of their articles and they do not give it powers to decide for them. In addition, the CoE does not deal with economy while the EU is a politic and economic organisation. The CoE is composed of 47 states including the 28

EU member states and 19 non EU countries from Western Europe to Caucasia. (see European Convention on Human Rights)

Council of the European Union (Council or Council of Ministers): A European Union Institution composed of the Ministers of Member States. It has the power of deciding the creation of EU Laws, after the European Commission made a proposition. It shares this power with the European Parliament (on most of the topics). We call this procedure the codecision since they decide together.

Court of Justice of the European Union (CJEU): is the highest court in the European Union (that-is-to-say the decisions it takes cannot be judged by any other court) in matters of European Union law. It is tasked with interpreting EU law to ensure its equal application in all EU member states. The CJEU only deals with EU law and thus is not concerned by national law (except if the national law is the application of EU law). It is not possible to appeal the decisions of national courts to the CJEU, but rather national courts ask questions of the interpretation to have on the EU law to it. However, national court has to apply all the interpretation given by the CJEU. The CJEU is also the arbitrator between the EU's institutions and can cancel their action if they act outside their powers.

Decision (of the European Union): An act, binding for its addressees and are directly applicable like the regulations due to its precise content. Decisions are created because the EU has competencies on the area(s) of the decision. (See also European Union law, competency, regulation, directive)

Dependents: "Permanent state in which are the people who, by virtue of their age, illness or disability, and linked to the lack or loss of physical, mental, intellectual or sensory impairment, require attention of another person or persons or significant help to perform basic activities of daily life or, in the case of people with intellectual disabilities or mental illness, other support for personal autonomy."

(Article 2. Law 39/2006, of December 14 of Promotion of personal autonomy and care for people in a situation of dependency. Published in BOE no. 299, 15 december, 2006.)

Directive (of the European Union): A legislative act, which requires member states to achieve a particular result without dictating the means of achieving that result. The EU directives must be transposed in Member States' national law. Directives are created because the EU has competencies on the area(s) of the directive. Unlike regulations and decisions, the content of a directive is usually broad and can be inserted in several national laws. (See also European Union law, competency, regulation, decision)

Discrimination: Discrimination is the act whereby a person or a group is separated or given a different treatment based on certain criteria (sex, origin, religion...) that undermine equality.

Divorce by mutual consent: In mutual agreement procedures are the spouses themselves, who, with the advice and intervention of their lawyer, agreed between them the measures which, in the future, will regulate their new situation. These agreements are detailed in a document called the Settlement Agreement which will be presented to the court for approval, along with the demand for separation or divorce by mutual consent.

Equality Act 2010: this Act came into force on 1 October 2010. The Act brings together over 116 separate pieces of legislation into one single Act. Combined, they make up a new Act that provides a legal framework to protect the rights of individuals and advance equality of opportunity for all. The Act simplifies, strengthens and harmonises the current legislation to provide Britain with a new discrimination law which protects individuals from unfair treatment and promotes a fair and more equal society. The nine main pieces of legislation that have merged are: (a) the Equal Pay Act 1970, (b) the Sex Discrimination Act 1975, (c) the Race Relations Act

1976, (d) the Disability Discrimination Act 1995, (e) the Employment Equality (Religion or Belief) Regulations 2003, (f) the Employment Equality (Sexual Orientation) Regulations 2003, (g) the Employment Equality (Age) Regulations 2006, (h) the Equality Act 2006, Part 2, and (i) the Equality Act (Sexual Orientation) Regulations 2007.

Ethnic Minority: ethnicity is a complex and open textured concept that is irreducible to one, single classification. However, the predominant approach has been to elevate colour as the predominant facet of ethnicity, so for instance terms such as "White" and "Black" have been major headings in administrative national data gathering exercises, such as the decennial Census e.g. in 1991, 2001, and 2011. The term is used here simply to describe any group that is not in the numerical or percentage majority in all, any, or the relevant parts of the UK.

EURES (European Employment Service): the EU service to encounter a work/an employee in another member state. Every member state has an employment service.

European Commission: A European Union Institution which aims at proposing and implementing the European policies (areas where the EU has some competencies/powers on). It is the only EU Institution able to propose a law, but it does not decide of its creation. It also watches and makes recommendations to Member States to make sure that they implement the EU laws. (See Competency)

European Convention on Human Rights (ECHR): A European Treaty by the Council of Europe (CoE) based on the Universal Declaration of Human Rights and more complete than the European Union Treaties on fundamental rights. The Convention has also established the European Court of Human Rights (ECtHR) which is opened for citizens, NGOs and groups of individuals to take a case to the Court when one of the rights of the Convention has been violated by one of the States which ratified it. Before taking a case to the ECtHR, everyone needs to have recourse at the national level and to have received the decision of the highest court (this procedure is called "exhaustion of domestic remedies"). This Convention is not a European Union one but rather the Council of Europe. All EU Member States have ratified the Convention and the EU is currently under negotiation.

European Parliament: A European Union Institution composed of EU parliamentarian for most of them belonging to European political parties. It is the only Institution where its members are elected by EU citizens. Together with the Council of the European Union, it has the power of deciding the creation of EU laws after the European Commission made a proposition. We call this procedure the codecision since they decide together. (See competency)

European Union law: Set of rules able to be applied in EU Member States. It is divided in three groups:

- The **primary law** is composed of EU Treaties which funds and governs the EU (e.g. Treaty on the Functioning of the European Union and Treaty on the European Union which both of them has been modified by the Treaty of Lisbon).
- The **secondary legislation** is composed of texts produced in compliance with EU Treaties. This includes: directives, regulations, decisions, recommendations and opinions. Only directives, regulations and decisions are compulsory for Member States to be inserted in their national law and to be implemented by them.
- The **Jurisprudence** is composed of the decisions (called case-law) taken by the Court of Justice of the European Union (CJEU) after a problem has been raised on the interpretation of EU law texts. Therefore, the interpretation chosen by the CJEU becomes a case-law which then becomes part of the EU jurisprudence. These interpretation help to ensure the equal application of EU law in all Member States.

Unlike the secondary legislation, primary law's texts, so EU Treaties are adopted by Member States and not EU Institutions. Besides, Member States adopt and modify them altogether so by unanimity.

Treaties (primary law), directives, regulations (Secondary legislation) and case-law (jurisprudence) can be presented before national courts to defend the rights they contain since it is compulsory for Member States to have transposed these texts in their national law as well as to apply them.

European Union Agency for Fundamental Rights (FRA): A European Union agency (not an EU Institution) which provides expertise and assistance to the EU and the member states when they implement the EU law. For that they collect and disseminate data on the situation of fundamental rights in the EU states. It can also give its opinion addressed to the Institutions or the member states on how to improve the application of fundamental rights at its own initiative or at the request of the European Parliament, European Commission or the Council of the European Union.

Family planning: The set of practices that can be used by a woman, a man or a couple, aimed primarily to control of the reproduction using contraceptive methods in the practice of sex.

Formal education: These plans are defined as those that allow the integration into mainstream education and, therefore, are aimed at achieving the Basic Qualification.

Free housing: Houses which are not subject to any public protection regime.

Friendly settlement: legal procedure to reach, without judgement, a mutual agreement following to a dispute between two parties

Fundamental rights: rights that belong to all human beings under the same jurisdiction (i.e. legal framework). An example of this could be those contained under the UN declaration such as: the right to freedom of movement, thought and association.

Gender Violence: That which, "as a manifestation of discrimination and emanating of the situation of inequality and power relations of men over women, is exerted on them by those who are or have been a spouse or who are or have been linked to them by similar emotional relations, even without cohabitation "and" comprise any act of physical and psychological violence, including offenses against sexual freedom, threats, coercion or arbitrary deprivation of liberty" (Article 1 of the Organic Law 1/2004 of 28 December on Integrated Protection Measures against Gender Violence. Published in BOE no. 313, 29 December, 2004.)

Gens du voyage (Travellers): in France, it is a legal category for individuals who exercise itinerant activities and of no fixed abode or residence

Gypsy / Traveller: the term 'Gypsy / Traveller' is used to acknowledge that Gypsy/Travellers are not a homogenous group, as whilst there are substantial commonalities (including unfortunately experiencing systematic disadvantage and discrimination) nonetheless it comprises many different groups such as Scottish Gypsy/Travellers, Irish Gypsy/Travellers, English Gypsy/Traveller, and Roma, amongst others.

Hierarchical legal system: Spanish legal system is hierarchical. As a result laws of lower jurisdiction cannot conflict laws of a higher jurisdiction. The rank, from higher to lower level goes as follows:

- Organic Laws: are those laws issued to regulate matters related to the exercise of fundamental rights and public liberties, Statutes of Autonomy, the general electoral system and others provided for in the Constitution.

- Ordinary laws: are those laws with different subject matter from those reserved to the Organic Laws contained in the Constitution.
- Decree-Law: provisional laws that the Government may issue as a result of urgent matters and that rank as laws.
- Legislative-Decree: a rule that ranks as a law issued by the Government whose function relates to the elaboration of articulated or refunded texts.
- Regulations: rules dictated by the Government which allow the constitutional bodies to control the regulated function.

Hierarchy of norms: Ranking of the rules (different laws) of a State or an international body (e.g. European Union). Thus, all laws do not have the same value. Some have a higher value in comparison to other one. Some may have been created following to the creation of higher valuable laws to define a precise aspect of it. In case of conflicts between two laws, ranking allows to set on which one should be used. Within the EU law, the ranking is the following:

- First are the Treaties and the Charter of Fundamental Rights which are part of the primary law
- Second are the international agreements (e.g. the European Convention on Human Rights of the Council of Europe when the EU will ratify it)
- Third is the Secondary legislation and for which, the legislative act is ranked as following: binding acts (Directive, Regulation and Decision) and non-binding acts (e.g. resolutions, declarations, agreements... which have more a political value)
- Fourth is the jurisprudence

This ranking is not complete but is adapted to the information needed for the current project.

In any case EU law is higher on the ranking than national law. Therefore, citizens can refer to EU law whenever a Member State violates his/her rights due to a non-application or a denial of the EU law. This is why we say that "EU law prevails on national law".

Human Rights Act 1998: this Act gives further effect to certain rights and freedoms guaranteed under the European Convention on Human Rights (the Convention). The Act works in three key ways: First, it requires all legislation to be interpreted and given effect as far as possible compatibly with the Convention rights. Where it is not possible to do so, a court may quash or disapply subordinate legislation (such as Regulations or Orders), but only Parliament can make changes to primary legislation (such as Acts of Parliament). Second, it makes it unlawful for a public authority to act incompatibly with the Convention rights and allows for a case to be brought in a UK court or tribunal against the authority if it does so. However, a public authority will not have acted unlawfully under the Act if as the result of a provision of primary legislation (such as another Act of Parliament) it could not have acted differently. In general, a person who wants to take the UK to the European Court of Human Rights must first bring their case before our domestic courts. Third, UK courts and tribunals must take account of Convention rights in all cases that come before them. This means, for example, that they must develop the common law compatibly with the Convention rights, taking account of Strasbourg case law. The Act has quasi-constitutional status in UK law.

Human rights defender (DDD): he is an independent body, created since July 2008.

His missions are protection of children's rights, security ethics, fight against discriminations, rights of users of public services.

Individual health card: It is necessary for receiving healthcare in the country, identifies the patient in medical centers and hospitals. Facilitates the work of professionals, because it facilitates access to health information of the patient and provides the possibility to use the services of the Virtual Office of Health Ministry.

Insured: People who are entitled to health care through a national benefit system or a contribution to a private insurance fund.

In Spain, people who are entitled to health care with public funds through the National Health System.

IPREM: Indicator or reference income level used to determine the amount of certain benefits or to access certain services. Available at the following link: <http://www.iprem.es/blog/>

Job seekers: Persons enrolled in the Public Employment Service as unemployed and job seeker.

Judicial procedure: a collection of steps aiming at sorting out a subject matter through a legal judgment.

Jurisdiction: possessing the right and power to apply and interpret the law, and to rule a case.

Jurisprudential: a body related to law.

Material equality: is understood as that existing in a legal system in which, taking into account how the different social positions in which citizens find themselves can lead to legal 'inequality,' passes laws that intend to favour that part of the population in disadvantaged to make equality effective.

Member States (of the European Union): The 28 countries which are part of the European Union: Austria; Belgium; Bulgaria; Croatia; Cyprus; Czech Republic; Denmark; Estonia; Finland; France; Germany; Greece; Hungary; Ireland; Italy; Latvia; Lithuania; Luxembourg; Malta; Netherlands; Poland; Portugal; Romania; Slovakia; Slovenia; Spain; Sweden, United Kingdom.

Moratoriums on access to employment: Transitional period within which EU legislation permits to Member States not to allow citizens from new member states (Romania, Bulgaria and Croatia currently) to work in their territory.

For Spain, period within which the law does not permit to employ citizens of Romania in the Spanish territory. Thus, Romanian workers are required to obtain work authorization like extra-community workers. (See Transitional measures)

Municipality: is the entity in charge of administrating a locality or a group of these.

Non-contributory or assistance: Is the benefit for persons who are unemployed and have exhausted contributory benefit or not traded social security long enough to receive the contributory benefit.

Non-European Union citizen/ Third country national: A citizen holding the nationality of a State which is not member of the European Union

Non-formal education: These plans are focused on training for active and responsible citizenship and also provide the basic skills development ensuring autonomy, personal enrichment and continuous retraining that modern society requires.

Non-Governmental Organizations: Also known as NGOs, are civilian entities not dependent on the government, created to provide a service that enhances or maintains the rights and quality of life of society.

Occupations difficult to fill: list of professions in which public employment services have found difficulties in meeting the demands for workers.

Ombudsman: Person responsible for resolving by recommendations the citizens claims on the functioning of public administration.

The EU Ombudsman receives complaints from individuals and legal entities resident in the EU. These complaints are based on the malfunctioning of the EU administration. It may also act on its own initiative.

For Spain, is the high commissioner appointed by Parliament to protect and defend these fundamental rights and civil liberties of citizens enshrined in the Spanish Constitution.

Portfolio of services: A set of techniques, technologies and procedures, by which the healthcare services are provided.

"Special provision": People who are not entitled to receive healthcare may sign an agreement with the Spanish Social Security to enjoy the basic portfolio of services. This "costs €59.20 / month for those under 65 and €155.40 / month if they are over 65.

Presumption: From a legal point of view, this involves consideration that certain facts are true and will be require submission of evidences against them in order to prove that the facts are not true.

Primary care social services: The primary care social services are the primary care level of basic social needs of citizens, are located in all Spanish municipalities and target the population as a whole.

Private school: not receive government subsidies and is funded by the users. Prices per student vary from one center to another. The criteria for admission to these centers are not subject to the law, the direction of the center who decides admission.

Prosecutor: The prosecutor, without prejudice to the functions entrusted to other organs, has the mission promoting the action of justice in the defence of law. It is also intended to defend the rights of citizens and public interests protected by law, automatically or on request of stakeholders. Finally, it ensures the independence of the courts and securing before them the satisfaction of social interest. (<http://www.fiscal.escct>)

Protected housing: Houses that have a more affordable price than the ones in the free housing market and are intended to sectors of the population with more difficult to access housing.

Public school: It is financed from taxes of citizens and is managed by the Educational Community itself.

Ratification (of a Convention, a Treaty): By ratifying a state indicates its consent to be bound to a legislative act. A State which has ratified a legislative act commits itself to apply its content (insertion in the national law) and to respect it. In principle, an act ratified by a State can be used before the national courts. For the UN and its agencies, acceptance and approval have the same legal meaning as ratification (See UN, UNESCO).

Registration certificate: It is the administrative record indicating all the neighbors who live or ordinarily resident in that municipality. Its data are proof of residence in the township. By law every person living in Spain is obliged to register in the municipality where he resides.

Registration in Social Security: An administrative act by which the General Treasury of the Social Security recognizes the condition included in the Social Security System.

Regular Process: When the student enrollment application is submitted pursuant to the calendar proposed by the administration.

Regulation (of the European Union): a legislative act of the European Union that becomes immediately implemented as law in all member states simultaneously. Regulations are created because the EU has competencies on the area(s) of the regulation. Unlike directives, the content of a regulation is usually precise to allow its direct insertion (without any modification) in national laws. A regulation contains the objectives and the means to reach them. (See also European Union law, competency, directive, decision)

Repatriation: to send someone back in her/his country of origin which most of the time is the country of nationality

Reversal of the burden of proof: It is not the victim who must prove that there has occurred an act of discrimination. It is up to the defendant (the alleged discriminator) who must show that there has been no breach of the principle of equal treatment.

(Law 62/2003, of 30 December, on fiscal, administrative and social order. Published in BOE no. 313 December 31, 2003.)

Schengen area: Inside this area, free movement of persons is the rule. Any individual, (whether a citizen of the European Union or of a non-member state who may require for the latter a visa to enter the area), once on the territory of a member country, can cross the borders of the other countries without any border checks. The 22 EU states signatories are Austria ; Belgium; Czech Republic; Denmark; Estonia; Finland; France; Germany; Greece; Hungary; Italy; Latvia; Lithuania; Luxembourg; Malta; Netherlands; Poland; Portugal; Slovakia; Slovenia; Spain; Sweden (Iceland; Norway; Switzerland; Liechtenstein are also signatories but non EU member states). Some EU member states are not part of the Schengen area: Ireland; Bulgaria; Croatia; Cyprus; Romania; United Kingdom.

Schengen visa: This visa allows the holder to enter a member state and freely travel to any country inside the Schengen area as long as the entire stay lasts less than three months within a six month period. Depending on your nationality, you might not need a visa. (See Visa)

Self-Employed: the economic or professional activity made by an individual regularly and directly, for profit, outside the scope of organization and direction of another person.

Signature (of a Convention, a Treaty): Mean of authentication, expressing the willingness of a state to ratify a Treaty or a Convention, but does not mean it will. However, it allows the state to proceed to ratification, acceptance or approval of this text. Unlike ratification, by only signing, a State is not bound to what it has signed on. (See Ratification, UN, UNESCO)

Special Process: When the registration procedure is done out of time because of extraordinary issues.

Statute of Autonomy: Is the Spanish basic institutional law of a community or an autonomous city, recognized by the Spanish Constitution of 1978.

Third country national / Non European Union citizen: A citizen holding the nationality of a State which is not member of the European Union

Transitional measures (of the European Union): Measures which restricts the freedom of circulation of citizens of a country which has recently joined the European Union. The restrictions tackle employment and indirectly the right of residence of these citizens. To not disturb their national employment market with the possible arrival of workers from the new States, the other Member States can, for example, restrict the choice of employment opened to these citizens as well as putting conditions on their hiring to employers. Following EU law, the incapacity for someone to afford his/her living leads to not have the right of residence after three months on

another Member State's territory. Not all Member States apply these measures. After a State has joined the EU, its citizens are compulsory under transitional measures for two years. As long as a Member State wants to put transitional measures, this length can be extended to three years and then to two years additional. In total these measures can last seven years. Being under these measures means that the country is not part of the Schengen area.

Treaty/Convention: Contract between several international bodies (e.g. States by their own or the European Union). To be binding a Treaty must be ratified by these bodies and not only signed. (See Ratification, Signature)

Treaty of Lisbon: Entered into force in 2009, the Treaty of Lisbon modifies two other EU Treaties: Treaty on the Functioning of the European Union and the Treaty on European Union. Among the changes brought by the Treaty of Lisbon: the Charter on Fundamental Rights of the European Union has now the same value as a Treaty on the hierarchy of norms, the EU can sign international Conventions (e.g. European Convention on Human Rights of the Council of Europe) and the competencies of the EU have been reshaped. (See Hierarchy of norms, competencies)

UN (United Nations): An international organization composed of most of the countries of the world. It promotes peace, security, economic development, social progress, human rights, civil rights, civil liberties, political freedoms, democracy. Conventions and Covenants made under the UN are binding legislative acts for the States which ratified it (or accepted/approved it).

United Kingdom: the United Kingdom of Great Britain and Northern Ireland (the UK) is a sovereign State, comprising four nations, namely England, Northern Ireland, Scotland, and Wales. It is important to distinguish between the UK and Great Britain, with the latter comprising England, Scotland, and Wales only.

UNESCO (United Nations Educational, Scientific and Cultural Organization): agency of the United Nations which contributes to peace and security by promoting international collaboration through education, science, and culture in order to further universal respect for justice, the rule of law, and human rights along with fundamental freedom. Its Conventions are binding legislative acts for the States which ratified it (or accepted/approved it).

UK Parliament: the sovereign legislature of the UK. It is a bicameral Parliament comprising an Upper House (the House of Lords) and a Lower House (the House of Commons). The former House comprises members - often referred to as Peers - appointed by the Queen on recommendation from the Prime Minister and the latter House contains individuals democratically elected as Members of Parliament.

Visa: Official authorization added to a passport, permitting entry into and travel within a particular country or region. (See Schengen Visa)

Work as Employed: an employee who works for a public or private entity in which he/she has signed a contract.

INTRODUCTION

Note to INSEROM partners:

Introduction is coming.

It will be a more practical one than the previous one which became the preface.

File 1 - Fundamental rights defence and respect of human dignity: Equality before the law

Article 1

Human dignity is inviolable. It must be respected and protected

Article 6

Everyone has the right to liberty and security

Article 20

Everyone is equal before the law

THE EUROPEAN LEVEL

1. The legislative texts funding the Rule of Law

The Rule of Law aims at protecting democracy and citizens' fundamental rights by avoiding any abuse which harms their rights or the democracy itself. The European Union does not have a legal definition of the Rule of Law since its meaning differs from one country to another. However, the EU adopted the principle and inserted it in its legislative texts¹, such as Treaties², by referring informally to the general idea that "no one is above the law", not even the State itself, and consequently every citizen is equal before the law.

Going deeper than just agreeing with the Rule of Law, the EU made of the equal treatment before the law and the protection from discrimination two universal rights³, which give them an even greater value. For this reason, the EU has engaged to treat equally its citizens within its "*institutions, bodies, offices and agencies*"⁴. Besides, since 1992, every citizen of a Member State is also a citizen of the EU⁵.

Consequently, due to this dual citizenship a member state citizen is both under his/her domestic legislation and the EU legislation. Furthermore member states cannot discriminate a EU citizen based on his/her citizenship⁶.

The Rule of Law also includes that there is a hierarchy of legislative texts. For the European Union, EU Treaties, including the Charter of Fundamental Rights⁷, are on top of the EU legislation which means that other EU legislative acts or agreements should not say the contrary of what they say. Moreover, all member states must also agree to the Treaties⁸. Directives and Regulations are also texts that member states should apply if they are addressed to them.

¹ The Rule of Law is considered as a founding value of the European Union along with fundamental rights as it is expressed in the Article 1A of the Treaty of Lisbon: "*The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities (...)*"

² The Treaty of Lisbon is the latest treaty made by the European Union and has been applied since 2009. The Treaty of Lisbon brought several change in the functioning of the EU by making it more democratic and efficient. For more information on EU Treaties: http://europa.eu/eu-law/treaties/index_en.htm

³ Recital 3 Directive 2000/43/EC "*The right to equality before the law and protection against discrimination for all persons constitutes a universal right recognised by the Universal Declaration of Human Rights, the United Nations Convention on the Elimination of all forms of Discrimination Against Women, the International Convention on the Elimination of all forms of Racial Discrimination and the United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and by the European Convention for the Protection of Human Rights and Fundamental Freedoms, to which all Member States are signatories.*"

⁴ Article 8 of the Treaty of Lisbon: "*the Union shall observe the principle of the equality of its citizens, who shall receive equal attention from its institutions, bodies, offices and agencies*".

⁵ Article 20 Treaty of Maastricht or (officially called the Treaty on the European Union): "*Every person holding the nationality of a Member State shall be a citizen of the Union*"

⁶ Article 18 of the Second part of The TEU "*any discrimination on grounds of nationality shall be prohibited*"

⁷ Since the Treaty of Lisbon the Charter of Fundamental Rights has the same legal value as the EU Treaties. This is mentioned in the Article 6 of the Treaty on the European Union (TEU or Treaty of Maastricht). The TEU was modified by the Treaty of Lisbon.

⁸ EU Treaties are binding legislative texts that-is-to-say that the addressees of legislative texts have to apply the content of the Treaties. EU Directives, EU regulations and EU decisions are also binding legislative texts.

Therefore, states must include the principle of equal treatment in their own legislation and apply it⁹.

However, United Kingdom and Czech Republic put limits to the application of the Charter of Fundamental Rights (See the United Kingdom and Czech Republic' sections of the current file).

Regarding non-EU citizens, the Charter of Fundamental Rights does not include only EU citizens. Therefore the rights apply to everyone who is present on the EU territory.

2. How is the equality before the law ensured?

Mechanisms have been implemented to ensure the application of the Rule of Law and thus the equality of treatment within the EU. This has been done on two levels, at the states level to make sure that they apply the principles and on the citizens level to give them means to take recourse. This second level will be addressed in the file 9 "How to fight anti Roma discrimination".

First of all, to be part of the EU, member states must accept EU treaties. Consequently, any state which wishes to join the European Union must have included in its binding legislative texts¹⁰ its principles and rules, and apply them.

Secondly, EU Institutions and bodies have, to a certain extent, the capabilities to prevent or react to the violations made to the Treaties by member states:

- The European Commission, very often called "Guardian of the Treaties", monitors the member states to ensure that they apply the EU law as well as within the deadlines set. In case they fail¹¹ it can take actions in two phases and worst cases reach the second phase. The first one is an amicable procedure¹² which usually aims at reminding the troubled state to apply the legislation¹³. If the first phase was not enough, the European Commission moves on to the second one¹⁴ by suing the member state to the Court of Justice of the European Union (CJEU)¹⁵.
- The main mission of the CJEU is to ensure that the law is respected "*in the interpretation and application of the Treaties*"¹⁶. It makes sure that any new EU laws are in conformity with the Treaties and that the member states apply their content. It also works in collaboration with the member states courts and tribunals so that EU law is interpreted on the same way everywhere and thus can be asked by one of them, specific

⁹COUNCIL DIRECTIVE 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin Article 14 paragraph a "*Member States shall take the necessary measures to ensure that: any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished*"

¹⁰ See definition of binding legislative texts

¹¹ The European Commission becomes aware of violation made by a member states thanks to their own monitoring or a complaint made by anyone, including citizens.

¹² An amicable procedure usually implies to fix a problem without resorting to justice

¹³ This phase is officially called the pre-litigation administrative phase, also called "Infringement proceedings". For more information : The European Commission website on the infringements of EU law http://ec.europa.eu/eu_law/infringements/infringements_en.htm

¹⁴ This phase is called the litigation procedure

¹⁵ More accurately, the member state is sued to one of the three courts of the CJEU, the Court of Justice

¹⁶ Article 19 of the Treaty of the European Union paragraph 1 "*The Court of Justice of the European Union (...) shall ensure that in the interpretation and application of the Treaties the law is observed.*"

interpretations. The Court of Justice is in charge of this task. Its case-law has led to the establishment of some of the EU fundamental principles, such as the fact that citizens can apply the EU laws before their national ones¹⁷.

- The European Union Agency for Fundamental Rights (FRA)¹⁸ provides expertise and assistance to the EU and the member states when they implement the laws. For that they collect and disseminate data on the situation of fundamental rights in the EU states¹⁹.

For now, the European Union is negotiating its accession to the European Convention on Human Rights (ECHR), an international convention based on the Universal Declaration of Human Rights and adopted by the Council of Europe in 1950's. While all member states have ratified the ECHR, the EU started officially the negotiations in 2010²⁰. This accession would strengthen the protection of human rights in Europe since the EU law will also be watched closely by an external and independent control, the European Court of Human Rights which is an organ of the Council of Europe, and not a EU Institution. In addition, the CJEU already refers sometimes to its decisions for its own jurisprudence. It will also bring consistence to the member states which must take into account the ECHR while they apply the EU law. Moreover, with the ECHR, EU citizens will be also protected from the EU law like they are already from their national laws.

UNITED KINGDOM

1. Introduction: Overview of the legislative text

The United Kingdom does not have a single legal system since it was created by the political union of previously independent countries. Article 19 of the Treaty of Union, put into effect by the Acts of Union in 1707, created the Kingdom of Great Britain but guaranteed the continued existence of Scotland's separate legal system. The Acts of Union of 1800, which combined Great Britain and Ireland into the United Kingdom of Great Britain and Ireland, contained no equivalent provisions but preserved the principle of separate courts to be held in Ireland, of which the part called Northern Ireland remains part of the United Kingdom. Therefore, United Kingdom has three legal systems which govern its people:

- English law, which applies in England and Wales
- Northern Ireland law, which applies in Northern Ireland, are based on common-law principles
- Scots law, which applies in Scotland, is a pluralistic system based on civil-law principles, with common law elements dating back to the High Middle Ages.

¹⁷ This principle is called "the direct effect of Community law"

¹⁸ Website of the Fundamental Rights Agency: <http://fra.europa.eu/en>

¹⁹ Their work only concerns fields where the EU has the right to work on. The EU does not decide nor work on everything. According to the principle of sovereignty, the Member States also have fields where they are alone to decide their policies and legislation. This is the case for the topic of housing for example. See File 3 "Right to access to decent housing". The FRA can also give an opinion addressed to the Institutions or the member states on how to improve the application of fundamental rights at its own initiative or at the request of the European Parliament, European Commission or the Council.

²⁰ In the Treaty of Lisbon, the accession became a legal obligation as mentioned in its Article 6 Paragraph 2 "The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms"

England and Wales, Northern Ireland, and Scotland diverge in the more detailed rules of common law and equity, and while there are certain fields of legislative competence devolved in Northern Ireland, Scotland, Wales and London, there are substantive fields of law which apply across the United Kingdom.

The highest court in the land for all criminal and civil cases in England and Wales and Northern Ireland and for all civil cases in Scots law. is The Supreme Court of the United Kingdom.

Formed in October 2009 'The Supreme Court' replaced the Appellate Committee of the House of Lords. In England and Wales, the court system is headed by the Senior Courts of England and Wales, consisting of the Court of Appeal, the High Court of Justice (for civil cases) and the Crown Court (for criminal cases). The Courts of Northern Ireland follow the same pattern. However, in Scotland the chief courts are the 'Court of Session', for civil cases, and the 'High Court of Justiciary', for criminal cases. Sheriff courts have no equivalent outside Scotland, as they deal with both criminal and civil caseloads. The Judicial Committee of the Privy Council is the highest court of appeal for several independent Commonwealth countries, the British overseas territories, and the British Crown dependencies. There are also immigration courts with UK-wide jurisdiction — the Asylum and Immigration Tribunal and Special Immigration Appeals Commission. The Employment tribunals and the Employment Appeal Tribunal have jurisdiction throughout Great Britain, but not Northern Ireland.

United Kingdom has been a home to a diverse range of migrants including Asylum Seekers, Refugees, European Union and non EU migrants who came to the UK to work, study or to make a better life for their families. 2004 saw an increase of the Romanian communities entering the UK following their right of free movement in hope of an improved standard of living. Although many Roma Migrants to the UK moved voluntarily a number of the migrants were forced to enter the UK in the hope of capitalising on the economic growth of that time across the UK.

Like the existing Gypsy traveller community within the UK the Roma population gained classification as an ethnic group. Residing in their thousands in the UK, across London, Doncaster, Midland, East London and North London and around Glasgow (Scotland), Wales and Northern Ireland; most of these communities are from Slovakia, Czech Republic, Romania and Poland.

The importance of the ethnic classification refers to the Rule of Law under Fundamental Rights defence and respect of Human Dignity: Equality before the law, Articles 1: Human dignity is inviolable. It must be respected and protected", Article 6: "Everyone has the right to liberty and security", Article 20: " All persons are equal before the law."

Within the backdrop of UK Law described above this file will apply UK Law and its implementation through case law with regards to Roma community from the accession countries and also Roma Nationals/ Roma Gypsy Travellers and settled Gypsy Travellers.

There are various legislations and policies that protects minority ethnic and cultural communities, of which, the Roma community is part of should gain protection against discrimination according to article 16 and 20 described above. As much of the legislations is controlled by UK

Government and Home Office with the Parliament holding the powers to repeal any law.²¹ In references to this toolkit it is illegal across the UK to violate rights of any human being, including Accession 2 (A2) migrants which is the term used to describe the countries who joined the European Union in January 2007 (Bulgaria and Romania). The Human Rights Act 1998 took effect in October 2000, incorporates the bulk of the European Convention on Human Rights into domestic law, and is the closest the UK has to constitutional statute. The Equality Act 2010 replaced and integrated disparate non-discrimination legislation that covered protected characteristics such as race, sex, disability and many others. The non-discrimination protections in the Equality Act 2010 cover nine protected characteristics, namely race, sex, disability, religion / belief, sexual orientation, age, gender reassignment, marriage / civil partnership, and pregnancy and maternity²². Therefore, equality before the law is ensured through judicial law and the Acts mentioned above. In addition, the Equality Act 2010 sets out the public sector duty apply across all UK public bodies and those others who are delivering public functions. This Act helps service providers to form their policies and deliver services which meet the needs of the communities and which are accessible to all including the Roma community.

Regardless where the Roma community lives in the UK (England Wales, Northern Ireland or Scotland they share equal rights as any other citizen legally residing within the country. Those entering the UK illegally, for example, Roma 'beggars', who often are coerced to the UK through trafficking or promise of employment.

2. How is the Equality before the law ensured?

Article 6: Right to liberty and security of person not to be randomly deprived of their liberty. That is, not to experience deprivation of liberty, such as, absolute deprivations (such as imprisonment or forced detention). Article 5 is not concerned with mere restrictions on liberty of movement. The difference between restrictions on liberty and deprivation of liberty is one of degree or intensity and depends on the type of measure imposed, its duration and effects and how it is implemented.

Exceptions: Lawful deprivation of liberty must be proportionate and within the following circumstances:

- detention following court conviction;
- arrest or detention for failing to observe a lawful court order or to fulfill a legal obligation;
- arrest or detention on remand – i.e. to bring a person before the courts if reasonably suspected of having committed an offence; if reasonably necessary to prevent the commission of an offence; or to prevent a person escaping justice (but not preventative detention). Detention must be proportionate in the circumstances;
- detention of children by lawful order for educational supervision or in secure accommodation, care etc;

²¹ "The role played by the UK Parliament in the ratification of treaties is not constitutionally defined, but derives from custom and convention. Parliament has no formal input into treaty-making, which is the prerogative of the executive acting on behalf of the Crown. An undertaking given by the then Under-Secretary of State for Foreign Affairs in 1924 led to the eponymous 'Ponsonby Rule' which has "gradually hardened into constitutional practice, observed in principle by all Governments". The rule is described in Erskine May as follows". [Parliament UK](#) Developments affecting Parliamentary sovereignty: Over the years, Parliament has passed laws that limit the application of parliamentary sovereignty. These laws reflect political developments both within and outside the UK. They include: The devolution of power to bodies like the Scottish Parliament and Welsh Assembly. The Human Rights Act 1998.²¹ The UK's entry to the European Union in 1972. The decision to establish a UK Supreme Court in 2009, which ends the House of Lords function as the UK's final court of appeal. These developments do not fundamentally undermine the principle of parliamentary sovereignty, since, in theory at least, Parliament could repeal any of the laws implementing these changes. The Human Rights Act: <http://www.equalityhumanrights.com/human-rights/what-are-human-rights/the-human-rights-act/>

²² Please find (a) the Human Rights Act 1998 at: <http://www.legislation.gov.uk/ukpga/1998/42/introduction>; and (b) the Equality Act 2010 at <http://www.legislation.gov.uk/ukpga/2010/15/contents>.

- detention which is lawful, necessary and proportionate to prevent, as a matter of last resort, the spread of infectious diseases, lawful detention on mental health grounds or other like grounds;
- arrest or detention to prevent unauthorised entry into the country or for deportation or extradition.

The final clause 'Unauthorised entry to country, deportation or extradition is only lawful if 'timeous' ie: proceedings for deportation or extradition are actually in process and carried out diligently.

Following a landmark case in 2004, the European Court of Human Rights found that an autistic man with profound disabilities, HL, had been unlawfully deprived of his liberty in a hospital. The Court found that there were no safeguards in place to protect HL against arbitrary detention, especially given he lacked the capacity to consent to his treatment and had no opportunity to challenge the decision.

As a result of this landmark judgment, in April 2009 the Deprivation of Liberty Safeguards (DoLS) came into effect. The DoLS are intended to satisfy the procedural safeguards required by Article 5, e.g. by providing that any deprivation is kept under review. Thus giving further protection through 'Procedural safeguards' under article 5 for those arrested or detained as follows:

- Article 5(2) requires that anyone arrested must be promptly informed as to why he or she has been arrested and what the charge against them is. This must be conveyed to them in a language which he or she understands. The purpose of this requirement is to enable the person to challenge the lawfulness of their arrest. This requirement is not only limited to the criminal context but also applies to detention on mental health grounds and immigration detention etc.
- Brought before a court - Article 5(3) gives everyone arrested or detained on suspicion of having committed an offence the right to be promptly brought before a judge. This is intended to impose a strict time limit on pre-charge detention.
- Trial - There is also an entitlement to trial within a reasonable time and release on bail. The presumption is that bail should be granted and if it is to be denied it must be justified by relevant and sufficient reasons.
- Right to go before a court - Article 5(4) provides that everyone deprived of their liberty is entitled to bring court proceedings to challenge the lawfulness of the detention. Such a challenge must be speedily decided by a court and if the detention is ruled unlawful his or her release must be ordered. If detention is ongoing this provision requires regular review of the lawfulness of the detention.

Within the UK the subject of Law is further complicated as "England and Wales share a judicial law system where Scotland and Northern Ireland have devolved responsibilities and have a different structure of court systems which is then translated by public bodies, such as, police, education, health and housing.

The English and Welsh 'Judicial Review' is the procedure by which the courts examine the decisions of public bodies to ensure that they act lawfully and fairly. On the application of a party with sufficient interest in the case, the court conducts a review of the process by which a public body has reached a decision to assess whether it was validly made. The court's authority to do this derives from statute, but the principles of judicial review are based on case law which is continually evolving. Judicial review in Scotland is the procedure whereby the exercise of a

delegated discretionary decision making power is examined by a court so as to ensure that the power has been properly exercised for its lawful purpose".²³

After a re-hearing, or if the AIT which hears a case for the first time has a 3 or more members, the decision may only be challenged by an appeal to the Court of Appeal (Civil Division) in England and Wales, or the Court of Session (Inner House) in Scotland. Permission is required for such an appeal either from the Tribunal itself or the relevant court.

UK always enjoyed its powers within the legislative frameworks of the EU. However UK has violated the EU Commissions directive. The Court holds the overall powers when it comes to any legislations concerning the UK and Wales and Scotland. The devolved countries only hold primary legislative²⁴ powers regarding the judiciary, prison services, education and health, but the overall power lies with UK Government. United Kingdom and Ireland from rest of the European member states have had a different position when it came to freedom, security and justice (article 6) in relation to the violation of the rule of law harming the Roma and other eastern European communities. The UK law violates the Free Movement Directive; UK do not allow extended family members from the EU to travel together with a member of the extended family who is a EU citizen holding a valid residence card and they are not allowed to apply for a residency in the UK even though they are dependent on this person.

3. The Violation of the Rule of Law Harming the Roma

All Victims of unlawful detention with loss of liberty are entitled to compensation under provision Article 5(5) which states that victims of unlawful arrest or detention have an enforceable right to compensation.

Case study

The Anti-Terrorism Crime and Security Act 2001 was passed within weeks of the Twin Towers atrocity. Part 4 of the Act provided that any foreign national who was suspected of being a terrorist (but not convicted or even charged) could be indefinitely detained without charge or trial if he or she could not be deported.

The Government acknowledged this measure breached the right to liberty, but sought to derogate from its obligations under the Convention. The House of Lords held that the derogation was invalid as the Government could not show that the measure was strictly required, particularly as it only applied to foreign nationals and not UK suspects.

The House of Lords held that this measure was a clear breach of the right to liberty and was also discriminatory. The Law Lords upheld the fundamental nature of the right to liberty noting that indefinite detention without trial wholly negates the right to liberty for an indefinite period.

²³ In general terms the court will intervene where the person or body which has been given the power fails to act when it is required to or when it makes a decision it ought not to have made when acting properly within the terms of the mandate given to them. The remedy is only available in the Court of Session². The current system of courts is provided for in Article 34 of the [Constitution of Ireland](#) of 1937. However, it was not until the [Courts \(Establishment and Constitution\) Act 1961](#) became law that this system took effect. Between 1937 and 1961 the courts provided for by the [Constitution of the Irish Free State](#) and the [Courts of Justice Act 1924](#) continued their work under the Transitory Provisions of the Constitution of 1937, in which Articles 34 to 37 deal with the administration of justice generally. The [Courts Service Act 1998](#) created the *Courts Service of Ireland* to manage the courts and associated property, and provide assistance and facilities to their users, including judges. The Courts Service also provides information to the public. The *Courts Service Board*, which oversees policy formulation and implementation, is headed by a [Chief Executive Officer](#). Judges of the courts are independent of the service in their judicial functions and are in that capacity paid by the state and not the service.

²⁴ Primary legislation is law made by the legislative branch of government. This contrasts with secondary legislation, which is usually made by the executive branch. Secondary (or delegated) legislation must be authorised by primary legislation, and conform to boundaries it has laid down.

The House of Lords made a declaration of incompatibility, and the law was repealed in response. There are various examples of the violation of the rule of law harming the Roma; for example some Romanians pretending to be Polish to be accepted in the UK, as both are from the invisible communities and can mis-represent their identity due to the same colour and similar ethnicity which can go unnoticed from other European member states. The institutions such as schools put children in difficult situations when asking questions to find their identity and UK always enjoyed its powers within the legislative frameworks of the EU, However UK has violated the EU Commissions directive. The UK Government holds overall powers when it comes to any legislations concerning the UK and Wales and Scotland The devolved countries only hold primary legislative powers regarding the judiciary, prison services, education and health, but the overall power lies with the Westminster.

United Kingdom and Ireland have held a different position when it came to freedom, security and justice (article 6) in relation to the violation of the rule of harming the Roma and other eastern European communities.

The UK law violates the Free Movement Directive as the UK do not allow extended family members from the EU to travel together with a member of the extended family who is a EU citizen holding valid residence card or to gain residency in the UK despite dependency on EU Citizen.

However, there are other violations of the law when it comes to migrants entering the UK, for instance, the health insurance under the Free Movement Directive are expected to have sickness insurance yet UK has free NHS and really doesn't require EU migrants to have that insurance, which breaches the EU law. The Romanian and Bulgarian are subject to further discrimination as UK doesn't issue workers within the first 12 months with the same residency documents as they would offer other EU workers from other member states.²⁵

The violation of the law harming the Roma under the Free Movement Directive (2004/38/EC) aims to ensure that EU citizens can fully enjoy their rights to freely travel, live and work anywhere in the European Union. If countries does not apply with the directive the Commission threatens to take them to the court of Justice of the EU as all member states were signatory to these directives.

4. Possible Recourses

Equality legislation in the UK promotes a strand-based approach to dealing with discrimination e.g. on grounds of race, disability, gender, sexual orientation, religion/belief and age. One of the first legislation which deal with race equality in the UK was the Race Relation Act 1976 (amended 2000). The Act "makes widens protection of discrimination on racial grounds and relations between people of different racial groups" (The Race Relation Act 1976: 1). However, historically there has been a lack of recognition of the Scottish Gypsy/Travellers ethnicity as a protective or legitimating label under the Race Relation Act 1976 had a long history in Scotland.²⁶

²⁵ Finally, the United Kingdom does not issue workers from Romania and Bulgaria during the first 12 months with the same residence documents as workers from other EU Member States. While EU law allows the United Kingdom to temporarily keep in place a work-permit scheme for workers from Bulgaria and Romania, those who have a work permit have the same right to reside as other EU workers and must be issued the corresponding residence documents.

²⁶ (Clark 2006, McKinney 2003). While the English Romani Gypsies and the Irish Travellers have been recognised as distinct ethnic group and protected by the Race Relation Act 1976 (as amended 2000), the Scottish Gypsy Travellers were not protected until 2008. McKinney (2003) argues that debates around recognition of the Scottish Gypsy/Travellers ethnicity revealed the gap between Scottish political rhetoric that emphasise plurality and equality for diversity and government practice. Only from, October 2008 the Scottish Gypsy/Travellers became recognised as an ethnic distinct group under the Race Relation Act 1976 (as amended 2000).

Everyone is equal before the law and Roma communities gain equal protection within UK legislative laws on discrimination. Since 1989 the courts must act on claims made by or perceived to be of racist nature towards Roma and Gypsy Traveller communities who are classified as ethnic minorities.

However despite this position the Gypsy Roma/ Travellers have not improved in the UK, across the UK, Wales, Ireland and Scotland. The Scotland Act 1998 is distinct from that of rest of Britain as it includes primary legislative powers under Justice, for health, prison services, rural affairs and transport and education.

The Human Rights Act 1998 and the Equality Act 2006 and Equality Act 2010 provides accountability from public bodies and all local authorities to publish their report on all nine characteristics, under these legislations the public bodies are held accountable to ensure equality across their services. In addition, according to the European Union treaty member states are obligatory to have “domestic institutions to have domestic institution guarantee.”

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Everyone is equal before the law and Roma communities gain equal protection within UK legislative laws on discrimination. Since 1989 the courts must act on claims made by or perceived to be of racist nature towards Roma and Gypsy Traveller communities who are classified as ethnic minorities.

However despite this position the Gypsy Roma/ Travellers have not improved in the UK, across the UK, Wales, Ireland and Scotland. The Scotland Act 1998 is distinct from that of rest of Britain as it includes primary legislative powers under Justice, for health, prison services, rural affairs and transport and education.

The Human Rights Act 1998 and the Single Equality Act 2006 and Equality Act 2010 provides accountability from public bodies and all local authorities to publish their report on all nine characteristics, under these legislations the public bodies are held accountable to ensure equality across their services. In addition, according to the European Union treaty member states are obligatory to have “domestic institutions to have domestic institution guarantee.”

FRANCE

1. The legislative texts founding the Rule of Law

A block of constitutionality is the basis of these rights.²⁸

Declaration of human and civil rights of 26 August 1789

²⁷ (Clark 2006, McKinney 2003). While the English Romani Gypsies and the Irish Travellers have been recognised as distinct ethnic group and protected by the **Race Relation Act 1976** (as amended 2000), the Scottish Gypsy Travellers were not protected until 2008. McKinney (2003) argues that debates around recognition of the Scottish Gypsy/Travellers ethnicity revealed the gap between Scottish political rhetoric that emphasise plurality and equality for diversity and government practice. Only from, October 2008 the Scottish Gypsy/Travellers became recognised as an ethnic distinct group under the Race Relation Act 1976 (as amended 2000).

²⁸<http://www.legifrance.gouv.fr/Droit-francais/Constitution>

“Art. 1: Men are born and remain free and equal in rights. Social distinctions may be based only on considerations of the common good.” This means the interest of all the society, not only for some fortunated by their noble birth.

After the second world war, France adopted a new Constitution.

Preamble of the Constitution of 27 October 1946

“1. In the morrow of the victory achieved by the free peoples over the regimes that had sought to enslave and degrade humanity, the people of France proclaim anew that each human being, without distinction of race, religion or creed, possesses sacred and inalienable rights. They solemnly reaffirm the rights and freedoms of man and the citizen enshrined in the Declaration of Rights of 1789 and the fundamental principles acknowledged in the laws of the Republic”.

All these principles are reaffirms by the Constitution of the 5th Republic and the following articles confirm the recognition of social rights.

Constitution of October 1958

“The French people proclaim their attachment to Human Rights and the principles of national sovereignty as defined by the Declaration of 1789, confirmed and complemented by the Preamble to the Constitution of 1946, and to the rights and duties as defined in the Charter for the Environment of 2004. [...]”

Article 1

“France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs. [...]”

Because of the indivisibility of the country and universalism, France does not recognize a legal status to minorities. So French Roma, are considered as French people like everybody else. The expression “Gens du voyage”, or Travellers, is an administrative term for people who have not a fixed abode and carry out an itinerant trade.

2. How is the equality before the law ensured?

According to the Constitution, in the part about judicial authority: *“The President of the Republic shall be the guarantor of the independence of the Judicial Authority.*

He shall be assisted by the High Council of the Judiciary.

An Institutional Act shall determine the status of members of the Judiciary.

Judges shall be irremovable from office “(article 64)

And “No one shall be arbitrarily detained.

The Judicial Authority, guardian of the freedom of the individual, shall ensure compliance with this principle in the conditions laid down by statute”. (Article 66)

The European Convention on Human Rights²⁹, ratified in 1974 completed the constitution in particular with Article 6³⁰, devoted to having a fair trial. France has been condemned several times by the European court for not respecting Article 6.

For low-income earners, legal aid may also be provided³¹. The State pays expense and fees for lawyer, judicial officer, expert....The legal assistance according to resources of the person concerned can be full or partial.

Conditions of citizenship and residence are required. The person must be French or citizen of European Union. In the other cases, the person must lives in France on a continuous and legal basis.

²⁹ http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/Convention_ENG.pdf

³⁰ Right to a fair trial : *“. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. (...)”*

³¹ <http://vosdroits.service-public.fr/F18074.xhtml#N1007C>

You can download form on a website ³² to take up a case of legal aid. It is better to be helped by a lawyer. You can seek advice from specialized associations.³³

The recourse to the Human rights defender³⁴ is another possibility. Children rights, fight against discriminations, and promoting equality are among his tasks.³⁵

3. The violations of the Rule of Law harming the Roma

The principle of equality of rights is not always followed. Racism and discriminations are important to Roma, French or foreigners.

For Travellers some laws limit their rights. They were submitted to special provisions about their freedom of circulation and voting rights³⁶. These provisions were brought before the constitutional Court and some of them have been repealed³⁷. Travellers need no more to wait three-yearst for being registered as voters in a district.

As legal submissions in France are finished, a new complaint has been lodged before the European Court of Human Rights to examine the other causes for discrimination.

SPAIN

1. Main legislative texts of the Spanish legal system

The main legislative texts of Spain, in **hierarchical** order, regarding equality, respect and human dignity are:

- The **Spanish Constitution** of 1978 recognizes the equality of all persons before law and forbids discrimination.

Article 10 of the Constitution states that the base of the legal system is the equality of all human beings: *1. The dignity of the person, his inviolable rights which are inherent, the freedom of personality development, the respect towards the Law and the rights of the others are foundations of the political order and the social peace.*

The equality before the Law would be contained in Art. 14. *All Spanish citizens are equal before Law, without any discrimination on grounds of birth, race, sex, religion, and opinion or any other personal or social condition or circumstance.*

Furthermore, it is predicted the recognition of **material equality**. in Art. 9.2.:

The public administrations are responsible for the promotion of the necessary conditions for the freedom of individuals and groups in which they are integrated to be real and effective; to

³² <http://vosdroits.service-public.fr/R1444.xhtml>

³³ See the « mallette Roms » of the LDH. Website to come.

³⁴ Défenseur des Droits (DDD)

³⁵ See file 9

³⁶ <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006068336&dateTexte=20120910>

³⁷ <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2012/2012-279-qpc/decision-n-2012-279-qpc-du-05-octobre-2012.115699.html#7>

remove the barriers which might prevent or difficult the participation of all citizens in the country's political, economic, cultural and social life.

- **Penal Code**³⁸. In which there are stated divers criminal offences related to discrimination on grounds of racial and ethnic origin³⁹.

- **Organic Law 4/2000**, of 11 January, in regards of rights and liberties of foreigners in Spain and their social integration. It states, in its article 2 bis, .2 how principles of migration policy bind all Public Administrations to effective equality between men and women and equal treatment in relation to working conditions and Social Security.

-**Law 62/2003**, 30 December, of fiscal, administrative and social order measures. This law contains, in its Chapter III of Title II, various measures for the application of the principle of equality of treatment.

Art. 23, qualifies as discriminatory any act *which 'directly or indirectly, entails a distinction, exclusion, restriction or preference against a foreigner based on race, colour, descent, nationality or ethnic origin, convictions and religious practices, and which has the intention or the effect of destroying or limiting the recognition or exercise, on an equal footing, of human rights and the fundamental freedoms in political, economic, social and cultural fields.'*

- **Law 19/2007, 11 July**, against violence, racism, xenophobia and intolerance in sports. This law defines offences and establishes sanctions to penalise the prohibited acts, whether these are carried out by professionals, players or supporters.

2. How equality before the law is guaranteed

Courts and tribunals:

The organization of the judicial system of Spain is quite complex. The State is organized for legal purposes in municipalities, provinces and Autonomous Regions.

The Constitutional Court is the body in charge of safeguarding the fundamental rights and freedoms contained in the Constitution. The fulfillment of the liberties and **fundamental rights** is guaranteed through diverse actions before the Ordinary Courts, provided the system of all previous resources predicted by the legislation has been exhausted. It is also guaranteed through the appeal for 'Constitutional protection' which is processed before this court. The **jurisdiction** is at the national level.

Similarly, should enough protection not be attained in the ordinary court, the individual can resort to the appeal of legal protection before the Constitutional Court.

³⁸. Passed through the Organic law 10/1995 of 23 November.

³⁹ Art. 22.4: includes the aggravating circumstance of racist, anti-Semitic motivation or with base on any other kind of discrimination referring to the ethnicity, race or country of origin of the victim in the crime commission.

Art. 314: incorporates the offence of discrimination in employment.

Art. 510: punishes the provocation of discrimination on the basis of racist reasons.

Art. 511: penalises the denial of a benefit to which an applicant has the right for on the grounds of ethnicity, race or national origin by responsible persons of public services, in addition to by associations and other corporations.

Art. 512: views as an offence the denial of benefits in the exercise of professional or economic activities.

Art. 515: declares illegal associations which 'promote discrimination, hatred, or violence against people, groups or associations based on their ideology, religion or beliefs, the belonging of their members or of any of them to an ethnicity, race or nation, his/her sex, sexual orientation, family situation, illness or disability that encourages to do so'.

Ordinary Courts:

- **Supreme Court.** It is the hierarchical superior judicial body. It has at its disposal different chambers (civil, contentious-administrative, social and military) and national jurisdiction. It handles cases addressing individuals who hold particularly relevant positions and government bodies.
- **National High Court.** It processes the proceedings related to crimes with causes particularly relevant, criminal procedures initiated abroad, proceedings brought against resolutions of the Central Courts of Instruction and of the Juvenile Court. It has national jurisdiction.
- **Supreme Court of Justice.** It is the body with the highest hierarchical rank within an Autonomous region. It is composed by the civil, criminal and contentious-administrative and social chambers.
- **Provincial Courts.** They have jurisdiction in civil and criminal areas. Its jurisdiction is provincial.
- **Criminal, Administrative, Social, Prison Supervision and Juvenile Courts.** There can be various of the named courts within the same province or expand their jurisdiction to other provinces depending on the volume of issues processed. They prosecute crimes which they have been legally assigned after a phase of investigation by the Court of Instruction. If the prosecuted crime has certain level of severity the competent court is not the Criminal Court but the Provincial one.
- **Court of first Instance,** with territorial jurisdiction, they carry out procedures for minor offences and 'habeas corpus'⁴⁰.
- **Peace Court.** In municipalities where there are not Courts of First Instance.

Irrespectively of the corresponding judicial procedures of the country's legal system, there are bodies linked to the General Administration of the State related to the promotion of rights and equality, public prosecutor's offices specialized in hate crimes, in addition to specific action plans insists on equality and the fight against discrimination and which will be dealt with in the chapter concerning discrimination.

Difficulties in the judicial procedure:

The conditions required by the legislator to assess the commission of the crime, difficult the application of the criminal sanctions. Moreover, the jurisprudential criteria for the applicable with the aggravating factor of art. 22.4 of the Penal Code are very restrictive⁴¹.

3. Violations of the legal system that affect Roma communities

Violations in the legal system that affect Roma are related to their country of origin. Roma individuals with foreign nationalities are affected by the following situations:

The European Commission against Racism and Intolerance, has recommended the Spanish State in several occasions to officially reassure the right of equality before law of those who reside within its territory, and not only of Spanish citizens. For this to be possible, it is

⁴⁰'Habeas corpus' is a fast and easy judicial procedure that reflects the right of any citizen to request his/her **immediate appearance** before a judge, so that, once the arguments have been presented, there can be a pronouncement over whether the detention or arrest and the conditions under which this has happened have been legal or not.

⁴¹ According to the annual report of discrimination of 2011.

necessary to acknowledge this right in the Constitution as opposed to doing so in laws susceptible of being further modified⁴².

Notwithstanding, the Constitution itself acknowledges a situation of inequality between foreigners and Spanish citizens in Art. 13:

'1. Foreigners in Spain will enjoy the public freedoms which guarantees the present Title in the terms established in the Treaties and the Law.'

'2. Only Spanish citizens will be entitled to enjoy the right acknowledged in article 23⁴³, except in cases where based on the basis of reciprocity, it could be established by Treaty or by Law for the right of active and passive suffrage in municipal elections.'

Thus, stating how 'only Spanish citizens' are entitled to participate in public affairs directly or through representatives freely elected in periodic elections by universal suffrage and to access to public functions and offices.

On the other hand, according to a decision of the Constitutional Court in 2001, it would not be considered discriminatory that fact that the police stop a person to check out his documentation because of his non Spanish physical appearance⁴⁴. This sentence particularly affects Roma individuals coming from Central and East Europe living in Spain.

CZECH REPUBLIC

1. The legislative texts funding the Rule of Law

The rule of law in the Czech Republic is shaped by a hierarchy of legal provisions, whereas the Charter of Fundamental Rights and Freedoms⁴⁵ occupies a superior position to ordinary laws. The Constitution of the Czech Republic⁴⁶ provides the Charter (that forms part of the constitutional order) a place at the top level of the legislative hierarchy. Constitutional laws and international treaties are not on the same level of the hierarchy as the Charter and Constitution, but these are both superior to ordinary laws, and must prevail in the event of a conflict with ordinary laws⁴⁷. Nonetheless, there exist several internationally acknowledged principles (e.g. the equality principle) that are irrevocable and form basis of concrete legal regulations, national or international.

⁴² Fourth Report of ECRI on Spain.

⁴³ Article 23: 1. Citizens have the right to participate in public affairs directly or through representatives freely elected in periodic elections by universal suffrage. 2. They are also entitled to equal access to public functions and offices, with the requirements specified in laws.

⁴⁴ STC 13/2001, of 29 January, 2001

⁴⁵ The Charter of Fundamental Rights and Freedoms, The Constitutional Court of the Czech Republic, available at http://www.concourt.cz/clanek/czech_charter, accessed on March 10, 2013

⁴⁶ The Constitution of the Czech Republic, The Constitutional Court of the Czech Republic, available at http://www.concourt.cz/clanek/czech_constitution, accessed on March 10, 2013

⁴⁷ Report on Measures to Combat Discrimination: Directives 200/43/EC and 200/78/EC, Country Report 2011, p. 4., 2011, Boučková, Pavla, available at http://non-discrimination.net/content/media/2011-CZ-Country%20Report%20LN_FINAL.pdf, accessed on March 8, 2013

A general anti-discrimination clause can be found in the Charter of Fundamental Rights and Freedoms, where the Chapter 1 General Provisions establishes the equality of rights, the principle of non-discrimination which applies to all fundamental rights and freedoms and the principle of the rule of law. Article 3 of the Charter guarantees equality in access to fundamental rights and freedoms and includes an open-ended list, expressly prohibiting discrimination on the grounds of sex, race, colour, language, religion or belief, political or other conviction, national or social origin, membership of a national or ethnic minority, property and birth or other status⁴⁸.

Article 1 of the Charter guarantees "equality principle":

*"All people are free and equal in their dignity and rights. Their fundamental rights and freedoms are inherent, inalienable, non-prescriptible, and irrepealable."*⁴⁹

Two basic provisions are applied towards the minorities in the Charter: "no discrimination", and "equality principle".

The first provision of "no discrimination" stems from the aforementioned Article 3 of the Charter:

"Everyone is guaranteed the enjoyment of her fundamental rights and basic freedoms without regard to gender, race, colour of skin, language, faith and religion, political or other conviction, national or social origin, membership in a national or ethnic minority, property, birth, or other status."

Then, Article 24 of the Charter refers to the "equality principle" in the following manner:

"Membership in a national or ethnic minority may not be to anyone's detriment."

The provision shall guarantee that the rule of law applies to every person in the same manner regardless his/her nationality or ethnicity.

Anti-discrimination clauses can be found also in other various laws, governing e.g. the employment, labour relations or education. The most important act regarding the equality principle is the Anti-discrimination Law No. 198/2009 Coll.⁵⁰ and that came into effect from 1st September 2009. This law established the Public Defender of Rights as the Czech Republic's Equality body, and provides for definitions of discrimination on seven grounds: racial/ethnic origin, sex, disability, sexual orientation, age, religion or belief and nationality. At the same time, the law defines the prohibition of discrimination in following areas: labour, employment and business, healthcare, goods and services, housing, education, public administration and other areas.

It was widely expected that the Law will improve the situation in the Czech Republic with respect to equality policies.⁵¹ After three years this law is valid, there are very few discrimination cases in front of the courts and similarly the Public Defender of Rights states that *"the discrimination*

⁴⁸ Ibid., p. 4

⁴⁹ „Inalienable“ - that cannot be transferred to another or others
„Non-prescriptible“ - not depending on or derived from prescription, as a claim or right
„Irrepealable“ – incapable of being repealed

⁵⁰ Act on equal treatment and on the legal means of protection against discrimination and on amendment to some laws (the Anti-Discrimination Act), The Public Defender of Rights, available at http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Antidiscrimination_Act.pdf, accessed March 10, 2013

⁵¹ Report on Measures to Combat Discrimination: Directives 200/43/EC and 200/78/EC, Country Report 2011, p. 6., Boučková, Pavla

issues do not represent a big agenda in the work of ombudsman".⁵² According to the experiences of NGOs working with issues of discrimination, this does not mean that the discrimination does not occur, rather it points out to several shortcomings with applying the law. Probably the most serious obstacle why the victims decide not to defend themselves is the unpredictability⁵³ of the result. Also, there are too many laws dealing with this issue and this leads to duplications and confusion on the part of the victims (moreover, it is regulated by both private law and public law). One of the other serious obstacles is the frequent lack of evidence or the fact that the victims do not know how to prove the discriminatory treatment.

Regarding the Roma minority concretely, the Czech legislation does not contain any definition of racial or ethnic origin. According to the Data Protection Law, ethnic origin belongs to the category of "sensitive" data which can be gathered and processed only under very strict conditions. It is perceived that exactly this lack of ethnic data collection makes it impossible to specify the main problems of Roma.⁵⁴

As for the legislative texts founding the rule of law concerning the principle of equality before the law, the most important shortcoming in the Czech Republic is not on the part of the rules themselves but rather on the part of enforceability of these rules. Likewise, the Anti-discrimination law was adopted not as a result of wide public discourse, but as a commitment ordered by the European Union and this missing public need is also weakening the anti-discrimination practices.

2. How is the equality before the law ensured?

For enforcing the principle of equal treatment there exist several actors and procedures. Among the judicial procedures we distinguish the civil procedures, the criminal procedures and administrative procedures. In the frame of judicial civil procedures the victims of discrimination have the right to demand that discrimination be stopped, to demand elimination of the consequences and that redress and satisfaction be given. Only when this would be unsatisfactory, in particular where the dignity of the person and their respect in society was considerably affected, do victims also have the right to claim monetary compensation.⁵⁵

In the frame of criminal judicial procedures the Criminal Code sets penalties for crimes relating to racial discrimination, discrimination on the grounds of religion, belief, ethnicity or on the other ground. The Code covers only the most serious incidents, such as those involving racial hatred or violence, and acts motivated by hatred or violence on the grounds of religion or belief. Administrative judicial procedures are set by the Code of Administrative Justice. The Code regulates the judicial review of administrative decisions.⁵⁶

⁵² Složitost antidiskriminačního práva i nejistota výsledku sporu lidí odrazuje od hájení svých práv („People do not defend their rights because of the complexity of anti-discrimination law as well as unpredictability of the result“), 2013, The Public Defender of Rights, available at <http://www.ochrance.cz/tiskove-zpravy/tiskove-zpravy-2013/slozitost-antidiskriminacniho-prava-i-nejistota-vysledku-sporu-lidi-odrazuje-od-hajeni-svych/>, accessed on March 15, 2013, accessed March 8, 2013

⁵³ Ibid.

⁵⁴ Racism and related discriminatory practices in the Czech Republic, ENAR Shadow Report 2011-2012, p. 13, 2013, The Czech Centre for Human Rights and Democratization, available at <http://enar.helcom.cz/2013/03/21/stinova-zprava-o-stavu-rasismu-v-evrope-a-ceske-republice-za-obdobi-2011-2012/>, accessed on March 21, 2013

⁵⁵ Report on Measures to Combat Discrimination: Directives 200/43/EC and 200/78/EC, Country Report 2011, p. 77, Boučková, Pavla

⁵⁶ Ibid., p. 78

In the Czech Republic, the discrimination cases still stand for very sensitive topic for the courts and that is also the reason why the simpler conciliation proceedings or mediation are the result of such cases. This way is also less frustrating for the victims of discrimination.

Administrative procedures cover both misdemeanours and administrative offences. Relevant administrative procedures provide investigative powers for administrative bodies and inspectorates, as established within the scope of specific laws. They are empowered to impose sanctions for prohibited activities and violations of obligations. For instance labour inspectorates, Czech School Inspectorate, or the Czech Trade Inspectorate, which controls access to goods and services, are competent to investigate misdemeanours and administrative offences involving discrimination and to impose sanctions. Where the powers of other specialised inspectorates or administrative bodies do not apply, local government authorities (through their misdemeanour commissions) are vested with the competency to investigate acts of discrimination.⁵⁷

Apart from the abovementioned actors, the Anti-discrimination Law awarded the role of so-called "equality body" - body for the promotion of equal treatment - to the Public Defender of Rights (ombudsman). This act appoints in the Section 13 the Public defender of rights as the person that:

"shall perform his/her mandate in matters of the right to equal treatment and protection against discrimination".⁵⁸

The Defender shall provide support to individuals when filing discrimination complaints, to conduct research and publish reports and recommendations. The Defender is not required to treat any vulnerable group as a priority issue, nor does the Anti-discrimination Law permits him/her to do so. His mandate allows him to reflect important social problems affecting concrete vulnerable group, as for example residential and educational segregation, affecting mostly Roma.⁵⁹

The legal definition of his mandate does not give the Defender the right to enter private-law relationships or disputes, and the complaints about discriminatory conduct are the only exception where Defender may intervene also in the private-law sphere. The Defender may conduct independent inquiries but he cannot substitute for the activities of state administrative authorities and he cannot cancel or alter their decisions. However, when a shortcoming is ascertained, the Defender may request that authorities or institutions ensure remedy.⁶⁰

However, the Defender himself states that the discrimination is not a big agenda for his office as the victims, for different reasons, do not defend against such behaviour. The instruments he can use do not seem to be strong enough to suppress unequal treatment and for more effective promoting and advocating of the equality, the power and competence of Defender should be reinforced.⁶¹

⁵⁷ Ibid., p. 78-79

⁵⁸ Act on equal treatment and on the legal means of protection against discrimination and on amendment to some laws (the Anti-Discrimination Act), The Public Defender of Rights

⁵⁹ Report on Measures to Combat Discrimination: Directives 200/43/EC and 200/78/EC, Country Report 2011, p. 86-88., Boučková, Pavla

⁶⁰ The Public Defender of Rights, Mandate of the Public Defender of Rights, available at <http://www.ochrance.cz/en/mandate-of-the-public-defender-of-rights/>, accessed on March 12, 2013

⁶¹ Složitost antidiskriminačního práva i nejistota výsledku sporu lidí odrazuje od hájení svých práv („People do not defend their rights because of the complexity of anti-discrimination law as well as unpredictability of the result“), 2013, The Public Defender of Rights

On the national level, the Council of the Government of the Czech Republic for Roma Community Affairs (in coordination with Government Council for National Minorities) is another actor working on equality treatment and focusing on Roma. The Council assists on a systematic basis in the integration of the Roma community into the society, it supports cooperation of ministries responsible for the implementation of partial measures and the fulfilment of tasks arising from Government Resolutions and international treaties to which the Czech Republic is a party.⁶²

On the regional level, the actors ensuring equality shall be the regional coordinators for Roma affairs, on the municipal level the Roma advisors shall follow and develop their agenda. On both of these levels the committees for national minorities are established according to the census. However, in practice those regional and municipal actors often do not work properly for various obstacles, mainly insufficient financing and human resources.⁶³

3.The violations of the Rule of Law harming the Roma

The Roma minority in the Czech Republic is the community most vulnerable to racism and discrimination. The sphere of education, employment, housing, hate speech, racist crimes and related stigmatization in the media belong among those spheres where the discriminatory treatment and violations of the rule of law occur most often. Concerning the access to justice, the Roma minority is endangered mainly in the sense of insufficient awareness of its rights and of basic administrative or judicial procedures. Their defence is being complicated also by their difficult financial situation and social background and thus by lower accessibility of a lawyer. This vulnerability can be misused by the official authorities on different levels, but this kind of misbehaviour negatively influences other vulnerable groups of the society as well.

Speaking about the concrete abuse in the way of policing and ethnic profiling⁶⁴, the statistics of the European Union Agency for Fundamental Rights in its Report from 2010(focusing exclusively on the Roma) asked the respondents if they felt ethnic profiling while stopped and controlled by the police. 18% of Roma respondents answered yes, 16% answered no and the rest of the respondents have not been stopped by the police for the last 12 months.⁶⁵

Racist violence and crime against the Roma minority have reinforced in recent years. In 2011, extreme right parties and movements revived and manipulated the anti-Roma sentiment. Extreme right wing party The Workers' Party of Social Justice engaged in protests against the socially excluded, particularly the Roma. The majority population and civil society representatives criticised the following response of the Government and municipalities to the situation as inadequate.⁶⁶ The Ministry of the Interior took several measures to deal with this situation, and "anti-conflict teams" and specialist units were deployed during the protests in the region.

⁶²Inter-ministerial Commission for Roma Community Affairs, Government of the Czech Republic, available at <http://www.vlada.cz/en/ppov/zalezitosti-romske-komunity/the-council-for-roma-community-affairs-50634/>, accessed on March 15, 2013

⁶³ Report on the Roma Minority Situation in 2011, p. 11-17, 2012, The Council of the Government of the Czech Republic for Roma Community Affairs, available at <http://www.vlada.cz/cz/ppov/zalezitosti-romske-komunity/aktuality/zprava-o-stavu-romske-mensiny-v-cr-za-rok-2011-100979/>, accessed on March 16, 2013

⁶⁴ "Ethnic profiling" - use of generalisations grounded in ethnicity, race, national origin, or religion – rather than objective evidence or individual behaviour - as the basis for making law enforcement and/or investigative decisions about who has been or may be involved in criminal activity

⁶⁵ Racism and related discriminatory practices in the Czech Republic, ENAR Shadow Report 2011-2012, p. 31, The Czech Centre for Human Rights and Democratization

⁶⁶ The worst manifestation of anti-Roma sentiment appeared in the region of Šluknovský výběžek, especially in the cities of Varnsdorf, Rumburk, Nový Bor and Šluknov.

Overall, the number of extremist criminal offences (including racially motivated criminal offences) did not increase in comparison with the rest of the criminal offences detected in the Czech Republic in 2011. 209 of them were racially motivated. The number of crimes directed against the Roma increased in 2011. Regarding the success of the investigation and prosecution of extremist crimes, 157 cases out of totally 238 extremist crimes which were recorded in 2011 were closed.

The Roma are often victims of hate speech that is prohibited according to the Criminal Code. It has created a legal framework enabling the police to prosecute specifically the right-wing extremism and perpetrators of hate speech. According to statistics from the Ministry of the Interior, there were 144 cases of hate speech recorded, 95 cases were cleared up and 152 offenders were arrested (2011 figures). According to police statistics, 35 hate speech crimes were committed against the Roma. The Constitutional Court has upheld the constitutionality of the criminal prosecution of hate speech (in the context of freedom of speech).⁶⁷ On the other side – if a Roma person is being accused - it is possible that he/she would be in comparable cases given more severe punishments than non-Roma persons, although this might happen on individual basis according to the concrete judge. Likewise, there exist concerns that the Roma have to face more strict treatment in prisons. Nonetheless, the ethnic data collection is prohibited according to the Data Protection Law, so the relevant statistics and analysis on this issue are missing.

⁶⁷ Ibid., p. 31-35

File 2 - Freedom of circulation and installation and prohibition of collective expulsions

Article 45

"Every citizen of the Union has the right to move and reside freely within the territory of the Member States."

Article 19

"Collective expulsions are prohibited"

THE EUROPEAN LEVEL

The legislations applying the rights to move, to reside and the ban of collective expulsions

Legislation applying to European Union citizens

Member states must have already implemented the EU directive¹ allowing the circulation of EU citizens² and their installation in their territories.

Regarding the circulation and the installation, rules differ according to the length of stay:

- **To circulate within the EU**, citizens need only a valid identity card or a passport³.
- **Up to a three months residency** no administrative procedure is required⁴.
- **After these three months** they can be asked to register to the relevant public authorities. Some documents testifying of their situation can be asked⁵.

In addition, if EU citizens **stay more than three months** on the territory of another member state; they need to have enough financial resources to afford their living⁶. Nevertheless, Member states cannot decide which amount is sufficient and instead they should focus on the personal situation of the person. However, if they refer to a certain amount it should not be chosen to avoid the EU citizens to ask for social assistance⁷. This part of the directive is quite ambiguous and unclear⁸.

¹ The Directive 2004/38/EC is the main legislative text on the topic of freedom of circulation. This directive provides the general rules that all member states should implement. Nevertheless, as it is a Directive, so a legislative text which guides them to reach some objectives, they are free to choose the way they want to implement them.

² We refer here to citizens of the EU who are circulating or living in a Member state which is not theirs.

³ Directive 2004/38/EC Article 5 paragraph 1 : « 1. Without prejudice to the provisions on travel documents applicable to national border controls, Member States shall grant Union citizens leave to enter their territory with a valid identity card or passport and shall grant family members who are not nationals of a Member State leave to enter their territory with a valid passport. No entry visa or equivalent formality may be imposed on Union citizens. »

⁴ Directive 2004/38/EC Article 6 : « Union citizens shall have the right of residence on the territory of another Member State for a period of up to three months without any conditions or any formalities other than the requirement to hold a valid identity card or passport. »

⁵ The Directive 2004/38/EC also includes at the Article 8 Paragraph 5, a list of documents which might be asked to the citizens according to their profile (workers or self-employee, non-workers or students/trainee) when he/she registers. Students and trainees cannot be asked to give the amount of their resources.

⁶ Consequently, in the Article 7 paragraph 1 of the Directive 2004/38/EC, to have the right to live in another member states more than 3 months, EU citizens need to be workers or self-employed persons or, if they do not have a job, which also concerns EU students, to have sufficient financial resources as well as having a global sickness insurance cover for themselves and their family. In addition, EU students need to assure to the host country that they have enough money to reside in, which can be done for example by signing a declaration. However they cannot be asked to give the amount of their resources (see reference 2).

⁷ Directive 2004/38/EC, Article 8, Paragraph 4: "*Member States may not lay down a fixed amount which they regard as "sufficient resources", but they must take into account the personal situation of the person concerned. In all cases this amount shall not be higher than the threshold below which nationals of the host Member State become eligible for social assistance, or, where this criterion is not applicable, higher than the minimum social security pension paid by the host Member State.*"

⁸ The paragraph 4 of the Article 8 is quite ambiguous since it is said that member states are not allowed to require a minimum amount of resources, but they finally can as long as they respect some conditions. Furthermore, the article lacks of clarification when it says that member states must "*take into account the personal situation of the person concerned*". Neither the criteria to be taken into account nor from when we consider that someone does not have sufficient resources are mentioned. Member states are then freer to make their own interpretation which can lead to abuses. The best interpretation that can be made is that member state should study every situation on a case by case basis.

- **After five years living continuously⁹ in the territory of a member states**, EU citizens have the right to obtain a permanent residency status¹⁰. For workers and self-employed persons, this right can be obtained before these five years. For persons who no longer work in the host state, a list of exemptions has been made¹¹. If their case fit one of these exemptions they may require this permanent residence status.

Member states have the right to expel EU citizens, as well as restricting their rights of entry¹² and on residence “*on grounds of public policy, public security or public health*”¹³ that-is-to-say for serious reasons and not for economic ones¹⁴. Consequently this right is quite limited for the right of circulation and installation to be fully achieved. To go into details, **before any expulsion, Member states must:**

- take into account the personal situation of the EU citizen (e.g. the length of their residency, their degree of integration...)¹⁵
- take only into account the behaviour of the concerned person by making sure that he/she is a real threat for the society. Thus expelling a group of people because of the behaviour of one or for fear reasons while the person has done nothing is forbidden¹⁶.
- in terms of public health, only refer to listed epidemic potential diseases¹⁷ and other diseases that national citizens need to be protected from¹⁸
- not take into consideration previous criminal convictions of the person¹⁹

Every decision taken to expel or restrict the entry of EU citizens should be:

⁹ Are tolerated “temporary absences not exceeding a total of six months a year, or by absences of a longer duration for compulsory military service, or by one absence of a maximum of twelve consecutive months for important reasons such as pregnancy and childbirth, serious illness, study or vocational training, or a posting in another Member State or a third country” (extract from the Directive 2004/38/EC, Article 16 paragraph 3)

¹⁰ They have this right without conditions, except the one to have lived there for five years continuously. They may lose it only if they leave the country for more than two years.

¹¹ Directive 2004/38/EC Article 17

¹² For more details about the restriction to the right of entry, see Directive 2004/34/EC Article 27

¹³ Directive 2004/38/EC Article 27 paragraph 1: “*Member States may restrict the freedom of movement and residence of Union citizens and their family members, irrespective of nationality, on grounds of public policy, public security or public health (...)*”

¹⁴ Directive 2004/38/EC Article 27 Paragraph 1 “(...) *These grounds shall not be invoked to serve economic ends*”

¹⁵ Directive 2004/38/EC Article 28 refers to the protection against expels. The paragraph 1 deals with the fact of taking into account the citizen's personal situation: “*Before taking an expulsion decision on grounds of public policy or public security, the host Member State shall take account of considerations such as how long the individual concerned has resided on its territory, his/her age, state of health, family and economic situation, social and cultural integration into the host Member State and the extent of his/her links with the country of origin*”. In the paragraph 2 it is said that citizens who have a permanent residency should not be expelled except for some serious reasons. Regarding, the situation of minors, he/she not be expelled “*except if the expulsion is necessary for the best interests of the child*” which refers to the United Nations Convention on the Rights of the Child of 20 November 1989

¹⁶ Directive 2004/38/EC Article 27 paragraph 2 “*The personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted*”

¹⁷ Are accepted only the epidemic diseases “*defined by the relevant instruments of the World Health Organisation*” (Directive 2004/38/EC Article 29 paragraph 1)

¹⁸ Only infectious diseases or contagious parasitic diseases « if they are the subject of protection provisions applying to nationals of the host Member State” (Directive 2004/38/EC Article 29 paragraph 1)

¹⁹ Directive 2004/38/EC Article 27 Paragraph 2: “*previous criminal convictions shall not in themselves constitute grounds for taking such measures*”

- written and in a way for him/her to understand its content and its consequences²⁰, as well as justified precisely and fully²¹.
- including all details to make an appeal (to which Court and the deadline to make one)²²
- including the length of his/her stay before leaving the Member State so a minimum of one month after receiving the notification²³.

Nevertheless, after a maximum of three years²⁴ following the enforcement of the final exclusion order EU citizens can submit an application to recover their right of entry.

Regarding the freedom of installation of Bulgarian, Romanian and Croatian citizens, who are under transitional measures²⁵, their rights can be restricted in matter of employment²⁶ which therefore may restrict their rights of installation. Since to live in another member state more than 3 months, a EU citizen needs to have enough resources, thus they probably need to work. However, member states decide under what conditions citizens of these countries can access to their working market²⁷. In practise this may lead a citizen of this country to hold a working permit to work in another member state which then allows him/her to hold a residence permit²⁸.

- **Legislation applying to non EU citizens**

Regarding non EU citizens, the right of entry and to reside differ according to the agreements signed between the EU²⁹ (and member states on their own) and their country of citizenship. Rules can differ as well if someone is a family member of an EU citizen. Family members are, according to the EU, the spouse or legal partner, the direct descendant under 21 years old

²⁰ Directive 2004/38/EC Article 30 paragraph 1: "*The persons concerned shall be notified in writing of any decision taken (...) in such a way that they are able to comprehend its content and the implications for them*". One of the ways to fully catch the meaning of the decision is for example to have it written in the mother tongue of the EU citizen.

²¹ « *unless this is contrary to the interests of State security* "The persons concerned shall be informed, precisely and in full, of the public policy, public security or public health grounds on which the decision taken in their case is based" (Directive 2004/38/EC Article 30 paragraph 2)

²² Directive 2004/38/EC Article 30 paragraph 3: "*the notification shall specify the court or administrative authority with which the person concerned may lodge an appeal, the time limit for the appeal (...)*". See article 31 for more details on the Procedural safeguards.

²³ Directive 2004/38/EC Article 30 paragraph 3 "*(...) Save in duly substantiated cases of urgency, the time allowed to leave the territory shall be not less than one month from the date of notification*"

²⁴ The delay before being able to apply must be reasonable otherwise it should not be more than three years (Directive 2004/38/EC recital 27)

²⁵ Like other member states when they just joined the EU Croatia is under transitional measures.

²⁶ Bulgarian, Romanian and Croatian students or trainees are exempted of the transitional measures. Their rights are the same as any other EU citizens. It is the same as well for non-working people who have enough resources to afford their living in another member states such as retired persons. Transitional measures last 7 years maximum. By January 2014, Bulgarian and Romanian will not have their rights restricted anymore.

²⁷ Annexe VI of the Treaty of adhesion of Bulgaria, Annexe VII of the Treaty of adhesion of Romania and Annexe V of the Treaty of adhesion of Croatia.

²⁸ For more information on the conditions to work in each Member States for citizens of a country under transitional measure, see: <http://ec.europa.eu/eures/main.jsp?&countryId=&accessing=0&content=1&restrictions=0&step=0&acro=free&lang=en>

²⁹ The following table does not include United Kingdom, Ireland, Denmark, Bulgaria and Romania which are not part or fully part of the Schengen area. For these countries, agreements are done at the national level, between each of the countries.

(children) and direct relative on an “ascending line” who is dependant for living on this person (parents and parents-in-law)³⁰.

| Countries | Conditions to enter the EU |
|---|--|
| For a maximum of a 3 months stay | |
| Albania | <ul style="list-style-type: none"> • For citizens with a biometric passport: no visa is required • For citizens without a biometric passport: a Schengen visa is required - To get a visa, citizens will be asked an official document justifying the reason of the travel and to pay fees • Only for Serbia: for Serbs of Kosovo, a Schengen visa is required, if the passport has been issued by the Serbian Coordination Directorate |
| Bosnia-Herzegovina | |
| Macedonia | |
| Montenegro | |
| Serbia | |
| Ukraine | <i>Under re-negotiation (Visa facilitation - awaiting for the publication of the text adopted by the European Parliament)</i> |
| Moldavia | <i>Under negotiation (Visa facilitation - awaiting for the publication of the text adopted by the European Parliament)</i> |
| Russia | <ul style="list-style-type: none"> • A Schengen visa • An official document justifying the reason of the stay • Fees for administrative process |
| Turkey | <i>Under negotiation (Visa facilitation - Vote in July 2013)</i> |
| Kosovo | Citizens of Kosovo needs a Schengen visa to enter the EU, which applies also for the Serbs of Kosovo (<i>see the section about Serbia</i>). As the country does not have a special agreement, unlike some of the other ones, the citizens do not benefit from both visa facilitation and free visa policies. |

³⁰ Directive 2004/38/EC of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, Article 2 “*Family member*” means: (a) the spouse; (b) the partner with whom the Union citizen has contracted a registered partnership, on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State; (c) the direct descendants who are under the age of 21 or are dependants and those of the spouse or partner as defined in point (b); (d) the dependent direct relatives in the ascending line and those of the spouse or partner as defined in point (b)”.

| | |
|--|--|
| <p>Family members of EU citizens with a citizenship from one of these countries</p> | <ul style="list-style-type: none"> - To enter the EU, according to the country of citizenship (<i>see above</i>), they may need a visa. However member states should facilitate its obtaining (no fees and under an accelerated procedure) - To reside within the EU they only need a valid passport and no administrative procedure are required (as it is for EU citizens) - To circulate within the EU they need a valid passport <p>For some of the other family members, who are not the ones mentioned in the previous definition, Member States should also facilitate their obtaining of a visa, following their national legislation.</p> |
| <p>For more than a 3 months stay</p> | |
| <p>All countries mentioned previously</p> | <p>This is regulated at the national levels. Member states make directly agreements with non-EU countries, on the conditions of stay of their citizens and according to their situations (e.g. students, retired persons, workers). It is very likely that non EU citizens need to ask for a visa and be asked to provide several documents (e.g. travel document, documents justifying the reason of the stay, proof of financial resources, travel insurance, medical certificate, police record...).</p> <p>However, a visa given by one of the Schengen countries, does not always allow the non-EU citizen to circulate neither to reside freely to United Kingdom, Ireland, Cyprus, Bulgaria, Romania and Croatia. Another visa may be asked for these countries.</p> |
| <p>Family members of a EU citizen with a citizenship from one of these countries</p> | <p>If the EU citizen matches all the requirements to reside more than three months in another member states (<i>see the information regarding EU citizens before</i>), the family member can join him/her. Specifically for EU citizens who are students, unlike the previous definition, the family members that are accepted to join them are the spouse and the children under their responsibilities. But for that, they need:</p> <ul style="list-style-type: none"> - To submit a resident card application, at least 3 months before the day of arrival in the EU. - Member States must deliver this card maximum 6 months after the application. The card should last 5 years maximum. - If the EU citizen has been granted the permanent resident status, the family members must apply for a permanent residence card before their resident card expires. This one lasts for 10 years with possibilities to be renewed. - Some documents are required for the application. |

Asylum status

Regarding, asylum application, this is an issue mostly tackled at the Member States' level. Otherwise there is a minimum requirement at the EU level for Member States to follow. One of the requirements is that the country of origin of the citizen should be regarded as unsafe. For that, Member States assess the unsafely thanks to information issued for example by the United Nations as well as assessing the functioning of the country (what are the rules and how they are applied). Another requirement is that the applicant matches the expected profile of an asylum seeker that-is-to-say someone persecuted. But for that, the applicant needs to prove, with documents that he/she has been persecuted, or at least that his/her answers are credible. If the country is considered as safe and the applicant's profile non-matching the requirements therefore the application will be processed quickly. However, citizens of EU countries cannot

apply for an asylum status since the EU countries are regarded as safe. Besides, for the neighbouring countries mentioned in this file, every Member State has its own opinion on whether they are safe or not. The EU was supposed to vote a minimum list of countries regarded as safe. As they could not agree on it, the list is still under draft. However and in general, there is a common and unofficial agreement on the idea that Roma people of these countries should not be granted the asylum status³¹.

UNITED KINGDOM

1. The legislations applying the rights to move, to reside and the ban of collective expulsions The rights to entry the UK are defined as follows:

The Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States defines the right of free movement for citizens of the European Economic Area (EEA), which includes the European Union (EU) and the three European Free Trade Association (EFTA) members Iceland, Norway and Liechtenstein. Switzerland, which is a member of EFTA but not of the EEA, is not bound by the Directive but rather has a separate bilateral agreement on the free movement with the EU.

This directive is mostly a concentration of existing regulations and directives in one place, although it does also extend the rights of unmarried couples. Whilst some of the formulations remain complex, the basic premise of the directive is simple: EEA citizens have the right of free movement and residence across the European Economic Area, as long as they are not an undue burden on the country of residence and have comprehensive health insurance.^[4] This right also extends to close family members that are not EEA citizens.

After five years, the right of residence becomes permanent, which means it does not depend on any precondition any longer. This permanent right of residence can be seen as a precursor to a true European Citizenship.

A8 migrants: In May 2004, CEE nationals from the A8 nations (Poland, Slovakia, the Czech Republic, Slovenia, Hungary, Latvia, Lithuania and Estonia) joined the European Union. Resulting in EU expansion nationals from these countries has the legal right to work and move freely throughout Europe and the UK. However, it was not until May 2011 that the UK recognised this and implemented the right of movement for the A8 migrant as previously residency and employment in the UK were subject to restriction of the transitional regulations. Now A8 nationals share the same rights as other EU citizens A2 migrants. In January 2007, Romania and Bulgaria (A2nationals) joined the European Union. Romanian and Bulgarian (Including Romanian Roma and Bulgarian Roma) migrants as EU citizens they are legally entitled to live and work in the UK, but certain conditions must be met. A2 nationals have the right to move to the UK and to reside for up to 3 months, to gain leave to remain they must obtain permission to reside and work in the UK. by successfully applying for the 'Accession Worker Card'. Therefore, A2 migrant must demonstrate they meet the criteria to gain a work permit under existing work permit arrangements (Tier System):

[r.1](#): This category is for entrepreneurs, investors, and graduate students, and those very [Tie](#)

³¹ The EU is currently reviewing its asylum legislation. However two texts refer to the issue the Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status and the Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted

few top people who meet the requirements of the exceptional talent visa category. UK also recently introduced a Post-study Work Visa for foreign graduates.

r 2: This category is for skilled workers who have a job offer. This includes general workers, ministers of religion, sportspersons, and intra-company transfers.

r 3: This category was originally designed for low-skilled workers filling specific temporary labour shortages.

r 4: This category is for foreign students coming to study in the UK.

r 5: This category is for youth mobility and temporary workers, such as those who come under Working Holiday agreements with other countries.

On 1 January 2014 UK labour markets will be open to Romanian and Bulgarian nationals (the "A2") giving equality with individuals from the rest of the EU. Currently there is an estimated 100,000 to 150,000 individuals born under 'A2' living in Britain and the lifting of the work restriction may increase the numbers further causing political concern of the impact on housing, education and salaries at entry level posts. With the restriction lifted Romanian and Bulgarian workers previously tied to the Seasonal Agricultural Workers Scheme (SAWS) will no longer have to stay in that sector potentially increasing wages within the farming sector to attract employees. The lift of the restriction on employment will likely reduce the 'criminality' or 'black economy' rising across the UK as often a last resort when 'A2' migrants cannot gain income legally. This will result in the community's ability to gain long-term residency within the UK and access to services offered, such as, housing, education, policing, health and employment as they will be able to provide for self and family.

Discriminations made to the Roma and violations of the law

Currently, the right to entry and reside is restricted to A2 Nationals under the UK immigration legislation to free movement and residence within the UK (This rule will be eradicated in January 2014). The restrictions placed has serious implication on Roma as the denial of access to equal treatment, such as, employment, health, legal aid, hate, racist and religious crime, education and participation in economic and public life, including electoral representative (Council of Europe 2010³²) as they can only reside within the UK for three months without financial means. This places the Roma at a social and economic disadvantage and reduces their experience of residing within the UK.

Irish High Court Case Raducan & Anor -v- MJELR & Orc The case is about the Moldovan wife of a Romanian citizen who was denied entry to Ireland and was detained for three days. She was not given entry on presenting her Residence Card as a family member of an EU citizen (Article 5(2) of the Directive 2004/38/EC), nor was her entry facilitated when she presented a marriage certificate proving her relationship to her EU husband The Irish Court Ruled It is a matter of profound regret that a perfectly innocent [family member of an EU citizen] who had every right to enter [Ireland] was instead refused entry and found herself obliged to spend the equivalent of almost three full days in custody.

What are the rights of a separated spouse before or during divorce? While the directive says that the family member is covered until the decree absolute is issued, the rights can be difficult to use. Without the cooperation of the EEA citizen, or if the EEA citizen leaves the country, the non-EEA spouse is left in a legal vacuum.

In which circumstances can the right of free movement apply to the home country of the EEA national? In the case of Surinder Singh, the ECJ rules that a worker can bring his spouse back

³² <https://wcd.coe.int/ViewDoc.jsp?id=1579605>

to his home country after working in another EEA state for at least 6 months. However, this judgement was based on previous legislation, and it is unclear whether it also applies to more recent treaty rights.

2. The implementation of these rights: the national requirements Possible recourses to be taken

The directive applies to any EEA citizen that is moving to and living in an EEA state other than his own. (The exclusion is based on the principle of non-interference with purely national issues). However, it also applies when a European citizen is moving back to his home country after staying abroad, as defined in the case of Surinder Singh.^[5] For dual citizens with two EEA nationalities the directive can apply in any EEA state. Temporary limitations are in place for the new member states of the EU.

To be fully covered by the European right of free movement, the EEA citizen needs to exercise one of the four treaty rights:

- working as an employee (this includes looking for work for a reasonable amount of time),
- working as a self-employed person,
- studying,
- being self-sufficient or retired.

These rights are named after the Treaty of Rome, which defines the freedom of movement for workers. They have been extended over time, and are mainly of historical significance by now, since being self-sufficient has been added to the list. As long as a citizen has sufficient money or income not to rely on public funds and holds comprehensive health insurance, he/she exercises one or more treaty rights. If no treaty right is exercised, the right of free movement is limited to three months.

Family members are also covered by the right of free movement, but only as a dependent of the EEA citizen. The right is limited to the EEA state in which the EEA citizen is exercising treaty rights. In certain cases (e.g. divorce after at least 3 years of marriage where 1 year must have been spent in the host member state), the family member can retain the right of residence. A family member is defined as:

- the spouse (unless in a marriage of convenience),
- the registered same-sex partner (but only in a state where same-sex relationships are recognised),
- a child under the age of 21, or
- a dependent child or parent (of the EEA citizen or partner).

There is a second category of extended family members, which can be included at the discretion of national legislation. It covers dependent relatives (especially siblings), dependent household members and unmarried/unregistered partners in a "durable relationship".

The right of free movement is granted automatically when the requirements are fulfilled, and it is not subject to an administrative act. However, member states may require the EEA citizen and family members to register with the relevant authorities. The relevant documentations are:

- an entry visa for the non-EEA family members if they are visa nationals and do not hold a residence card from another member state,
- a residence certificate (for EEA citizens) or a residence card (for non-EEA family members), which may be valid for up to 5 years and confirms the right of residence,
- a permanent residence certificate or a permanent residence card, which certifies the right of permanent residence.
- Permanent residence is acquired automatically after exercising treaty rights for 5 years, with absences of normally less than 6 months a year, a single absences less than 12

months in certain circumstances (birth, severe sickness, etc.), or longer for military services.[6] Permanent residence removes any restrictions that are in place concerning access to public funds (such as unemployment benefits, a state pension etc.), although some of these restrictions are already lifted after a period of 3 months. Permanent residence is only lost after an absence of 2 years.

All applications covered by the directive are free, or require at most a moderate fee similar to comparable national documents.

As Equality Legislation is a reserved matter for the UK Parliament, the devolved nations have limited powers. However they do have the ability to improve conditions, for example, under the Scotland Act 1998 holding devolved powers for education, housing and health, therefore, can act to ensure an inclusive system independently within these matters.

Across the UK deportation is an issue which continues to divide families, communities, journalism and lawyers. The qualified right, [Article 8](#) (the right to a private and family life) is fundamental in decision making of deportation/expulsion particularly involving cases where criminality question must be addressed becoming increasingly challenging when the individual is an EU citizen, as proportionality also comes into effect.

“Case law across the UK and Europe gives further considerations when the UK courts consider individuals situations prior to expulsion. Decision against an EU citizens “must state precisely” how expulsion “does not prejudice the offender’s rehabilitation.” This approach preserved the individual’s interests and those of “the Union in general.”

Regardless of prohibitions on re-entry to UK following expulsion this does not preclude an EU citizen from using his right of freedom of movement to enter another Member State. For this reason EU Courts state that “it is therefore in the general interests that the conditions of release should be such as to dissuade him from committing crimes and, in any event, not risk pushing him back into offending.” ...

Further case law demonstrates that in cases involving expulsion following completion of a criminal punishment, the proportionality test had “a special significance” and “the competent authority” was required “to take account of factors showing that the decision adopted is such as to prevent the risk of reoffending” [94].

It is often felt that in these cases individuals affected feel that they are being punished for a second time and no consideration has been taken of their rehabilitation reducing their right to the opportunity of a better life with their families in the UK. The Grand Chamber has set precedence that “a balance must be struck between the exceptional nature of the threat to public security as a result of the personal conduct of the person concerned” and “the risk of compromising the social rehabilitation of the Union citizen in the State in which he has become genuinely integrated, which, as the Advocate General observes in point of his Opinion, is not only in his interest but also in that of the European Union in general”.

Throughout the UK there has been positive action taken using interagency approach, through community planning partnership, education, and health and safety initiatives in partnership with housing associations and community organisations to establish key services for the Roma community.

The stakeholders involved the local communities and developed local action plans to improve the services and health and wellbeing of the Roma population across the UK. Other recourses taken into action are training for staff from local authorities and other organisations to support Roma community in relation to education, employment, health and social care and housing.

3. Discriminations made to the Roma and violations of the law

4. Possible legal recourses to be taken

UK: EEA Regulations (UK)

In the UK, the directive is transposed into the Immigration (European Economic Area) Regulations 2006^[15] amended by SI 2009/1117^[16] and amended by SI 2011/1247.^[17] The implementation is reasonably complete and accurate although non-EEA family members require an entrance clearance (called EEA Family Permit) to enter the UK even if they are in possession of a 5-year residence card of another EEA member state, in breach of the Directive.^{[18][19][20]} The UK law recognises same-sex relationships, and it also has a clause for unmarried/unregistered partners. Applications are free of charge.

In Ireland, the Directive is transposed into the European Communities (Free Movement of Persons) (No. 2) Regulations 2006^[21] amended by SI 310 of 2008^[22] in reaction to the *Metock* case^[9]

The case of *Metock*¹ concerned four nationals of non-EEA² states ('third-country nationals') each of whom had applied (unsuccessfully) for asylum in Ireland, and had then married a citizen of another EEA state who was exercising free movement rights in Ireland (the 'host' Member State). They each applied for a residence card under the Irish regulations that implement the Free Movement Directive.³ The Directive allows EEA nationals who are exercising free movement rights in another EEA state to be accompanied by their family members of whatever nationality.

The Irish Government refused each of the applications, because its regulations stated that the rights under the Directive did not apply to a family member unless the family member was already lawfully resident in another Member State and was either (1) seeking to enter Ireland with the EEA citizen of whose family her or she was a member or (2) seeking to join such an EEA citizen who was lawfully present in Ireland. A number of Member States supported the Irish Government's position and submitted observations to the Court.

In its judgment, the Grand Chamber of the European Court of Justice (ECJ) ruled against the Irish Government. Its main findings were that (1) national legislation cannot require the third-country-national spouse of an EEA citizen who is exercising his or her free movement rights in a host Member State to have been previously lawfully resident in another Member State before they can benefit from the provisions of the Free Movement Directive;⁴ and (2) it is immaterial when and where their marriage took place and how the third-country national entered the host Member State.⁵ and amended by SI 146 of 2011 allowing visa free entrance with a residence card issued by another EEA member state.^[23]

10 Council of the European Union press release, [2890th Council meeting: Justice and Home Affairs - Brussels, 25 September 2008](#), p9

11 Report from the Commission to the European Parliament and the Council [on the application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States](#).

The UK implemented the Free Movement Directive through the Immigration (European Economic Area) Regulations 2006.¹⁴ Whilst these regulations do not limit the definition of family members in the same way as the Irish legislation considered in *Metock*, they do contain provisions which conflict with the decision in *Metock*. The three relevant categories of application under the regulations are outlined below:

'Surinder Singh' cases: regulation 9 of the 2006 Regulations extends the provisions of the Free Movement Directive to cover family members of British citizens who have exercised their free movement rights in another Member State moved back to the UK (called 'Surinder Singh' cases after an earlier ECJ decision¹⁵). Regulation 9 does not require the third-country-national family member to have prior lawful resident in another Member State; but if the third-country family member is the spouse or civil partner of the UK national, it does require that "the parties are living together in the EEA State or had entered into the marriage or civil partnership and were

living together in that State before the United Kingdom national returned to the United Kingdom".
16

- Admission to the UK: under regulation 11, third-country family members of EEA nationals will be admitted to the UK only if they have a passport and "an EEA family permit, a residence card or a permanent residence card". Regulation 12(1)(b) provides that to obtain a family permit the person must either (1) be lawfully resident in an EEA state; or (2) meet the requirements of the UK's Immigration Rules for entry as a family member
- Rights of residence: a family member of an EEA national will have an initial three-month right of residence in the UK as long as he or she holds a valid passport; and will have an extended right of residence and then a permanent right of residence in certain circumstances.¹⁷ These provisions make no mention of a need for prior lawful residence in the UK or another EEA State, or for a marriage or civil partnership to pre-date their arrival in the UK.

Metock clearly has some relevance to the first two types of application.

The UK Border Agency considers that its existing processes for assessing applications from those in the UK are already compliant with the Metock ruling.¹⁸ However, it has issued revised guidance on applications from EEA nationals' family members who apply from outside the UK. Interim guidance was issued to Entry Clearance Officers during the week of 8 December 2008, and Chapter 3 of the UKBA's European Casework Instructions have now been revised to state that when assessing applications from direct family members,¹⁹ neither the 'lawful residence requirement' nor the requirements in the Immigration Rules may be applied:

The remedy in such cases would be If UKBA resists applications for residence cards or EEA permits for third country national family members of migrant EU citizens (as defined in the directive) on the basis of the Immigration Rules this is inconsistent with the judgment and the question is one of damages for the EU citizens and their family members who are adversely affected. All entry clearance and residence card applications for third country national family members of migrant EU nationals must be decided exclusively on the basis of the Directive not UK Immigration Rules³³

FRANCE

1. National legislative texts:

- The *Ceseda*³⁴ stipulates the main rules and regulations for foreigners in France :
 - o conditions for entry and refusal of entry into the territory, waiting zones and appeals.
 - o Various residence permits with conditions of residence and the mention of measures for the integration in French society.
 - o Assisted voluntary return
 - o Family reunification
 - o Removal orders, administrative detention, deportation order and expulsion
 - o Asylum rules.

³³ Immigration: the Metock case and its implications for UK rules on family members of EEA citizens, Standard Note:, SN/HA/4900, 9 February 2009, Arabella Thorp, Home Affairs Section

³⁴ *Ceseda*, Code de l'entrée et du séjour des étrangers et du droit d'asile : Code of Entry and Residence of Aliens and the Right to Asylum http://www.legifrance.gouv.fr/affichCode.do;jsessionid=4923BA5847C34DABA768C980FF6851AD.tpdjo16v_1?cidTexte=LEGITEX000006070158&dateTexte=20130306

- The Directive 2004/38/EC of 29 April 2004 was adopted to encourage Union citizens to exercise their right to move and reside freely within Member States,³⁵,
 - The 16 June 2011³⁶ Act and a Decree³⁷ on immigration and French nationality are transpositions of several EU directives :
 - To establish common standards and procedures for Member States, whereby illegally staying third-country nationals³⁸ may be removed from their territories. It lays down provisions for terminating illegal stays, detaining third-country nationals with the aim of removing them, plus procedural safeguards.³⁹
 - About conditions of entry for highly qualified non-EU nationals. It creates a "European Blue Card" and sets out the conditions and rights of residence in the issuing as well as in other Member States.⁴⁰
 - About the employment of non-EU nationals who are illegally staying in the European Union (EU), in order to counteract illegal immigration. It provides minimum common standards for sanctions and other measures (disqualification from public benefits, etc.) and in serious cases, criminal penalties against employers of these third-country national.⁴¹
- This law goes beyond the transposition of the directives with administrative decision of house arrest, for example. Some rights for foreigners are limited:
- o Duration of administrative detention is longer
 - o Restriction for legal aid before the National Asylum Court.
 - o Creation of the Obligation to Leave French Territory, OQTF⁴² without delay for return. The previous 30-day delay for appeal is reduced to 48 hours
 - o Creation of special temporary waiting zone according to the needs.
- The 31 December 2012 Act concerns detention for an audit on the right of residence and amending the offence for helping the illegal stay in the country when based on humanitarian grounds.⁴³

Travellers

The identity booklet or "carnet de circulation"⁴⁴ had to be stamped every three months. This was considered a disproportionate violation of the freedom of circulation. However

³⁵ Directive [2004/38/EC](http://europa.eu/legislation_summaries/internal_market/living_and_working_in_the_internal_market/133152_en.htm) of 29 April 2004 http://europa.eu/legislation_summaries/internal_market/living_and_working_in_the_internal_market/133152_en.htm

³⁶ http://www.legifrance.gouv.fr/affichTexte.do?sessionId=4AE6104F403ADB74A68513B064A8D85.tpdjo09v_1?cidTexte=JORFTEXT000024191380&dateTexte=20130306

³⁷ <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000024537138&dateTexte=&categorieLien=id>

³⁸ a country that is not a member of the European Union.

³⁹ Directive [2008/115/EC](http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/jl0014_en.htm) of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/jl0014_en.htm

⁴⁰ Directive [2009/50/EC](http://europa.eu/legislation_summaries/internal_market/living_and_working_in_the_internal_market/114573_en.htm) of 25 May 2009 http://europa.eu/legislation_summaries/internal_market/living_and_working_in_the_internal_market/114573_en.htm

⁴¹ Directive [2009/52/EC](http://europa.eu/legislation_summaries/internal_market/living_and_working_in_the_internal_market/114566_en.htm) of 18 June 2009 http://europa.eu/legislation_summaries/internal_market/living_and_working_in_the_internal_market/114566_en.htm

⁴² OQTF : Obligation de Quitter le Territoire Français

⁴³ Law n°2012-1560 of 31 December 2012 <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000026871211&dateTexte=&categorieLien=id>

⁴⁴ The « carnet de circulation » was for people engaged in a ambulant sales activity.

the Court maintained the « livret de circulation »⁴⁵ but limited its control to a yearly checking plus, the obligation to be settled in a municipality even though the number of travellers should not exceed 3% of the total population.

2. The implementation of these rights: the national requirements

So any citizen of the European Economic Area (EEA) can enter and stay in France for less than three months by virtue of having an identity card or a valid passport⁴⁶

They can stay in order to work or become a student, they may be accompanied by their close family members (spouse or relatives in the ascending line- except for students or relatives in the descending line) if their family is from the European space⁴⁷. If not working, they must be self-supporting.

If they intend to have their usual residence in France they must be registered within three months after their arrival at the town hall of their residence.⁴⁸

After five years of legal residence, they can obtain a permanent residence permit from the Prefecture of their place of residence.⁴⁹

3. Discriminations made to the Roma and violations of the law

Restrictions of the right to freedom of movement and residence, derogations:

According to the circular letter of 10 September 2010⁵⁰, citizens of the countries which joined the EU on 1st January 2007 (Romania and Bulgaria) must apply for a work permit to get a job and for a residence card, during a transitional period (till the end of 2013), whether they have a job or not.

However, it is possible for a citizen of the European Economic Area to be refused the right of free movement and residence on grounds of public policy or unreasonable burden for the social insurance system. The reasons of denial depend on the current political circumstances.

Dismantling of illegal camps for Member States' nationals:

The circular letter of 24 June 2010, paragraph 2.2, 51 evokes the reasons for eviction as well as the lack of resources. The text also asks the security forces to carry out removals for the people who are illegally present on the territory. On these grounds, Romanian and Bulgarian citizens, and thus Roma people, can receive obligations to leave the French territory (OQTF), an administrative measure affecting foreigners, from the EU or non-EU countries.

The inter-ministerial circular letter of 26 August 2012⁵² on organizing and implementing the removal of the illegal camps does not repeal the former 2010 circular letter. Admittedly, alternatives should be sought for people living in these camps when there are security issues. The Court decisions and the people's rights are emphasized. Any solutions for the camp's

⁴⁵ This document is required for people who do not have a fixe domicile.

⁴⁶ Article L 121-4-1 from Ceseda

⁴⁷ article 121-1

⁴⁸ Article 122-2

⁴⁹ <http://vosdroits.service-public.fr/N110.xhtml>

⁵⁰ <http://www.immigration.gouv.fr/IMG/pdf/IMIM1000116C.pdf>

⁵¹ <http://www.interieur.gouv.fr/Media/Immigration/Files/Circulaire-IOCK1016329J-du-24-juin-2010-relative-a-la-lutte-contre-les-campements-illicites>

⁵² http://circulaire.legifrance.gouv.fr/pdf/2012/08/cir_35737.pdf

inhabitants should be looked for. Nevertheless this law still obeys the 2010 circular letter on the eviction of illegal camps and deportation measures for undocumented foreigners.

The appraisal of regular residence is difficult during police missions of evacuation. The measures of removal are individual but the reasons on which the deportation (OQTF) is based are stereotyped: either people have no money or they represent an unreasonable burden for the social insurance system.

No measure in the circulars of 2010 and 2012 organized the collective deportations prohibited by article 4, Protocol 4 from the European Convention for the Protection of Human Rights and Fundamental Freedoms⁵³.

In fact, situations vary according to the attitude of the local authorities.

4. Possible appeals

Foreigners

To challenge a decision to deport, filing an action is necessary at the administrative court within the jurisdiction of the prefecture responsible for the decision in order to submit a revocation request to ask the judge to assess the legality of the decision. This request must submit all the arguments demonstrating that the prefect made a mistake in making his decision. To write this request, the assistance of a lawyer or the help of a civic association dealing with foreigners' rights is required.

The court must return a verdict within three months. During this period of time, being removed is legally forbidden, but should the people be arrested by the police, they could be placed under administrative detention.⁵⁴

Travellers : see file 1

SPAIN

1. Legislations applying to the rights to move, to reside and the ban of collective expulsions

According to the Spanish Constitution, in Article 19⁵⁵: *"All Spaniards have the right to choose their place residence and to move freely within the country. They also have the right to enter and leave Spain in the terms established by law. This right may not be limited on the grounds of political or ideological reasons."*

Thus, Spanish gypsies, as Spanish citizens, do not suffer discrimination in the legal field associated with the right to freedom of movement and residence.

However, for Roma communities from other European states, mostly from Romania, the legislation raises certain restrictions in regard to their freedom of travel and residence:

The Royal Decree 240/2007, of 16 February is the transposition of the EU Directive 2004/38/EC into national law. This Decree regulates the entry, exit, freedom of movement, residence, permanent residence and work in Spain by the Member States of the European Community and other States party to the Agreement on the European Economic Area.

⁵³ <http://conventions.coe.int/treaty/fr/treaties/html/046.htm>

⁵⁴ See th « Mallette Roms » of the LDH.Siteweb to come

⁵⁵ **Spanish Constitution of 1978**. Published in BOE no. 311 of 29 December, 1978.

This decree provides the authorities with the possibility of developing policies that limit the entry into Spain, deny registration in the Central Register of Foreigners, refuse to issue or renew of a residence card or an order of expulsion of Spanish state on grounds of public health or safety. According to PRE/1490/2012 Order of 9 July, which set up the rules for the application of Article 7 of Royal Decree 240/2007 of February 16, the initial conditions of the RD 240/2007 on the right to stays longer than three months for EU citizens are restricted, having a direct effect on the Romanians and Bulgarians residence status.

In line with this order, in effect since September 1, 2012, shall be entitled to reside in Spain for stays exceeding three months those citizens who fulfil the following conditions:

- To be employees or self-employed.
- To be citizens who have the financial resources to support themselves to not become a burden on the social security and health insurance.
- To be studying in Spain.
- To be family of a citizens applying for residence and that falls into any of the above categories above (spouses, own and spouse ascendants and descendants under twenty one years of age).
- To be a citizen who has been legally working and suffers a temporary disability resulting from an illness or accident.
- To be registered as unemployed after having spent over a year working. If the duration of the contract has been less than one year, the status of worker shall extend not less than six months.

This new legal situation prevents Romanian and Bulgarian communities from exerting the right of residence for stays longer than three months. The majority of them do not meet these requirements due to an arrival after September 1, 2012 or to not having achieved the Certificate of Registration prior to that date.

In addition, to access the status of employees, workers (only) from Romania are affected by the moratorium on access to employment proposed by Spain and endorsed by the European Commission⁵⁶ by the end of 2012.

Thus, only those Romanian nationals, who were registered as unemployed or with a contract dated before 22 July, 2011 can live and develop any type of work activity. Whereas those who were neither working nor registered as unemployed on the date indicated right, though having the right to live in the country, can only work on their own or with a work permit as extra community citizens.

2. The national requirements for the implementation of the rights to freedom of circulation and installation

Requirements to enter and move freely within country:

It is only needed a passport or valid identification card (for stays lower than three months).

Documents required to register in the Central Register of Foreigners for European citizens (for stays longer than three months):

⁵⁶ Instruction SGIE/3/2012 as renewing of SGIE/1/2012 instructions on the regime applicable to domestic employees and their families of Romania applicable until December 31, 2012

It is required visit personally the office of the province⁵⁷ chosen to settle or the corresponding police station before within the first three months in the country. Besides, it is compulsory to bring a passport or national identity card along with the supporting documentation in compliance with the requirements referred to in the Order PRE/1490/2012, July 9:

- Employees should provide a copy of employment contract, employment certificate, or proof of Social Security registration in Spain; Work contract registered in social security for employees.
- Those working on a self-employed basis can provide a copy of their registration with Spain's Commercial Registry or proof of Social Security registration.
- Student are required to provide a copy of their enrolment at a Spanish school or university, as well as a signed declaration stating that they have sufficient financial resources for their expenses while in Spain and proof that they have health insurance with coverage in Spain.
- Those that do not fall in any of the categories above will have to prove they have enough financial resources to cover their family's expenses with copies of bank statements⁵⁸, property deeds, investment income, etc. In addition, they must provide proof that they have health insurance with coverage in Spain.

For foreigner citizens there are an automatic connection between work permits and legal residence in Spain.

Requirements for obtaining a work permit as an employee for those citizens non-belonging to the Community framework:

The Work authorizations will be granted together with the permits of residence. The applicants should not be residing irregularly in Spain, hold a prohibition of entry in the country or find themselves within the period of a non-returning commitment programme. They should not have a criminal offences recorded in Spain or any other offences contained in the Spanish law committed in other countries.

Working as employed: such a permit will be managed in the country of origin after having a job offer in Spain. The job of the contract must belong to occupations of difficult coverage that the Public Employment Service publishes quarterly⁵⁹, or hold a certificate issued by the Public Employment Service certifying that there are no qualified applicants within the activity in which is intended to work (which must be requested the employer). It is not needed to have a contract of a job belonging to the catalogue of occupations or to have the certificate of the Public

⁵⁷ To access to the information about the offices and the procedure use this link: http://www.seap.minhap.gob.es/servicios/extranjeria/extranjeria_ddgg.html

⁵⁸ Pursuant to the Order PRE/1490/2012 sufficient accreditation is required for compliance with this requirement about resource tenure that must exceed the amount set annually Law of State Budget to generate the right to receive a benefit not tax, taking into account the personal and family circumstances.

⁵⁹ Catalogue available online : http://www.sepe.es/contenido/empleo_formacion/catalogo_ocupaciones_dc/

Employment Service, if the applicant can be included into any of the cases referred to in art.40 of the immigration law⁶⁰.

The employer must apply for the authorization bringing with it the signed employment contract that guarantees the validity of the authorization. Such documents shall be presented at the immigration office in the province where the services will be provided. If the request is granted, the worker has one month to apply for the visa in person by submitting: a passport, criminal record, medical certificate, and proof of payment of visa fees (amounting to approximately € 60). Once the visa is collected, the worker must enter in Spain within the three months of its issue. After entering into the country, the employee will have three months to make his/her affiliation, registration and social security contributions.

Work permits requirements (only) for Romanian nationals⁶¹:

- Application form in duplicate on the official form duly completed and signed by the employer.
- Copy of the passport or national identity card.
- Copy of documentation attesting to possess training and, where appropriate, professional qualifications legally required for the practice of the profession.
- Documentation identifying the company that seeks the approval.
- Work contract signed.
- Proof that the company can guarantee the economic reliability necessary.

Applications must be submitted in person at the Immigration Office in the province where they wish to reside or at the local Police Station.

Exceptional cases for obtaining a work permit⁶²:

Social roots: being irregularly in the country for more than three years and able to prove so with official documents, as well as by not having criminal records in Spain or in the country of origin, nor holding a prohibition of entry into Spain or Schengen and having a yearlong job contract.

Working roots: being able to prove two years of permanent stay in Spain, having been working one of those years (the company must be reported) with a resolution of a judge or of a work inspection confirming that he has been working a year without permit job.

Family roots: first-degree relatives of Spanish nationality.

Certificate of permanent residence⁶³:

60 Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social. Art. 40 : The reunited family members of working age foreign resident in Spain. The prior authorization holders who intend to renew their work authorization. Workers needed for a fitting renovation of a facility or production equipment. Those who have had the condition of refugees, during the year following the cessation of the application of the Geneva Convention of 28 July 1951 relating to the Status of Refugees, for the reasons set out in section 5 of the section C of Article 1. Those who have been recognized as stateless persons and those who have lost the status of stateless the following year to the termination of such status. Foreigners who are responsible for ancestors or descendants of Spanish nationality. The foreign-born and living in Spain. Children or grandchildren of Spanish origin. Foreign minors working age with residence permits that are protected by the child protection agency for those activities which, in the opinion of that body, could promote their social integration, once proven unable to return to their family or country of origin. Foreigners who obtain a residence permit for exceptional circumstances in cases specified in the regulations and, in any case, in the case of victims of domestic violence or human trafficking. Foreigners who have held work permits for seasonal activities for two calendar years, and have returned to their country. Foreigners who have given up their residence and work permit under a voluntary return program.

⁶¹ According the Instruction SGIE/3/2012 as renewing of SGIE/1/2012 instructions on the regime applicable to domestic employees and their families of Romania applicable until December 31, 2012

⁶² Organic Law 4/2000 of 11 January on the rights and freedoms of foreigners in Spain and their social integration. Published in BOE no. January 10, 2010. Art. 31.3 y 68.3.

⁶³ <http://www.interior.gob.es/extranjeria-28/ciudadanos-de-la-union-europea-718/residencia-de-caracter-permanente-725?locale=es>

The citizens of a Member State of the European Union or a State party to the Agreement on the European Economic Area, and family members who are not nationals of one of these states, which legally resided in Spain for a continuous period of five years are holders of the right to reside permanently.

They will also have the right to permanent residence before the end of the five-year period referred to above:

The people who attend any circumstances relating to their situation as employees and previous stay in Spain before retirement or disability status between other factors⁶⁴.

3. Discriminations and violations of the law suffered by Roma communities

In the case of Romanian and Bulgarian Roma, it is worth saying that fortunately there are no mass expulsions of our country or region. However, the number of displacements of settlement is increasing without addressing the causes responsible for this situation or providing any solutions in collaboration with the public institutions.

The moratorium on access to employment for citizens of Romania and the tightening of the requirements (mainly economic) to be met by citizens of the European Union has a direct effect on the Romanians and Bulgarians residence status, who rarely meet the required conditions.

Moreover, the current president of Spain approved the mass expulsions that took place in France in 2010, as evidenced by the statements of two prominent Spanish newspapers: "I am absolutely convinced that the French Government did this, how could it be otherwise, according to the law "(ABC, 16/09/2010) and " the president of the PP, Mariano Rajoy, said (...) that he respects the decision of the French president, Nicolas Sarkozy, to expel Gypsies Romanian and Bulgarian origin "(El País, 16/09/2010).

4. Possible recourses to be taken

⁶⁴ Those circumstances are:

- To be an employed or self-employed, in the time they stop their labour activity, if they have reached the age laid down in Spanish law to enter retirement with pension rights when exercised his activity in Spain for at least the last twelve months and have resided continuously in Spain for over three years.
- The condition related to the length of residence will not be required if the Union citizen is married or is registered as partnership of a Spanish citizen or a citizen who has lost their Spanish nationality after marriage or registered as partnership with the worker.
- To be a worker who accesses early retirement, in case of have exercised their activity in Spain for at least the last twelve months and have resided continuously in Spain for over three years.
- The condition related to the length of residence will not be required if the Union citizen is married or is registered as partnership of a Spanish citizen or a citizen who has lost their Spanish nationality after marriage or registered as partnership with the worker.
- To be an employed or self-employed that has ceased the practice of their labour activity as a result of permanent disability, having lived in Spain for more than two years without interruption.
- Not will be need evidence of any residence if the disability is resulted from an accident at work or occupational disease entitling him to a pension for which it is responsible, in whole or in part, a Spanish state agency, or if the Union citizen is married or registered as partnership of a Spanish citizen or a citizen who has lost their Spanish nationality after marriage or registered as partnership with the worker.
- To be an employed or self-employed who, after three years of continuous employment and continued residence in Spanish territory to carry on business in another Member State and keep their residence in Spain, returning to the Spanish territory daily or at least once week. For the purposes of the right of residence, periods of employment spent in another Member State of the European Union are considered fulfilled in Spain.

People who suffer violations or discriminations in the rights related to freedom of movement and residence may request an application for amparo to the Constitutional Court (once they have exhausted all legal remedies before turning to the Constitutional Court).

For more information about how to report discriminations or violation of rights caused by administrations, individuals or private companies to roma people, will be accessible to the general legal resources relating to racial discrimination referred to in the file 9.

It is recommended to seek support on NGOs which offering legal advisory service. Some of these organizations are: Union Romani, FSG, Human Rights Association of Andalusia, etc..

CZECH REPUBLIC

1. The legislations applying the rights to move, to reside and the ban of collective expulsions

On the territory of the Czech Republic, the freedom of circulation and installation fall within the alien law and are significantly relating to the international public law. The right to move and reside is dealt by the national legislation but at the same time this right has to be consistent with international alien law standards and commitments that the Czech Republic has according to other particular agreements.

On the constitutional level, the freedom of circulation and installation is regulated in the Charter of Fundamental Rights and Freedoms⁶⁵, namely in the Article 14, and Article 8 (Personal liberty is guaranteed – a general provision in relation to freedom of circulation and installation).

The provisions of the Article 14 regarding the freedom of movement and residence are as following:

- (1) *“The freedom of movement and of residence is guaranteed.*
- (2) *Everyone who is legitimately staying within the territory of the Czech and Slovak Federal Republic has the right freely to leave it.*
- (3) *These freedoms may be limited by law if such is unavoidable for the security of the state, the maintenance of public order, the protection of the rights and freedoms of others or, in demarcated areas, for the purpose of protecting nature.*
- (4) *Every citizen is free to enter the territory of the Czech and Slovak Federal Republic. No citizen may be forced to leave her homeland.*
- (5) *An alien may be expelled only in cases specified by the law.”*

In this context, the Article 8 of the Charter comprising the provision *“Personal liberty is guaranteed”* stands for a general provision in relation to freedom of circulation and installation

This freedom can be demanded directly and no other laws implementing the Charter provisions are needed to enforce it. As for definition of the freedom of circulation and installation, this freedom represents a permission to freely move and settle down wherever on the territory of the

⁶⁵ The Charter of Fundamental Rights and Freedoms, The Constitutional Court of the Czech Republic, available at http://www.concourt.cz/clanek/czech_charter, accessed on March 10, 2013

Czech Republic, and a permission to freely choose the place of residence inside of the Czech Republic.

The freedom of circulation and installation is in the Czech law regulated by the Act on residence of foreign nationals⁶⁶ and this law shall remain the key legal instrument stipulating the conditions for the entry and stay of foreigners in the Czech Republic.⁶⁷

The rights to move and to reside are also addressed in several international documents, namely International Covenant on Civil and Political Rights, The European Convention on Human Rights, Universal Declaration of Human Rights, or The Charter of Fundamental Rights of the EU. Concerning the provisions of the EU Directive 2004/38/EC on the right of citizens of the EU and their family members to move and reside freely within the territory of the member states, was fully transposed into the Czech national law in 2007.⁶⁸

As for the transitional measures that a state can impose on foreign citizens, the Czech Republic did not use these provisions concerning the right to move or reside. In general, the Government of the Czech Republic does not support this kind of provisions and promotes cancellation of transitional regimes. However, the government of the Czech Republic in its resolution from January 2004 decided not to give up the possibility of using these provisions according actual situation.⁶⁹

The ban of collective expulsions is included in the Act on Residence of Foreign nationals in the Czech Republic, exactly in the Title X Administrative Expulsion, Article 3:

“Collective administrative expulsion of foreign nationals on the basis of a single decision shall be prohibited.”

2. The implementation of these rights: the national requirements

The requirements for someone to get in the Czech Republic legally (for EU citizens) and move within it (for national travellers)

Since the Czech Republic joined the European Union, are citizens of the EU special category of foreigners in the Czech Republic, which was established by the Act No. 326/1999 Coll. on the Residents of Foreign Nationals. EU citizens have with their family members much more favourable position than foreigners from third countries, because their rights are related with freedoms of the EU, including and especially freedom of movement within the territory of the EU. The Act in § 1 and § 2 defines: *“the foreigner means a natural person who is not a citizen of the Czech Republic, including a European Union citizen.”* However, the law refers to the definition of an EU citizen contained in the Treaty on European Union, Article 9. Institute of EU citizenship is then further developed in Treaty on EU, Articles 20-25.

Within the free movement, EU citizens can together with the closest family members travel freely throughout the European Union, and they need only to have a valid passport or identity card. EU citizens' right to travel is valid regardless of the location or purpose of the travel (private or

⁶⁶ Act on Residence of Foreign nationals in the Czech Republic (Act no. 326/1999 Coll.); Ministry of the Interior of the Czech Republic, available at www.mvcr.cz/soubor/uz-326-k-1-5-2011.aspx, accessed on March 16, 2013

⁶⁷ Residency in the Czech Republic, Ministry of the Interior of the Czech Republic, information brochure, 2010

⁶⁸ EU Directive 2004/38/EC on the right of citizens of the EU to move and reside freely, 2009, Ministry of Labour and Social Affairs, available at <http://www.mpsv.cz/cs/6944>, accessed on March 17, 2013

⁶⁹ Transitional Measures on Free Movement of Employees, 2010, Ministry of Labour and Social Affairs, available at <http://www.mpsv.cz/cs/1282>, accessed on March 17, 2013

business, as an employee, self-employed or tourist). EU citizens have the right to enter and to reside without formalities in any EU country for up to three months. The rules for family members who are not EU citizens are more complex, depending on their travelling with the EU citizen or separately.

The requirements to have a legal and recognised presence in your country so the resident status, the rights/duties of a resident in the Czech Republic (differences between a foreign EU citizen and a national citizen, complications for travelling people)

- There is only different practise. Czech citizens are not obligated to report about the change of their temporary stay. Place of their permanent stay is obligatory information in ID card, if you changed it, you have to change it in your ID Card as well.
- One of the obligations ensuing from the Act on the Residence of Foreign Nationals for citizens of the EU, Iceland, Norway, Liechtenstein, or Switzerland is the "reporting requirement" in the event that the length of the intended stay in the Czech Republic is longer than 30 days. In this situation, within 30 days of entering the Czech Republic, an individual is required to report his/her presence to the appropriate Foreign Police Department that holds jurisdiction in the location of his/her stay in the Czech Republic.
- This obligation does not apply if the person providing accommodation submits the registration forms on behalf of the citizen of the EU. The reporting requirement also does not apply to persons younger than 15 years of age, consular staff of a foreign state or the personnel of an international governmental organisation accredited in the Czech Republic and their family members who are registered with the Czech Ministry of Foreign Affairs, or to foreign nationals whose accommodations are secured through the Ministry of the Interior (MOI). Citizens of the EU are also bound to report the change of surname, marital status, changes in data contained in the residence card (i.e. certificate of temporary residence or permanent residence permit). In case of a stay without any residence card, these changes are to be reported to the Foreign Police. In case any residence permit/certificate was issued, changes are reported to the MOI. Citizens of the EU temporarily stay in the Czech Republic without any special permit, solely on the basis of a travel document or an identity card.
- The Act No.74/1958 on permanent settlement of travellers was cancelled on 1998, despite this fact we do not have travellers in the Czech Republic.

Processes to become a resident

If they intend to stay in the Czech Republic for longer than 3 months, they can request a certificate of temporary residence or a permanent to be issued.

For an EU citizen, **the certificate of temporary residence** is not a condition of their stay in the Czech Republic, therefore it is up to them whether they request this certificate be issued or not. A certificate of temporary residence is issued at the request of an EU citizen who intends to stay in the Czech Republic for more than 3 months and has not threatened state security or seriously disrupted public order. The application for issuing a certificate of temporary residence is filed on the appropriate [form](#). Application requirements:

- A [travel document](#) (i.e. an identity card for an EU citizen),
- a [document confirming the purpose of the stay](#) if it concerns employment, business or another gainful activity or studies
- 1 [photograph](#),
- proof of [travel medical insurance](#), (not required if the purpose of the stay is employment, business or other gainful employment)[proof of accommodation](#)

As an EU citizen, you can request permanent residence:

A) after 5 years of continuous temporary residence in the Czech Republic.

B) after 2 years of continuous temporary residence in the Czech Republic – as a family member of another EU citizen

- All of the requirements mentioned below must be provided with the application.
- There shall be no reasons for refusing or suspending the processing of the application.
- An application for permanent residence can be filed at the MOI offices. With regards to the possible personal contact with the office where the application was filed, it is best to file the application at the office nearest to where you are registered. The application must be submitted in person. You should submit the application on a completed form along with all the necessary requirements given below. You should, however, always submit originals or notarized copies of the documents. All documents submitted (except the travel document) must be made out in the Czech language or officially translated into Czech.
- Along with the application, submit these requirements:
 - A travel document / document on identity (It is necessary to submit an original)
 - A document confirming meeting the condition of 5/2 years continuous temporary residence
 - A document confirming meeting the fact that you are family member EU citizen
 - 2 photographs
 - Proof of accommodation

Conditions for issuing a permanent residence permit

To obtain this permit you must meet these conditions:

1. 5 or 2 years of continuous temporary residence in the Czech Republic
2. All of the requirements mentioned below must be provided with the application.
3. There shall be no reasons for refusing or suspending the processing of your application.

All documents submitted (except the travel document) must be made out in the Czech language or officially translated into Czech.

Along with the application, submit these requirements:

1. A travel document / document on identity (It is necessary to submit an original)
2. A document confirming meeting the condition of 5 years continuous temporary residence
3. 2 photographs
4. Proof of accommodation

The requirements for the application shall not be older than 180 days except for the travel document, the birth certificate, marriage certificate and the photograph of the foreign national if it corresponds to his/her actual appearance.

The application procedures are governed by the Act on the Residence of Foreign Nationals, the Administrative Procedure Code and any other associated acts.

The Act on the Residence of Foreign Nationals sets a deadline of 60 days from filing the application in the Czech Republic, during which the MOI is required to make a decision on your application. If the procedure is halted, the deadline for making a decision is also halted. This deadline is also halted or is extended in other legally set cases.

All procedures are in the competence of MOI office where the person is registered.

The ban of collective expulsions is included in the Act on Residence of Foreign nationals in the Czech Republic, exactly in the Title X Administrative Expulsion, Article 3.⁷⁰

⁷⁰ EU citizens and their family members , 2013, Ministry of the Interior of the Czech Republic, available at <http://www.mvcr.cz/mvcren/article/eu-citizens-and-their-family-members.aspx>, accessed March 19, 2013

3. Discriminations made to the Roma and violations of the law

In the Czech Republic, almost the whole Roma minority consists of persons already settled and with the Czech citizenship, even if their predecessors can come from other countries (practically all from Slovakia). So far, any higher migration of Roma from other countries was not registered. Only descendants of Roma from Hungary or Romania are recorded, i.e. they are not newly incoming migrants.

In this context, there are no discriminations made to the Roma concerning the freedom of circulation and installation.⁷¹ Nor the Roma in the Czech Republic fall within the group of Travellers, as this feature of the minority was completely eliminated as a result of the Act on Permanent Settlement from the 1958.

4. Possible recourses to be taken

As the Roma in the Czech Republic are basically all Czech national citizens and not belong to the group of Travellers, this right is not being violated. However, this situation may change in the future with new states becoming members of the European Union. In the Czech Republic, several NGO's deal with the assistance to different kinds of minorities or migrants, for instance Association for Integration and Migration⁷² or Counselling Centre for Citizenship, Civil and Human Rights.⁷³

⁷¹ The freedom of installation concerns the housing situation of certain part of Roma minority that are segregated territorially by the municipalities, for more information see File 3.

⁷² Association for Integration and Migration, available at <http://www.migrace.com/en/>

⁷³ Counselling Centre for Citizenship, Civil and Human Rights, available at <http://www.poradna-prava.cz/en>

File 3 - Right to access to decent housing

Article 7

Everyone has the right to respect for his or her private and family life, home and communications

THE EUROPEAN LEVEL

The legislative texts applying the rights to housing and to a decent housing

Housing is not a common EU policy that-is-to-say there is no EU law on the topic and thus member state are free to choose how to deal with it.

Nevertheless, two broad EU legislative articles refer to housing. Mentioned in the Charter of Fundamental Right, member states can provide the “*right to social and housing assistance*”. But they are not forced to. Furthermore, public and private housing sectors should discriminate no one when it comes to access housing².

In parallel, to fight exclusion and poverty some member states have engaged through the Council of Europe (CoE)³ to promote an effective access to housing⁴. They also recognize that there is a right to housing⁵. However, all EU member states did not join, neither fully, this initiative by the CoE⁶. In addition, in comparison to the EU, CoE has less power to put pressure on countries which do not comply with the treaties⁷. As a result, member states feel less threatened by the CoE.

Some discussions are held at EU level to improve housings in matter of social inclusion or fight against homelessness. However, there is no debate about including housing as a EU competency which could have allowed EU Institutions to make laws and thus confer rights to EU citizens, including the right to sue its member state, and force them to have a minimum of requirements regarding this issue. For now, member states are mostly encouraged to improve and invest in housing.

¹ Charter of Fundamental Rights, Article 34, Paragraph 3: “*In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.*”

² Council directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Article 3 Paragraph 1 dealing with the scope of the directive: “*Within the limits of the powers conferred upon the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to: (...) h. access to and supply of goods and services which are available to the public, including housing.*”

³ The CoE is a distinctive institution independent from the EU, which works on promoting democracy and protecting the human rights and the rule of law. In comparison to the EU, where member states gave some of their sovereignty away to the EU to take decisions on common interest's topics, the CoE is strictly an intergovernmental institution where involved states are not forced to ratify all treaties neither all of their articles. In addition, the CoE does not deal with economy while the EU is a politic and economic organisation. The CoE is composed of 47 states including the 28 EU member states and 19 non EU countries from Western Europe to Caucasia.

⁴ Article 30, The right to protection against poverty and social exclusion, Revised European Social Charter, 1996: “*With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake: (a) to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance* ».

⁵ Article 31, The right to housing, Revised European Social Charter, 1996: “*to promote access to housing of an adequate standard; to prevent and reduce homelessness with a view to its gradual elimination; and to make the price of housing accessible to those without adequate resources*”

⁶ Concerning the countries tackled within this toolkit, France is the only one which ratified the Revised European Social Charter of 1996. Czech Republic, Spain and United Kingdom did not ratify it. Link to the list of countries which ratified the revised version: <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=163&CM=8&DF=&CL=ENG> and list of the provision to the Charter per country: http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/ProvisionsIndex_en.asp

⁷ The CoE can only put political pressure on a state to make it to comply with its engagements, while the EU can in addition use financial pressure on its member states.

However, at the international level, member states agreed that for everyone to reach an adequate standard of living, an adequate housing is important⁸. Moreover, to reach a high level of physical and mental health, recognised as well as a right by member states, they should improve the hygiene of the environment people live in⁹.

UNITED KINGDOM

1. The legislative texts applying the rights to housing and to a decent housing under the UK Legislation

The duty of providing adequate housing is carried out on behalf of the Government by the Local Authority. Due to current 'A2' status and their inability to gain work due to UK legislation it can encourage the set-up of unauthorized encampments of Gypsy traveller/Roma which has led to increased legislative text applying to the break up of such encampments, for example: The Public Order Act 1986¹⁰ which imposes conditions on public assemblies and the Criminal Justice and Public Order Act 1994 ('the 1994 Act') which specifically addresses Gypsy/ Travellers' circumstance. The 1994 act empowers both the police and local councils to evict Travellers on unauthorized sites. For prosecution for unauthorised encampment in Scotland, the Trespass Act 1865, the Roads Act 1984, and The Anti-Social Behaviour Act 2004, are very salient.

Scottish Legislation: In terms of housing, the 2010 Housing (Scotland) Bill (SP Bill 36) includes in its 'Outcomes' 'the provision and management of sites for gypsies and travellers, whatever their race or origin'. The Housing (Scotland) Act 2001¹¹ placing a duty on Local authorities to regularly review and update their Local Housing Strategy to meet the accommodation needs of Scottish Gypsy/Travellers communities (Scottish Executive, 2001a, 2004; Communities Scotland, 2006). This duty was confirmed by Communities Scotland's instruction to local authorities.

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All Bulgarians and Romanians can apply for accommodation direct from housing associations but may be refused if they do not have enough money to pay the rent and cannot access housing benefit.

Scotland

Bulgarian and Romanian workers are often told that they are not entitled to housing, homelessness assistance or benefits in the first year when they are authorised to work. This is not the case as they have legal rights under the conditions below.

⁸ International Covenant on economic, social and cultural rights, article 11, paragraph 1 : «*The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.* »

⁹ International Covenant on economic, social and cultural rights, article 12: «*1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: (b) The improvement of all aspects of environmental and industrial hygiene;* »

¹⁰ <http://www.legislation.gov.uk/ukpga/1986/64/contents>

¹¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7812/138355.pdf

Self employed, students and self-sufficient individuals have the same rights as other EEA nationals with the same status. However, jobseekers who have not yet worked in the UK are not eligible for housing, housing benefit or homelessness assistance.

Employees who are authorised or exempt are eligible for an allocation of housing from the council, help if homeless and housing benefit to help pay the rent. Those arriving under the SAWS scheme are expected to be housed by their employer. Authorised workers who become unemployed within their 12 month period are not entitled to help to pay rent or an allocation of housing from the council or help if homeless. However, individuals will become eligible if they receive new authorisation and start working again.

England and Wales

Self employed, students and self-sufficient individuals have the same rights as other EEA nationals with the same status. However, jobseekers who have not yet worked in the UK are not eligible for housing, housing benefit or homelessness assistance.

Employees who are authorised or exempt are eligible for an allocation of housing from the council, help if homeless and housing benefit to help pay the rent. Those arriving under the SAWS scheme are expected to be housed by their employer. Authorised workers who become unemployed within their 12 month period are not entitled to help to pay rent or an allocation of housing from the council or help if homeless. However, individuals will become eligible if they receive new authorisation and start working again.

Applications for housing or homelessness help in Wales you are eligible if applicant is habitually resident in the UK, Channel Islands, Isle of Man or the Republic of Ireland or if working while authorised or exempted. Individuals who have not yet completed the 12 months as an authorised worker but are no longer working, are not eligible for housing benefit to help pay rent or for an allocation of housing or for homelessness help in England. You become eligible if you can get new authorisation and start working again.

In Wales, you are not eligible for help to pay your rent, but you are eligible for an allocation of housing or for homelessness assistance as long as you are habitually resident.

Certain workers from Romania and Bulgaria are allowed to work without restrictions (i.e. they are not required to seek authorisation to work). If exempt they have the same rights to housing and help with your rent as EEA workers. Individuals are not required to seek authorisation to work if you:

- have legally worked (i.e. had an appropriate form of leave or authorisation, including work as allowed as a student) in the UK for a continuous period of 12 months (whether that period started before, on or after 1st January 2007)
- have leave to enter or remain in the UK which was not subject to any condition restricting employment
- meet the criteria for the UKBA highly skilled migrant programme and you hold a registration certificate giving you unrestricted access to the UK labour market
- have dual nationality as a British citizen or as a national of another EEA state which is not Bulgaria or Romania
- are the spouse or civil partner of a UK national or person with settled status
- have a permanent right of residence¹²

¹² Any period of residence in the UK in which you make use of a European Union right to reside will count towards the qualification period. However, some periods where your right to reside arises solely from UK legislation does not: for example, time spent before your country joined the EU may only count in certain circumstances.

- are the spouse, registered civil partner or child of a person who has leave to enter the UK provided the terms of that leave allow the person you are accompanying to work
- are the husband, wife, civil partner or child under 18 of a Bulgarian or Romanian person who has worker authorisation
- are a family member of an EEA national (other than a Bulgarian or Romanian)
- are a student who works for less than 20 hours per week and who holds a registration certificate which allows you access to the UK labour market for up to 20 hours per week
- have been posted to work in the UK by an organisation that is based in another EEA member state.

The Equality Act doesn't specifically state that Gypsies/Travellers belong to a distinct racial or ethnic group. However, judges in England have decided that Irish Travellers and Romany Gypsies are distinct ethnic groups. These decisions aren't legally binding in Scotland, because the Scottish court system is separate, but Scottish sheriffs¹³ are likely to agree with the English decision. This means that a Romany Gypsy or Irish Traveller who feels that they have been treated unfavourably because of their travelling lifestyle, they may be able to take action using the Equality Act.

2. The implementation of the law

For settled population:

- Give a picture of the housing market in your country (including informal habits if they are considered as tolerated rules): housing market in England, the housing stock is very poor and not many new developments are happening. The Housing stock in other countries like Wales and Ireland and Scotland has poor housing stock especially when accessing it from the local government or housing associations. Since new benefit reform the introduction to housing bed room tax which states that you cannot gain full benefit if you have empty bed rooms. This is particularly challenging as current private and housing stock with reduced number of bedrooms is very low.
 - Private and public actors able to provide a housing
 - General prices
 - Type of housing available for population with a socio-economic profile like Roma
 - Requirements asked by owners to access to housing

For travelling population:

Due to the Roma being unable to work they are often legislatively barred from being eligible for assistance with housing. As previously discussed this can cause illegal sites as the community often feels safer within a cluster. These sites often cause disharmony among the existing community and laws have been created to protect communities from an influx of the Roma/ Traveller communities. Although recent case law in Scotland would suggest that law is beginning to rethink their approach to these communities. In relation to the Trespass Act 1865 a petition lodged on 26 March 2010 to the Scottish Parliament (PE 1321) directly addresses the issue of removal. "Section 3 of the ancient Trespass (Scotland) Act 1865 empowers police officers to arrest, detain and present before a magistrate Gypsy/Travellers who are encamped on unauthorised sites. This includes charging 16 year olds (classed as children under the United Nations definition of a child) and adults who have family members under the age of 18 demonstrating the vulnerability of the group in comparison to the wider community.

¹³ Sheriffs deal with the majority of civil and criminal court cases in Scotland. Currently, there are 142 permanent or resident sheriffs sitting in 49 courtrooms in towns and cities across the country. Floating sheriffs move between courts, sitting wherever they are needed. As the jurisdiction of the ancient office of sheriff is so vast, sheriffs must have a grasp of every aspect of law.

Scotland using its devolved responsibility has adopted a more supportive approach. However, this does not provide overarching protection and the community may find that they are evicted from their pitches, via:

Eviction by the council from an official site although this will be given with four weeks' notice under common law rights although may be requested sooner if there has been public disorder. People who live on a protected site have many more rights than residents who live on an unprotected site, including more protection against eviction. Eviction from an unprotected site without planning permission and a site licence, community has no rights and the site owner.

The Scottish Planning Policy 3: Planning for Homes (SPP3) , revised in 2008, prescribes that the 'Scottish Housing Regulator' which inspects local authority housing services, has a series of nationally agreed Performance Standards. The "Sites for Gypsies/ Travellers Performance Standard " plans to: provide or arrange good-quality, serviced stopping places for Gypsies/ Travellers. The four areas of consideration before a local authority will assist, as follows is the individual homeless, is there a priority need, has the homelessness occurred intentionally and does the individual have a local connection.

If homelessness test is passed then Local Authorities (LA) will offer a place to live initially in the form of temporary housing, although the LA should consider individual needs it is likely that the offer will be within 'bricks and mortar' rather than following the lifestyle of choice and therefore should offer advice and support in adapting to your new lifestyle.

3. Discriminations made to the Roma and violations of the law

Gypsies/Travellers who reside within sites and settled accommodation often experience racial harassment including verbal abuse, such as name-calling, insults or racist jokes, vandalism and racist graffiti, nuisance phone calls, texts or emails, bullying, intimidation and threats, physical abuse or violence. Often this harassment is reported to come from neighbours or other people in the community, staff at the council, site owners and the police. Due to the historical nature of harassment of the Roma many individuals fail to report or take action against individuals who harass them, fearing raising alarm will make the situation worse. Harassment causes many Roma communities to move on, or abandon their lifestyle in favour for mainstream lifestyles hiding their cultural background from the wider community. In addition, to coping with day to day harassment issues the Roma often have to deal with the legal recourse as indicated by 'One Crown Office Row' which reported that 'Racial and ethnic discrimination was observed, highlighted the discrimination facing Travellers and noted the Dale Farm Traveller Settlement case and also noted a 5 per cent increase in racially motivated incidents¹⁴.

In 2009 a group of Romani Gypsies bought some land (Dale Farm) because of lack of available accommodation in the district, they moved their caravans onto their land and applied for planning permission which was refused. In 2012 the families applied again for planning permission The Royal Borough accepted the application, and have now refused to determine their application, choosing instead to evict the families onto the road side. Council have also been reported to have instructed local land owners not to sell the land to Travellers with one cited case of an individual from the planning department going undercover as a Traveller Liaison Officer, and making site visits without even applying for a CRB Certificate.

The enforced eviction is noted by RBWM is noted to contravene the Human Rights of the community, particularly: Article 1 - Article 1 of the First Protocol: Protection of Property, Article 6. - The HRA refers to a right to a fair hearing, Article 8. - Right to respect for private and family life, Article 14 - Prohibition of discrimination. Despite five UN agencies raised their concern and opposition to the unprecedented use of force employed to level fifty homes and expel 80 families from their own land on the Dale Farm estate on 19 October last year. Police report confirmed

¹⁴ Analysis: US State Department's review of UK Human Rights

that seven riot police were armed with and, in most cases, used Taser weapons on defenders in the first stages of the assault. More than 45 arrests were subsequently made. The clearance operation and legal action has so far cost in excess of 10 million euro. Since the eviction many of the original residents have become ill¹⁵ and the site has fallen into disrepair. Director of Essex University Human Rights Clinic stated that "Dale Farm represents a serious breach of human rights law," "...the rules say those evicted should be provided immediate relief and restitution. This has not happened." Unauthorised sites or encampments are sites which aren't licensed, don't have planning permission and aren't run by the council. Gypsies/Travellers usually set up these sites on unused land, for example on wasteland or at the roadside, or on the shores of the sea or a loch. Some councils may unofficially set aside areas of waste ground to be used as unauthorised sites.¹⁶

4. Possible recourses to be taken

"Where persons occupied land, the court did not have power to grant a possession order in respect of a separate plot of land that was not being occupied by those persons:

The appellant travellers (T) had established an unauthorised encampment in woodland owned by the Claimant (C). C applied for a possession order in respect of the woodland and also in respect of additional separate sites nearby. C also applied for an injunction restraining T from re-entering the woodland and the other sites. The Court of Appeal granted both the wider possession order and the injunction.

Held : (1) There was no legitimate basis for making a precautionary possession order in respect of land the persons were not occupying but were threatening to occupy. Such an order was nonsensical as it required the persons to deliver up possession of land that they did not occupy (Drury v Sec State for Environment Food & Rural Affairs [2004] EWCA Civ 2002, overruled).

(2) An order for possession could be made in respect of the whole of a single plot of land, where persons occupied only part of it. However, that reasoning could not extend to apply to land wholly distinct or miles from the occupied land (University of Essex v Djemal [1980] 1 WLR 1301, distinguished)

(3) The court was entitled to grant an injunction preventing the persons entering the occupied land and the unoccupied land. The court should not normally grant an injunction which it would be unable to enforce, but could grant one if it was considered to have a real deterrent effect.

(4) (Per Lady Hale) The Drury wider-order for possession may be developed, provided it can be tailored against known persons, who have already intruded on C's land, are threatening to do so again and have been given an opportunity to contest the order".

"Self-Representation: On 1 April 2013, the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) came into force. It means that fewer people now have access to free legal representation than at any time since legal aid (state funding for legal advice and representation) was introduced. This means that if you have a legal problem there is now more chance that you will have to represent yourself."

Course of redress for Roma individuals experiencing harassment would be using the Equality Act 2010 in the first instance. Many local authorities and/or Police agencies now have Gypsy/ Traveller liaison officer allowing 'remote reporting' of racist incidents. Agencies which may assist the Roma if they feel that they have an issue with a Local Authority, Health or Police Service can seek assistance through other groups, such as, Citizens Advice Bureau (CAB). Authorities

¹⁵ Half those moved from the upper portion of the estate have lived for six months on a private access road. Others have taken refuge on some 40 legal plots. A lack of proper sanitation and toxicity released from cess-tanks left broken by contractors is believed to have contributed to the several hundred instances of illness among children and adults, confirmed by a Red Cross report.

¹⁶ Secretary of State for the Environment, Food & Rural Affairs v Meier [2009] UKSC 11
Lord Rodger, Lord Walker, Lady Hale, Lord Neuberger, Lord Collins

such as the Local Authority must take into consideration individual human rights when making decisions and balance this with the rights of the wider community, for example, moving a community from an unauthorised site or deciding planning permission on owned land. Across Scotland many Local Authorities provide sites for Gypsies/Travellers to stay in, either temporarily or permanently.

The Scottish Government published in 2004 Guidelines for managing unauthorised camping by Gypsies/Travellers in Scotland. The aims of these guidelines are to encourage members of the settled community, local businesses and landowners, and Gypsies/Travellers or Roma Gypsies to build good relations between different communities to meet the needs and legitimate expectations. The government set out recommended courses of action which all local authorities and police forces were strongly urged to follow in order to provide an effective solution to unauthorised camping in their area, where it is a problem. To encourage a more consistent approach across Scotland, building on current good practice and sharing experience.

There has been systematic failure in Britain to explicitly include Gypsies and Travellers in national employment monitoring systems, such as through the quarterly Labour Force Survey; in the ethnic monitoring practices of the Department for Work and Pensions; as well as within any distinct regional ethnic monitoring systems in Northern Ireland, Scotland, and Wales. Romania and Bulgarian migrant's rights to come to Britain were restricted, however on 31st Dec 2013 this ban will be lifted and they will be able to move freely to the UK. In many ways it will serve the purpose of the European freedom of movement, thus harming the job prospects of British people (as perceived). The government will have to introduce some measures to have Roma and Bulgarian migrants engaged in employment. There needs to be more work done around building the capacity and empowering the Roma community to have their voices heard in the policy area. Local authorities who are the main service providers may need to adapt new ways of working with diverse community groups and they should be given training on recruitments of staff from minority communities eg. More training needs to be delivered to local authorities on mainstreaming equalities and ensure appropriate resources are available to support the Roma community and ensure monitoring of policies on Roma issues are implemented and scrutinized in order for it to work across the UK. However, all the policies that apply to British Citizens will also apply to Roma and Bulgarian communities; it may only vary in certain cases. "The Bridges Programme's "Ladders to Employability and Integration" aims to improve the economic and social integration of refugees and asylum seekers generally (not just in Govanhill), as well as other ethnic minority groups including Roma women.

FRANCE

1. The legislative texts applying the rights to housing and to a decent housing

The right of housing

-In its decision of 19 January 1995¹⁷, The Constitutional Council refers to the **Preamble of the Constitution of 27 October 1946, and considers that "the possibility for anyone to access a decent housing is objective of constitutional value"**.

In its decision of 13 August 1993¹⁸, the Constitutional Council asserted that "Foreigners who enjoy the rights of social protection when they live in a stable environment under regular

¹⁷decision n° 94-359 DC <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/1995/94-359-dc/decision-n-94-359-dc-du-19-janvier-1995.10618.html>

¹⁸ decision n° 93-325 DC <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/1993/93-325-dc/decision-n-93-325-dc-du-13-aout-1993.10495.html>

conditions in France, must benefit from recourses guaranteeing these rights and liberties." This decision concerns Europeans and non Europeans living in regular conditions.

-The law of 5 March 2007, known as Dalo law established the right to housing¹⁹. The circular letter of 26 October 2012²⁰ established the principle that "anybody or any family with difficulties because of inadequate income or living conditions can assert their right to housing." The law requires eligibility conditions to be recognized as priority cases and in emergency situation.

For travelling population:

The law of 5 July 2000, known as the second Besson Law ²¹ on reception and housing of Travellers, reinforces the obligations for elaboration and implementation of a departemental arrangement for the reception of travellers. The law stipulates that municipalities of more than 5 000 inhabitants must provide travellers with temporary or permanent²² halting sites, under departemental plans.

A circular of the 17 december of 2003 permits the possibility of family sites. When bought by the Travellers, they can receive caravans for a permanent residence²³. The number of caravans is defined by the circular.

The national definition of decent housing

-The decree of 30 January 2002 specifies the characteristics of a decent housing.²⁴

It defines all the characteristics required for physical security and health of people living there. A decent housing must contain proper heating, drinking water hook-up and sewage disposal.

The accommodations must have one main room of a living area covering a minimum of 9 square metres and a living space equal to 20 cubic metres.

A kitchen or a kitchen corner fitted out so as to receive a cooking appliance and including a kitchen sink linked with an installation of hot and cold water supply and with an installation of sewage disposal.

A sanitary facility inside the dwelling includes a toilet, separate from the kitchen and the room where meals are eaten, and equipment for washing, including a bath or a shower furnished to ensure personal privacy, equipped with hot and cold water with a sewage disposal. The sanitation of one-room housing may be limited to a toilet outside housing provided that the restroom is located in the same building with easy access.

A power grid permitting adequate lighting of all the rooms and domestic appliances indispensable to daily life.

Texts stating the rights/duties of an owner and a tenant

- **The law of 6 July 1989 to improve the rental relationships and amending the law of 23 December 1986²⁵ indicates that the right to housing is a fundamental right and defines the obligations between lessors and tenants²⁶.**

¹⁹ <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000271094&dateTexte=&categorieLien=id>

²⁰ http://circulaires.legifrance.gouv.fr/pdf/2012/11/cir_36018.pdf

²¹<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000583573>

²² Loi Besson, article 1

²³Circulaire UHC/IUH1/26 no 2003-76 du 17 décembre 2003 http://www.dguhc-logement.fr/infolog/droit_logt/gdv_terrains_familiaux_circulaire_17_12_2003.php

²⁴<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000005632175&dateTexte=20110729>.

²⁵ **Law n°86-1290**, <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006069108&dateTexte=vig>

²⁶ <http://vosdroits.service-public.fr/N292.xhtml>

1.2. Housing market for settled population:

Rents and their evolution are supervised²⁷. Rental rate freedom is only applied for special cases (as new or renovated housing) and is defined by the 6 July 1989 Act.

The market varies between regions. Home ownership has increased because of low rate loans but it could lead households to financial hardship.

Access to rental housing of social or private sector is impossible for people with low-income or on social assistance. More than 3 million people endure poor-housing problems. 685 000 of which don't own their house and live in makeshift shelter all year long²⁸.

Private and public actors able to provide housing

- For private sector, the lessor could be the owner, or estate agencies working for an owner or a legal entity (banks, insurance companies...)

For the social sector, social landlords administer social housing: city or municipality, "Office d'HLM"²⁹. There are three categories of social housing: PLA³⁰ for low income household, PLU³¹ for middle income and PLS³² for higher income household, the latter pays a higher rent if their income exceeds the ceiling fixed by the administration of the HLM.

Requirements asked by owners to access to housing

Documents to check the identity and the income of the candidate can be required. The law only mentions what documents cannot be required³³.

To have access to social housing³⁴, an application must be submitted imperatively to the City Hall social services people geographically depend on.

It is necessary to prove people have an income, (including financial assistance and social allowance), an identification document, and to mention the reason of the request. It can be because the housing is too small for the family, inadequate for disability or senior citizens, or in case somebody lives with his parents, and in the event of divorce.

The attribution board eventually makes decisions.

Type of housing available for population with a socio-economic profile like Roma

More than 100 000 persons are homeless or live in substandard or insecure housing as shown in the report of the Fondation Abbé Pierre³⁵ on poor housing.

Populations in precarious situations are accommodated in temporary shelters as barracks, gymnasium during winter (till 31 March).

Some less precarious options are sometimes available for Roma people who are successful in getting a job and a residence permit. Some municipalities have implemented in their area "villages d'insertion"³⁶, a specific system of temporary housing for families living in slums or

²⁷ <http://www.developpement-durable.gouv.fr/Plafonds-de-loyers-et-de-prix-en.html>

²⁸ http://www.inegalites.fr/spip.php?article508&id_mot=95

²⁹ HLM : Habitat à loyer modéré : council house

³⁰ Prêt locatif aidé d'intégration : assisted rental program

³¹ Plan local d'Urbanisme : Local Town planning

³² Prêt locatif social : social rental loan

³³ <http://vosdroits.service-public.fr/particuliers/F1169.xhtml>

³⁴ <http://vosdroits.service-public.fr/N19424.xhtml>

³⁵ http://www.fondation-abbe-pierre.fr/publications.php?filtre=publication_rml

³⁶ Villages d'insertion: integration villages

squatting. These “villages” are contested both by Roma and associations because of the selective conditions of implementation and binding functioning rules

For the Travellers « Gens du voyage » (see also file 9)

Towns of more than 5000 inhabitants must establish living and transit sites for travellers. Arrangements for granting the aid are provided³⁷ by the State. The region, the department, and the family allowance fund can also help. If municipalities fail the law, the Prefect can carry out the departmental arrangement for the reception of Travellers at the expense of the municipality³⁸.

The Ministry of Ecology, Energy, Sustainable development and the Sea published in 2009 a guide for the housing of Travellers³⁹. Technical standards have been defined⁴⁰.

1.3-The common abuses/discriminations occurring and faced by the Roma

Roma people live generally in unacceptable conditions, often in slums or in squats. The municipalities have some obligations. They are to be contacted to provide access to safe water, proper sanitation and have garbage dumpsters regularly collected.

The inter-ministerial circular letter of 26 August 2012⁴¹ (see file 2) provides solutions⁴² for housing but it is not applied or poorly applied. D’abord un hébergement d’urgence, ensuite trouver des solutions pérennes liés à une avec les autorités locales, les bailleurs sociaux.

The Dalo Law should allow the Roma from Romania or Bulgaria to access decent housing. But to be eligible, it is necessary to be a French native, or for foreigners to have the right of residence or a residence card. Because of transitional measures this law does not apply to Roma from Romania or from Bulgaria.

For Travellers: the implementation of the 5 July 2000 Act is partial but parking prohibition on a large part of the territory has become the rule for Travellers. Evictions, permitted by the law (article 9), are made easier and irregular parking is penalized. It is provided by the Internal Security Law of the 18 March 2003⁴³ on crime prevention⁴⁴.

1.4- Possible recourses to make these rights respected

In the event of a breach of the law, remedies can be provided before administrative tribunals and administrative appeal courts. The administrative court of Toulouse points out that the law is the same for foreigners⁴⁵

If no solution is offered by the Prefect to priority person within legislated time limits, the person can appeal to the administrative court. With the DALCOM procedure⁴⁶, if one is found to have no priority by the DALO committee or if this committee does not reply within the time period laid

³⁷ Loi Besson, articles 2, 4, 5

³⁸ Loi Besson, article 3

³⁹ http://www.dguhc-logement.fr/infolog/droit_logt/gdv_guide_2009.pdf

⁴⁰ http://www2.logement.gouv.fr/publi/droitlgt/doc_pdf/GDV1.PDF

⁴¹ http://circulaire.legifrance.gouv.fr/pdf/2012/08/cir_35737.pdf

⁴² First an emergency housing, and then sustainable solutions, but that is difficult because there is a lack of housing

⁴³ <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000412199&dateTexte=&categorieLien=id>

⁴⁴ <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000615568>

⁴⁵ <http://www.romeurope.org/IMG/pdf/DOC040311.pdf>

⁴⁶ http://www.romeurope.org/IMG/pdf/Fiche_pratique_DALO-2.pdf

down, he can file an internal administrative appeal or contest the decision to the administrative court.

SPAIN

1. Legal texts that applicable to the rights to housing and to decent housing

The right to social housing arises after other more consolidated civil rights in Spanish society:

- The Spanish Constitution⁴⁷ of 1978 recognises the right to housing in Art.47: *'All Spanish individuals have the right to decent and appropriate housing. The public authorities will promote the necessary conditions and will establish the relevant rules to make this right a reality. This entails regulating land use accordingly to the general interest in order to prevent speculation. The community will participate in the capital gains generated by the public city-planning action.'*

Even though this article does not recognize the right of housing of migrant people, this right is supported in other articles:

- Article 9.2. 'The public authorities are responsible to promote the necessary conditions for the freedom of individuals and groups in which they are integrated to be real and effective; to remove the barriers which might prevent or difficult the participation of all citizens in the country's political, economic, cultural and social life.
- Article 10.2' The norms related to fundamental rights and freedoms recognised by the Constitution will be interpreted according to the Universal Declaration of Human Rights and international treaties ratified by Spain.
- Article 13.1 'Foreigners in Spain will enjoy the public freedoms which guarantees the present Title in the terms established in the Treaties and in the Law.'

Competences relating to housing correspond to every Autonomous Region. In this file we outline the general requirements at state level.

It is considered 'adequate and decent housing'⁴⁸ the houses which complies with the following requirements:

- It has fixed and habitable construction.
- It is accessible, especially those dedicated to individuals with especial needs.
- It is quality housing, whose design must comply with the basic requirement of functionality, safety and habitability.
- It has to be located within urban spaces, with the equipment and free areas necessary to meet the needs of citizens.

As for Roma travellers who use caravan to move and set up, the regulation depends on the Autonomous Regions⁴⁹. This way, camping will be only permitted in areas especially prepared by Municipalities for such use. Yet, there are barely any municipalities where this is permitted.

Thus, we can considered that free camping for travellers is not allow in spanish territory (with a few exceptions depending of the specific municipalities).

⁴⁷ Art. 47. Spanish Constitution of 1978. Published in BOE no. 311 of 29 December, 1978.

⁴⁸ According to the Law of regulating Housing Right in Andalusia of 18 February, 2010. Publishe in BOE no. 77 of 30 march, 2010

⁴⁹ Link with different regional laws about camping and campgrounds: <http://www.mesadelturismo.com/common/mt/compendio/campamentos.shtml>

Therefore, camping will **only** take in place in areas specifically designed for this purpose and its users will have to comply with the requirements of the accommodation companies agreeing with the Royal Decree 2545/1982 of 27 August, on the creation of Touristic Camping sites⁵⁰. As for the access to basic services such as water, waste collection, parking and overnight stay spaces, there are specific places to do so such as service stations and campsites, though some of them are subject to payment⁵¹.

Obligations of the lessor and the lessee of a dwelling

The regulation of the lease agreement in Spain are carried out in accordance to the **Law 29/1994, of 24 November, 1994 of urban leases**⁵². This law regulates the conditions in which agreements must be formalised.

Moreover, it will be taking into account what it is exposed in the Spanish Civil code in its Second section on rights and obligations of the dwelling lessor and lessee⁵³:

-The lessee⁵⁴ is obliged to deliver the dwelling agreed in the contract, make the needed repairs in order to preserve it for the use it has been assigned and to ensure the lessor's peaceful enjoyment of the dwelling during the agreed period.

-The lessor⁵⁵, is obliged to pay the price of the lease agreed with the lessee. Make use of the dwelling in according to the use agreed, and finally to pay the expenses incurred in writing the contract.

If any of the involved parts does not comply with the former expressed obligation, it would be possible to request the termination of the contract and to claim compensation damages.

2. The application of the law

Even though, in the Spanish legal system it is made explicit the right to housing, housing policies have not been able to promote the right fulfilment of the constitutional mandate and of the international commitment undertaken on the subject.

It is the housing market the one that dominates, regulates and assignees the urban and habitable resources. The current result is the product of a habitational policy historically insufficient and situational, very dependent of the private sector and of an economical context that has turn the housing sector into an operational field generator of large short-term benefits.

The rise of housing prices, shortage of land, the complex system for its assignment, or the lack of promotion of social housing, difficult the access to decent dwelling for many families.

The housing policies aims to meet the housing needs, however this does not mean a free housing delivery to people who request it, but seeks to promote access to it.

⁵⁰ Royal Decree 2545/1982, of 27 August, on the creation of tourist campsites. (Published in BOE 242 of October, 1982).

⁵¹ List of RV service areas available in Spain: http://lapaca.org/areas/listacompleta_es.php

⁵² Law 29/1994 of 24 November, 1994 of Urban Leases (Published in BOE num. 282 of November 1994).

⁵³ Civil Code of Spain. (Published in BOE num. 206 of July, 1989).

⁵⁴ Article 1554 of the Civil Code.

⁵⁵ Article 1555 of the Civil Code.

The National Plan of Housing and Rehabilitation 2009-2012 (PEVR), developed by the central government, pays particular attention to low-income families by promoting the rental, purchase of housing, housing rehabilitation and eradication of shantytowns. This plan provides a subsidy system for users with a particular profile; incomes not exceeding 1.5 the IPREM (Public Income Indicator of Multiple Effects⁵⁶) for access to rental housing and 2.5 the IPREM to access home ownership, as well as under 35, homeless families from operations of eradicating of shanty or families at risk of social exclusion, etc.

The procedure is done through the autonomous regions, that derives these actions to the management of the municipalities.

General process to access to this aids⁵⁷:

- The applicants must be enrolled in a public register of housing applicants managed by the autonomous regions.
- Have a minimum family income to be agreed by each region.
- Household income must not exceed the maximum set out in the preceding paragraph.
- Not having obtained financing for the same type of application previously.

These grants have proved to be insufficient to meet the demand for housing in most municipalities in the state as municipalities usually do not have enough stock of housing which can meet the demand of the population.

In addition to the insufficient supply, the new State Housing Plan 2013-2016 has not been approved yet, since the government cuts policy is expected to lead to a reduction of funding for its development and to an increase of the requirements and conditions to get this aid.

Housing Market in Spain:

The housing market in Spain has experienced an extensive growth over the past decade due to the "property boom". However, after the arrival of the current economic crisis, there has been a strong decline in the activity of this sector causing a lower purchase - sale housing and reduction of the market prices.

The Spanish housing market tends to leans mainly in house purchases over the lease of houses due to a poor promotion of social rental housing by the government and the lack of legal protection for homeowners in relation to the difficulties to force pay the rent or vacate housing tenants in arrears⁵⁸.

There is also a limited supply of public housing due to low profitability for housing developers.

The biggest difficulty for the population lies in the difficulty of affording the high costs of housing in the open market, the limited number of sponsored housing and low for the rental housing stock.

Furthermore, aside from the government housing policies referred above, housing applicants can go to private developers, property agencies and individual owners through the publication of

⁵⁶Indicator or reference income level used to determine the amount of certain benefits or to access certain services.

⁵⁷ More information at:
http://www.fomento.gob.es/MFOM/LANG_CASTELLANO/DIRECCIONES_GENERALES/ARQ_VIVIENDA/_AYUDASVIV/ESTATALES/

⁵⁸ Gilda Espinola Orrego. Thesis : "The right to adequate housing and adequate in Spanish territory." University of Alcalá, 2010.

tenders in the press or in specialized newsletters to access both accommodation rented or owned.

Costs of buying and renting:

According to the National Institute of Statistics⁵⁹, in 2012 the average price per square meter in Spain was 1,531.2 € per m² for the free housing and the price for protected housing for the same period was € 1,129.3.

The prices of rent housing are different depending on the geographical location and the condition thereof. The national average⁶⁰ stands at 677 € per month, with prices ranging from 400 to 1100 € per month.

Public rental housing:

To access to the tenancy of rent housing, pursuant to Act 29/1994, of 24 November, of Urban Leases⁶¹, there is an obligation to deliver a month's rent deposit. Although, the aforementioned legislation does not make explicit the list of documents to necessary to formalize the lease, both the real estate and private owners usually ask for the landlord documentation certifying the creditworthiness of the tenant, such as recent pay slips, statement income for the last year or even contract of work.

3. Discrimination against Roma and violations of the law.

According to the map on Housing and Roma community in Spain, in 2007⁶² 11.7% of Roma families still resided in badly damaged homes and shacks, huts or caravans.

As stated in its annual report, published in 2012 by FSG⁶³, they have been recorded 13 cases of direct discrimination based on ethnicity in access to housing, in most cases by homeowners refusing to sign the lease agreement, requiring many documents or claiming a higher amount as a deposit than to lessee of Spanish origin.

The housing exclusion, either on ethnic and / or economic grounds appears not only in the permanence of the slums and substandard housing, it also arises on the difficulties of access to housing for younger families, overcrowding of some homes, the concentration and residential segregation in some towns and cities, and the difficulties of maintaining physical and economic of the buildings, which sometimes also affect the public rental housing.

One of the most important consequences of residential segregation based on economic situation, is the inability that this generate in to improve their housing situation by many social groups.

The residential concentration of Roma population in certain urban areas and neighbourhoods, has traditionally been one of the keys of the relationship between Roma and housing. The 92.6% of Roma households are located in areas with a high concentration of this ethnic origin. This is a consequence of this segregation is the housing market due not only to economic resources but also to the marginalization of this ethnic group.

⁵⁹ <http://www.fomento.gob.es/BE2/?nivel=2&orden=35000000>

⁶⁰ Data taken from the report of the average rental price of housing in Spain carried out by the specialized portal Enalquiler rent in February 2013. <http://www.enalquiler.com/precios/precios-alquiler-febrero-2013.pdf>

⁶¹ Law 29/1994, of 24 November, of Urban Leases (Published in BOE no. 282, November 1994).

⁶² Map of Housing and Roma community in Spain 2007. FSG Ed. Madrid.

⁶³ FSG Annual Report 2012. Discrimination and the Roma Community. FSG Ed. Madrid.

4. Possible recourses to be taken.

To address situations of discrimination related to access to housing faced by the Roma community:

The general procedure for denounce discriminations or violation of rights caused by administrations, individuals or private companies to roma people, will be accessible to the general legal resources relating to racial discrimination referred to in the file 9.

In any case, those affected by discrimination on the right housing could go to non-governmental organizations (FSG⁶⁴, Romani Union⁶⁵, etc ...) which can help through a process of mediation with homeowners, neighbours, or municipal governments , before resorting to the courts.

CZECH REPUBLIC

1. The legislative texts applying the rights to housing and to a decent housing

The right to housing is not specifically detailed in the Czech constitutional order. However this right is part of the Czech rule of law, as it is comprised in the frame of the International Covenant on Economic, Social and Cultural Rights, that is binding for the Czech Republic. This provision shall be applied irrespective of race, religion, sex, political or other attitudes, national or social background, or other character. The right to housing is also comprised in the European Social Charter, International Convention on the Elimination of All Forms of Racial Discrimination or Declaration on Social Progress and Development.

The constitutional framework of the Czech Republic comprises the commitment of the state to secure minimal standard housing to individuals endangered by social exclusion. This provision is established by the Article 30 of the Charter of Fundamental Rights and Freedoms⁶⁶: „*Everyone who suffers from material need has the right to such assistance as is necessary to ensure her a basic living standard.*” Then, the Article 32 stating that „*Parents who are raising children have the right to assistance from the state*”, is also relevant in relation to the right to a decent housing.

Further specification of the right can be determined from the case law of the Supreme Court, Constitutional Court, and the European Court of Human Rights. With regard to this case law, the right to decent housing can be defined as a right to have opportunity of achieving the decent housing, i.e. housing of adequate standards, or at least social housing that would be appropriate in relation to upbringing of children.

The real possibility of ensuring the decent housing is existentially important particularly for those living in the socially excluded localities or those endangered by possibility of getting into such situation. In this context, the Constitutional Court in its case law stated that the fact that this right is not included in the Charter of Fundamental Rights and Freedoms does not disqualify the constitutional relevance of this right embodied in the international treaties.

⁶⁴ http://www.gitanos.org/que-hacemos/areas/vivienda/nuestro_trabajo.html

⁶⁵ http://www.unionromani.org/union_es.htm

⁶⁶ The Charter of Fundamental Rights and Freedoms, The Constitutional Court of the Czech Republic, available at http://www.concourt.cz/clanek/czech_charter, accessed on March 10, 2013

Other national legislative texts dealing with the issues connected to the right to housing are mainly the Civil Code⁶⁷ (regulating the rights and duties of an owner and a tenant), Act on Assistance in Material Need, Act on Living and Subsistence Minimum, Act on Municipalities, Act on State Social Support, or Act on Social Services.

2. The implementation of the law

Housing market in the post-Communist Czech Republic is not a single market with uniform rules of operation but rather a mosaic consisted of different sectors and regional sub-markets that function to high extent autonomously. It is evident that the position of the households on the housing market does not simply reflect differences in households' incomes and that the relation between housing inequalities and social inequalities is complex.⁶⁸

Concerning the general prices (and also quality), there exist substantial differences among various regions, cities and neighbourhoods. As for the municipal flat, the highest lease for m² in Prague is approximately 130 CZK/m², the lowest one situated somewhere in countryside being about 70 CZK/m² (plus operating fees – e.g. power, sewer rates, heating). The privatization (sale) of a municipal flat in Prague is about 15.000 CZK/m². As for the private flat, the lease for m² depends on the locality and quality, but an average flat in Prague of 50m² costs between 8.000 and 10.000 CZK, plus operating fees.

Types of housing available for population with socio-economic profile like Roma are very limited, as they usually do not meet the requirements or criteria for gaining municipal flat. In case of a private owner it is nearly impossible to rent a flat for them, as the owner, or the neighbours find out that the prospective taker of the flat is of Roma origin. Then they are usually refused.

The requirements asked by owners to access to housing are ordinarily the refundable deposit in the amount of one till three leases, the brokerage in an amount of one lease if you get the flat via real estate agency. The lease contract cannot be made or do not used to be made in many cases. The owners very often refuse to register occupants for a permanent stay, although usually without relevant reason. The consequence for a tenant is that without contract and permanent stay he/she cannot apply for welfare benefits on a flat.

Allocation of flats owned by municipality for rent and setting criteria are spheres in which covertly occur discriminatory practices most commonly. It is often quite globally favored only interest in maximizing profit of municipality as a legal entity, while a general interest in the social housing of the municipality as a public corporation is secondary or even marginal subject. The behavior of municipalities in this area can be identified also as usurious practices that are contrary to good morals.

Generally, binding regulations or other measures of municipalities determine allocation of flats by many criteria, which have no connection with the housing applicant's needs. In addition, these rules used to be contrary to the laws or constitutional order of the Czech Republic. In particular, frequent clashes are with the Charter of Fundamental Rights and Freedoms, the Civil Code and the Law on Personal Data Protection.

An adjustment often occurs that only a person who does not have a criminal record can apply for the allocation of an apartment, and this requirement is often extended to all family members, or

⁶⁷ The Civil Code, available at <http://portal.gov.cz/app/zakony/zakon.jsp?page=0&nr=40~2F1964&rpp=15#seznam>, accessed on April 3, 2013

⁶⁸ Trh bydlení, jeho regionální diferenciacie a sociální souvislosti (The housing market, its regional differences and social context), p. 71, 1999, Nedomova, Alena (ed.), Edition "WorkingPapers" WP 99:2, Sociologický ústav AV ČR, available at http://studie.soc.cas.cz/upl/texty/files/148_99-2wptext.pdf, accessed on April 2, 2013

even such a requirement can be: "*blameless applicants, living a decent life.*" Municipality decides according to consideration of reputation of the applicant and his/her family. Contradictions appear regularly also between a regulation of the local administration and other government actions to the Civil Code. Setting criteria differs widely and it is definitely in such way to be not accessible to unfavorable person. Municipal flats are then usually available for "trouble-free" white people from the middle class (e.g. young families with children, seniors etc.).

Projects of social housing are often interchanging for reducing the quality of housing below standard that is normal in Central Europe. Such practices are especially popular and used by local authorities. Persons in difficult situation caused either by their own fault or due to social problems are then forced to use such housing. This extremely low level of housing and services is often out of proportion to the amounts which the resident or tenant is obliged to pay - monthly rents in some of them is equaled to regulated rents of the first category flats.⁶⁹

In this context, recently the term "holobyty" (plural: "holobyty") has come to be recognised amongst administrative agencies, social workers, construction companies and the media. It literally translates as "bare apartment", and can be used to describe a variety of types of housing such as small apartments, low-standard lodging or new cheap structures made of container units. "Holobyty" are used mainly by municipalities for citizens moved from their homes due to social or financial difficulties, such as rent defaulters and so-called "socially unadaptable" persons.

The overwhelming number of tenants in "holobyty" are Roma. Due to the decisions of municipalities when assigning substitute apartments and other alternate housing, there are concentrations of Roma in certain areas, leading to the creation of Romani enclaves or ghettos. Such concentrations emerge in less valuable parts of municipalities and cities, often due to lower land prices. They are located further away from town centres, in the suburbs, where transportation is bad or non-existent.⁷⁰

3. Discriminations made to the Roma and violations of the law

The Roma minority is facing to increasing segregation in marginalised communities and the challenges and risks posed by this territorial segregation are most often compounded by the problem of inadequate housing. The problem has roots already in the situation when the applications for housing by Roma are often rejected, irrespective of their ability to pay rent. The refusal is actually often expressed in advertisements pre-emptively refusing "minorities", or stems from the demands of other inhabitants of the apartment building.⁷¹

Thus, the Roma minority is one of the most vulnerable groups on the housing market as the Roma often face to structural barriers and discrimination. Accessibility of standard housing is very low for these people and for this reason the Roma families are left to non-standard and provisional housing in private or municipal lodging houses. The Czech housing market still misses a special segment of social housing for low-income people. The recent phenomenon of Roma families migrating for cheap accommodation reflects their unstable housing situation. The

⁶⁹ Bydlení (Housing), Counselling Centre for Citizenship, Civil and Human Rights, available at <http://bydleni.poradna-prava.cz/pridelovani-obecnich-bytu.html>, and <http://bydleni.poradna-prava.cz/ubytovny-lzy-holobyty-a-domovni-rady.html>, accessed on April 3, 2013

⁷⁰ Low Standard Apartments as a Tool of Ethnic Segregation in the Czech Republic, 2002, Víšek, Petr, European Roma Rights Centre, available at <http://www.errc.org/article/low-standard-apartments-as-a-tool-of-ethnic-segregation-in-the-czech-republic/1642>, accessed on April 2, 2013

⁷¹ Racism and related discriminatory practices in the Czech Republic, ENAR Shadow Report 2011-2012, p. 19, 2013, The Czech Centre for Human Rights and Democratization, available at <http://enar.helcom.cz/2013/03/21/stinova-zprava-o-stavu-rasismu-v-evrope-a-ceske-republice-za-obdobi-2011-2012/>, accessed on March 21, 2013

territorial segregation and concentration of these excluded households is affecting also other spheres of their life, e.g. complicates their access to employment, education or public services.⁷²

The territorial segregation of Roma people in certain parts of cities is result of more factors. On the one side, it can be result of natural and spontaneous moving of wider Roma families together so as they can maintain mutual relationships. On the other side, the segregation can be involuntary and a consequence of various inequalities. The unequal access to public housing was also the issue that the Public Defender of Rights dealt with most often in 2011 speaking about discrimination of Roma. Likewise, access to private housing means for low-income Roma households a big problem as they have to face higher discrimination by the real estate agencies and landlords. Other barrier to access the housing is that the Roma usually do not have any savings that are necessary to pay the advance refundable deposit to the landlord.⁷³

On the Czech housing market there has developed a special segment compensating for the low accessibility of public housing. The landlords in this segment are on the contrary largely willing to provide housing to this group of people, however, on very disadvantageous conditions. The price of such housing is quite often several times higher than is the standard price in the locality. Landlords are trading on poor legal awareness, insufficient knowledge of the housing market, and on acute housing situation of the families without shelter. Thus, Roma families in such types of housing pay high payment for low-quality housing, while in different circumstances they could have standard housing for the same price.⁷⁴

In 2012 the local authorities continued to evict Roma families, especially from centrally located buildings, leading them to settle in insalubrious conditions, usually in peripheral areas. Roma continue to face discrimination on the housing market and evicted families generally end up in informal accommodation without tenure or in hostels where they are forced to pay excessive rates, as already mentioned.⁷⁵

The "Concept of housing policy until 2020" adopted in July 2011, which addresses the issue of social housing in the Czech Republic was a positive step, however, there exist several concerns that the proposals included in the Housing Concept have remained largely on paper and that the housing projects being carried out in practice are isolated and depend on the political will of municipalities, who exercise devolved powers in this area. Other concern is related to the possibly limited effectiveness of the government's response to some of the decisions and acts of local and regional authorities in respect of evictions or the allocation of housing.⁷⁶

4. Possible recourses to be taken

The most important shortage when speaking about the insufficient housing policy in the Czech Republic is the missing Law on Social Housing. The law is at present under preparation by the Ministry of Labour and Social affairs and Ministry of Regional Development. The professionals

⁷²Report on the Roma Minority Situation in 2011, p. 72, 2012, The Council of the Government of the Czech Republic for Roma Community Affairs, available at <http://www.vlada.cz/cz/ppov/zalezitosti-romske-komunity/aktuality/zprava-o-stavu-romske-mensiny-v-cr-za-rok-2011-100979/>, accessed on March 16, 2013

⁷³Ibid.

⁷⁴ Ibid., p. 72-73

⁷⁵ Report by Nils Muižnieks Commissioner for Human Rights of the Council of Europe Following his visit to the Czech Republic from 12 to 15 November 2012, p. 15-16, 2013, Muižnieks, Nils, available at http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/aktuality/zprava_komisare_pro_lidska_prava_Rady_Evropy_2013.pdf, accessed April 3, 2013

⁷⁶Ibid., p. 16

working with the housing issues and especially with people in need of social housing, emphasize importance of this law being adopted. According to their experiences, the need of such law lies in definition of who needs the help temporarily, who needs the assistance all the time, or in specifying the linkage to rules of such assistance. On the other hand, the existing legislation could be also better enforced but it requires higher responsibility on the part of municipalities.⁷⁷

Different non-governmental organizations or platforms provide help and assistance to Roma in relation to housing conditions, however they do not possess the authority to investigate possible discrimination in housing. This authority falls within one of the powers of the Public Defender of Rights. Every person has the right to address the Defender with his or her problem related to discrimination, and the Defender addresses the case from the legal point of view, states whether discrimination occurred according to his observations and makes suggestions on a possible further course of action.⁷⁸ Although, the Defender cannot make a binding decision, nor requires a sanction for such discrimination. Possible recourse in this context could be broadening Defender's powers, so that he can defend the victims in front of the court.

As the problems with discrimination in housing are widespread, an *actio popularis* - a lawsuit in the interest of the public as a whole – can be of use, as it can enhance the real enforceability of the law. The enforceability is unsatisfactory for more reasons, for instance the victims usually do not have appropriate financial background to undergo long judicial proceeding, they are very often afraid to defend themselves publicly because of possible revenge, poor knowledge of the rights or procedures on the side of victims, frustration, diffidence, etc.

In the concrete case of discriminatory advertisement or discriminatory declining of prospective tenant, the possible recourse is assessed according to the Anti-discrimination law. The person whose rights on equal treatment was violated this way has to bring an action before the court as only the court has the right to give binding decision if the discrimination had occurred or not.

If a person has suspicion of illegal termination of lease contract, he/she can address to relevant civil advisory centre⁷⁹ or to the Public Defender of Rights that can analyse the situation, as mentioned above. It is necessary that the person is acknowledged with the reasons for legal termination of lease contract that are specified in the law.⁸⁰ Sometimes, the individuals do not know that their right was violated (i.e. the termination was not legal) and thus do not defend themselves. In case the termination is not valid according to the law, the invalidity can be decided by the court decision.

If the complainant is not able to pay the court tax because of his/her material or social background, he/she can be exempt from this obligation, and this demand should be presented already with the legal action, as well as demand for appointment of the lawyer. In this type of proceeding, the complainant has the burden of proof to evidence his/her arguments.

Concerning the allocation of flats owned by municipality for rent, discriminatory treatment can occur in the determined criteria as well, even indirect or hidden. Here, the victim can again refer

⁷⁷ Chybí zákon o sociálním bydlení, upozorňují odborníci kvůli Přednádraží (The Law on social housing is missing, the professionals say in connection with Přednádraží cause), 2012, The Czech Radio, available at http://www.rozhlas.cz/zpravy/politika/_zprava/chybi-zakon-o-socialnim-bydleni-upozornuji-odbornici-kvuli-prednadrazi--1104526, accessed on April 2, 2013

⁷⁸ Discrimination, The Public Defender of Rights, available at <http://www.ochrance.cz/en/discrimination/>, accessed on April 2, 2013

⁷⁹ Association of civil advisory centres, available at <http://www.obcanskeporadny.cz/>

⁸⁰ Law No. 89/2012 Coll. Civil Code specifies reasons and circumstances of the termination in following provisions: § 2285 -§ 2296. The Civil Code is valid from January 1, 2014. Until January 1, 2014 are valid the provisions of §710-§712 of the Act No. 40/1964 Coll., the Civil Code.

to Public Defender of Rights that can inquire into the individual requirements that are afterwards claimed judicially (civil and/or administrative judicial proceedings).

In every case, it is very important that the person carefully reads through and understand well the lease contract. A person can refer to the Counselling Centre for Citizenship, Civil and Human Rights that provides information and assistance relating to housing.⁸¹

⁸¹ <http://bydleni.poradna-prava.cz/home.html>

File 4 - Right to access education

Article 14

Everyone has the right to education

THE EUROPEAN LEVEL

The legislations applying this right

- **European Union level**

Member states are the only one responsible for their national education and training systems, so including their administrative systems. The EU supports and completes them in their policies and actions as well as it coordinates their works together¹ to reach common objectives². As a result, the EU does not have the power of making laws to impose to member states a way of dealing with their systems itself³ but only to promote changes.

However, resulting of member states' traditions and objectives⁴, **the EU has a few and general rights related to the access to education**. Therefore, everyone has the right to education and access to training⁵. In addition to that, public sectors and bodies must treat everyone equally in matter of education⁶ and access to vocational guidance⁷. Moreover, to ease the freedom of circulation of EU workers, their children should have the same access and under the same conditions as national citizens to the general educational system, apprenticeship and vocational training courses of the other EU countries they live in. This right also mentions that member states should encourage their children to attend these courses and under the best conditions possible⁸.

Furthermore, **to ease the circulation of EU workers within the Union and facilitate their integration, a directive has been made for their children**, who have to attend school, to receive a free teaching about the host member state countries and especially a teaching of the

¹ TFEU article 6 paragraph bullet e « *The Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States. The areas of such action shall, at European level, be: education, vocational training, youth and sport* »

² Preamble to the Treaty on the functioning of the European Union (TFEU) : « *Member states are determined to promote the development of the highest possible level of knowledge for their peoples through a wide access to education and through its continuous updating* »

³ EU's work is mostly about implementing the common EU objectives. It does so, for example, by creating and managing programmes like Grundtvig which is about the education of adults.

⁴ Some of the members' states common objectives are the fight of exclusion and poverty, having permanently highly qualified workforce which consists in improving the quality of education and trainings, their wide access and promoting continuous learning. Another of their objectives is to ease the freedom of circulation of EU workers.

⁵ Charter of Fundamental Rights of the European Union Article 14 paragraph 1: "*Everyone has the right to education and to have access to vocational and continuing training.*"

⁶ Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin Article 3 paragraph 1, bullet g "*Within the limits of the powers conferred upon the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to: education;*"

⁷ Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin Article 3 paragraph 1, bullet b "*Within the limits of the powers conferred upon the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to: access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience*"

⁸ EU Regulation 492/2011, Section 3 Workers' families Article 10: "*The children of a national of a Member State who is or has been employed in the territory of another Member State shall be admitted to that State's general educational, apprenticeship and vocational training courses under the same conditions as the nationals of that State, if such children are residing in its territory. Member States shall encourage all efforts to enable such children to attend these courses under the best possible conditions.* »

national language(s)⁹. In addition, member states should also promote (and are not forced to) a teaching of the mother tongue and the culture of the country of origin of the children. But there is no mention if this teaching should be free¹⁰.

- **International level**

Regarding international law, so outside of the EU, member states are free to decide if they want to sign and implement international legislative texts.

Firstly, primary education should be compulsory and free to all¹¹. In addition, no one can be refused the right to education and parents have the right to ensure the education of their children which should be respected by the States¹². Beyond that, the UNESCO made an exhaustive Convention¹³ against discrimination in terms of education and by taking a large definition of it¹⁴. According to the text, discrimination includes¹⁵:

- to deny a person or a group of person access to education
- to provide an inferior standard of education
- to create or maintain separate educational systems for groups of persons
- to put someone or a group in a situation where it affects their dignity

Consequently, to avoid discrimination, states who joined this Convention must¹⁶:

- repeal any administrative practises which would include any discrimination

⁹ Directive 77/486/EEC "Article 1 This Directive shall apply to children for whom school attendance is compulsory under the laws of the host State, who are dependants of any worker who is a national of another Member State, where such children are resident in the territory of the Member State in which that national carries on or has carried on an activity as an employed person. Article 2 Member States shall, in accordance with their national circumstances and legal systems, take appropriate measures to ensure that free tuition to facilitate initial reception is offered in their territory to the children referred to in Article 1, including, in particular, the teaching - adapted to the specific needs of such children - of the official language or one of the official languages of the host State. Member States shall take the measures necessary for the training and further training of the teachers who are to provide this tuition."

¹⁰ Directive 77/486/EEC Article 3: "Member States shall, in accordance with their national circumstances and legal systems, and in cooperation with States of origin, take appropriate measures to promote, in coordination with normal education, teaching of the mother tongue and culture of the country of origin for the children referred to in Article 1"

¹¹ Convention on the Rights of the Child Article 28, paragraph 1, bullet a "States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular: Make primary education compulsory and available free to all".

¹² Convention for the Protection of Human Rights and Fundamental Freedoms, Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms Article 2: "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

¹³ Convention against discrimination in education, UNESCO, 1962. Within its article 9, the Convention says that: "Reservations to this Convention shall not be permitted." That-is-to-say that the states which joined it cannot make any modification or exclude themselves from some parts of it. All the countries of the toolkit have to implement this Convention since they joined it.

¹⁴ Convention against discrimination in education, Article 1 Paragraph 2 « For the purposes of this Convention, the term 'education' refers to all types and levels of education, and includes access to education, the standard and quality of education, and the conditions under which it is given. »

¹⁵ UNESCO, Convention against discrimination in education, Article 1: "For the purposes of this Convention, the term 'discrimination' includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular: a. Of depriving any person or group of persons of access to education of any type or at any level; b. Of limiting any person or group of persons to education of an inferior standard; c. Subject to the provisions of Article 2 of this Convention, of establishing or maintaining separate educational systems or institutions for persons or groups of persons; or d. Of inflicting on any person or group of persons conditions which are incompatible with the dignity of man."

¹⁶ UNESCO, Convention on discrimination in education, article 3: "In order to eliminate and prevent discrimination within the meaning of this Convention, the States Parties thereto undertake : a. To abrogate any statutory provisions and any administrative instructions and to discontinue any administrative practices which involve discrimination in education; b. To ensure, by legislation where necessary, that there is no discrimination in the admission of pupils to educational institutions;"

- take measures, including making laws, for ending the discrimination towards pupils to be admitted in the educational system
- Give to foreign nationals residing in their country the same access to education as their national citizens

Furthermore, everyone has a right of vocational training. States which agreed with it must provide or promote trainings for everyone as well as special measures for the professional reintegration of long-term unemployed persons¹⁷. Among the countries represented in this toolkit, France is the only one which ratified this right.

UNITED KINGDOM

1. National Legislative Texts

“Everyone has the right to education and to have access to vocational and continuing training.”

This right includes the possibility to receive free compulsory education.

Responsibility for education is dispersed across the countries of the United Kingdom: Scotland, England, Wales, and Northern Ireland each have legislative and executive competency for education provision, including for compulsory school education. Following devolution each has a degree of responsibility for its own laws. Education is one area where there is no single UK picture. Accordingly, each of the four countries has separate legislation, setting out arrangements for the provision of education. By country, these are, respectively:

Scotland:

- Education (Scotland) Act 1980;
- Standards in Scotland’s Schools etc., Act 2000;¹⁸
- Education (Additional Support for Learning) (Scotland) Act 2004;

“[Further and Higher Education \(Scotland\) Act 2005](#); An Act of the Scottish Parliament to make provision establishing the Scottish Further and Higher Education Funding Council and provision as to its functions; to make provision as to support for further and higher education; to make provision relating to bodies which provide further and higher education; and for connected purposes.”¹⁹

- [Education \(Additional Support for Learning\) \(Scotland\) Act 2009](#).

England:

- Schools Standards and Framework Act 1998;²⁰ and Act 1980²¹ raises standards of school education, this sets a limit in how many infants per class there to be. It also puts

¹⁷ European Social Charter (revised version), Article 10: “*With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake: 1. to provide or promote, as necessary, the technical and vocational training of all persons, including the handicapped (...) 4. to provide or promote, as necessary, special measures for the retraining and reintegration of the long-term unemployed;*”. The revised version of the European Social Charter has only been ratified by France, among the countries of the toolkit. See the updated list of the countries which ratified it: <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=163&CM=&DF=&CL=ENG>

¹⁸ http://www.legislation.gov.uk/asp/2000/6/pdfs/asp_20000006_en.pdf

¹⁹ [http://www.scottish.parliament.uk/S2_Bills/Further%20and%20Higher%20Education%20\(Scotland\)%20Bill/b26s2-aspssed.pdf](http://www.scottish.parliament.uk/S2_Bills/Further%20and%20Higher%20Education%20(Scotland)%20Bill/b26s2-aspssed.pdf)

²⁰ <http://www.legislation.gov.uk/ukpga/1998/31/contents>

²¹ <http://www.legislation.gov.uk/ukpga/1980/44/contents>

duty on the local authority to promote education standards which apply to all children regardless of their religion, faith or ethnicity. The act also ensures intervention on concerns in schools when and if needed by local authorities who are responsible for new arrangements for schools or for keeping its standards up.

- Education Act 2002²²; act ensures functions of government body, and the framework ensures educational opportunities and rights are implemented by the governing bodies. The duty enforces education authorities to be responsible for the right of the child and see that it's implemented in schools.
- Education and Inspections Act 2006;
- Education and Skills Act 2008;
- Children, Schools, and Families Act 2010;
- Education Act 2011.

Wales:

- School Standards and Organisation (Wales) Act 2013;
- Education (Wales) Measure 2011; and
- [Education \(Wales\) Measure 2009](#).

Northern Ireland:

- Education (Northern Ireland) Order 2006. Most of the above legislations are very similar in each country of the UK as there is not a specific legislation for education.

2. The Implementation of the Law:

Right regarding the secondary school and how to enroll children at school:

There is no specific legislation on education in the UK. The early year's framework provides a strong platform for opportunities for early years.²³ The children's charter which is inline with the UN Convention on the Right of the Child ensures that all children get their pre-school education from the age of 3yrs and required to attend Kindergarten which is funded by the state or paid by the state by voucher system which pays for private children's nurseries as there is a lack of child care nurseries in the UK.

Children age 5yrs by September 1 and not age 21 on the first day of school are eligible for enrolment. You should register at the child's local school. Children who previously attended school else where or in any other country they need to bring their latest report card and if a student receiving special education services should bring a copy of the current individual education program.

Post-secondary school:

There are various education state bodies and NGO's providing training to a socio-economic audience like the Roma through life long learning in the UK. Community Learning and Development, meeting the needs of disadvantaged communities and providing support to those who have been away from education and had difficulties in attaining any education in schools with numeracy and literacy. Higher education is education provided by universities, vocational universities (community colleges, liberal arts colleges, and technical colleges, etc.) and other college institutions that award academic degrees, such as career colleges following the completion of a school that provides secondary education, such as a high school and secondary schools. It has a long history of universal provision of public education and the Scottish education system is distinctly different from those in the other countries of the United Kingdom.

²² http://www.legislation.gov.uk/asp/2000/6/pdfs/asp_20000006_en.pdf

²³ <http://www.educationscotland.gov.uk/earlyyears/about/index.asp>

For example, in Scotland a state-funded 'Public School is the opposite of an English independent or private Public School.

The Scotland Act 1998 gives the Scottish Parliament legislative control over all education matters, and the Education (Scotland) Act 1980 is the principal legislation governing education in Scotland. The Lifelong Learning sector covers five key constituency groups:²⁴

- Community learning and development (CLD) - covering adult and community learning/community based adult learning; community development, community education, development education, youth works, family learning and works with parents:

Further education (FE) - embracing FE colleges, specialist institutions, sixth form colleges in England and post-16 learning provision in Wales and in Scotland ((Scotland) Act 2005;

- **Higher education (HE) - including universities and colleges of HE**

- **Libraries, archives and information services (LAIS)**

- Work based learning (WBL) - both publicly-funded and private sector training organizations concerned with the delivery of applied (vocational) training, which is primarily work based. The Lifelong Learning sector contains a wide variety of working environments, with people working under very different terms and conditions.

- Community learning and development (CLD)²⁵ - covering adult and community learning/community based adult learning; community development, community education, development education, youth work, family learning and work with parents

- Further education (FE) - embracing FE colleges, specialist institutions, sixth form colleges in England and post-16 learning provision in Wales:

- Higher education (HE) - including universities and colleges of HE

- Libraries, archives and information services (LAIS)

- Work based learning (WBL) - both publicly-funded and private sector training organisations concerned with the delivery of applied (vocational) training, which is primarily work based. Long distance courses and Open University courses are

Directive 2005/36/EC on the recognition of professional qualifications came into force in 2007.²⁶

3. Discrimination made to the Roma and Violations of the Law in the UK

Roma and Gypsy traveller as like other ethnic minority communities who appear to be disproportionately affected by hate crime and that the hate crime affecting these communities has received less attention and intervention in the past (Home Office 2009: 12) The Equality Act 2010 forms a framework for anti-discrimination law in the UK. The equality legislation is reserved matter for the UK Parliament. However, it should be emphasised that Under the Scotland Act 1998, the Scottish Parliament holds devolved powers including education, housing, health, therefore the legislative framework of those areas with relation to Gypsy/Travellers. One of the reason why the Roma children preferred schools in the UK because they face less discrimination if any and they enjoy equal treatment and support from teachers and their peer groups and also this further strengthens it with the equal opportunities Act 2000 and the Race Relations Act 1976 and (amended Act 20002). The Equality Act 2010 forms a framework for anti-discrimination law in the UK..

4. The Possible Recourses

²⁴ <http://www.lifelonglearning.co.uk/>

²⁵ <http://www.educationscotland.gov.uk/communitylearninganddevelopment/about/index.asp>

²⁶ http://ec.europa.eu/internal_market/qualifications/policy_developments/legislation/index_en.htm

Possible recourses to be taken: The UK Department for Education should consider how it can help disseminate good practice that increases attendance levels and the academic attainment of Roma pupils. The UK government should consider the long-term impact of spending reductions on services that help increase attendance and attainment of Roma pupils, in particular Roma mediators working with schools and local authorities and the TESS and EMAS services.

Most of the above Acts apply for all citizens of UK and there hasn't been a specific act or legislation in education for Roma community. One of the recourses which can help the Roma new arrivals and also existing Romanian communities is the benefits of employing Roma liaison staff or 'mediators' working with schools; and Roma families should be promoted to schools and local authorities. Service providers should consult Roma communities in the decision making process. Ensure information and services are accessible for Roma community and that they are aware of their rights. The government needs to set up more establishments to cater for capacity building of the Roma community so that they can become active citizens and can apply for mainstream education and employment. There needs to be suitable and culturally sensitive frameworks or systems put in place to integrate the Roma community in to the wider population and with other diverse ethnic minority groups. This can only be done by engaging them at various levels of decision making process both at a local level and also at a policy level.

FRANCE

1. The national legislative texts applying the right to education on its greater meaning:

- **The Preamble of the Constitution of 27 October 1946 mentions/ states** that the Nation guarantees children and adults access to instruction, professional education and culture. The organization of free public and secular compulsory education at all levels is a state obligation"²⁷. This preamble is integrated into the Constitution of the 5th Republic.²⁸
- Education Code : "Schooling is mandatory for children of both sexes, French and foreign, aged between 6 and 16 years"²⁹
- The Penal Code defines as a criminal offence "the fact that parents or any person having legal or de facto parental responsibility over a child, do not enroll the child in an educational establishment without reasonable excuse(...)"³⁰

Travellers:

For Travellers and non-sedentary families the circular letter n° 2002-101 du 25-4-2002³¹ confirms that children have equal rights to schooling and says that in each department teachers with specific skills can assist the regular school teachers.

²⁷<http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/la-constitution/la-constitution-du-4-octobre-1958/preambule-de-la-constitution-du-27-octobre-1946.5077.html>

²⁸<http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/la-constitution/la-constitution-du-4-octobre-1958/texte-integral-de-la-constitution-du-4-octobre-1958-en-vigueur.5074.html#preambule>

²⁹ Article L 131 - 1 <http://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEX000006071191&idArticle=LEGIARTI000006524422&dateTexte=20130418>

³⁰ article 227 - 17 - 1 <http://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000006418058&cidTexte=LEGITEX000006070719>

³¹ <http://www.education.gouv.fr/botexte/sp10020425/MENE0201120C.htm>

2. The implementation of this right (see also file9):

- School is not compulsory before the age of 6. But French or foreign children, can attend nursery school from the age of 3. If classes are not full 2-year old children can attend if they are physically and psychologically ready for it.
- A private or a public school can be chosen.

In the case of the first enrollment in a public school, it is necessary to get in contact with the town council in order to know the school of the area; the following documents will need to be presented:

- family record booklet, national ID card or birth certificate.
- proof of a fixed address, but this is not a legal requirement,
- a document certifying that the child has received the mandatory vaccinations for his age (against diphtheria, tetanus and polio)

The Town administration delivers a certificate of registration for the school where the child is assigned. One then needs to go to the designated school to enroll the child with the registered certificate and the other above mentioned documents.

Children from Romania or Bulgaria are often admitted into specific non French speaking³² classes. They will carry out a French language training course before joining an ordinary class.

- For secondary schools, registration takes place directly at the administrative office of the nearest school. The teenager can be admitted into a reception class³³ where a special course is offered before joining the mainstream class.
- The fight against illiteracy often concerns Travellers of all ages. In many departments, tailored measures are implemented by social workers³⁴ who take into account specific needs relevant to the traveler's way of life. It is also the role of the Agency against illiteracy (ANLCI)³⁵.

Being for both foreign Roma children or being for French, travellers or non –travellers, it is advisable to request the intervention of the district educational authorities for the schooling of newly arrived travellers' children (CASNAV¹⁰). There is one in each educational district. There are also associations that can help such as the the Association for helping in the schooling of Tsiganes Children (Aset)^{11 & 12}.

- Homeschooling and common conditions :

Parents may choose to home school. If they decide so, they have to declare it with the Town Council where they reside. The educational level and health of the child will be regularly checked up on.

- distance courses and general conditions

They are numerous. The most important is the National Centre for Distance Learning 10, it is a French public institution. It represents the State's public service for distance learning and proposes courses for all levels from nursery to primary, and from secondary through to adult and the working life.

³² Classe d'initiation pour non-francophones (Clin) : special class for no french speaking

³³ Classe d'accueil, Cla : reception classe

³⁴ <http://www.lien-social.com/spip.php?article2643>

³⁵ Agence nationale de lutte contre l'illettrisme : <http://www.anlci.gouv.fr/content/search?SearchButton=Recherche&SubTreeArray=2%2C146&SearchText=gens+du+voyage&x=0&y=0>

- Financial help³⁶ exists to help low-income families with children in Primary school. Back-to-school allowance is paid by the Family Allowance Fund (Caf³⁷). Some departments give a school attendance grant³⁸. It should be noted that Roma children from another Member State are often considered as illegal residents in France and as such are not entitled to receive any aid or any support from the social security French system.

For secondary school students there are different aids³⁹ : back-to-school allowance, secondary school scholarship, merit-based scholarships, social fund. To know one's rights and the possibilities one must get in contact with the social worker of the school.

3. Discrimination

It is difficult to enroll in school⁴⁰. Both, foreign Roma or Travellers children⁴¹ Some Elected representatives multiply administrative barriers because of the prejudices against Roma and Travellers. They pretext the lack of documents but according to the circular n° 2002-101 of the 25 April 2002⁴² : *"If the family cannot, in enrolling their child in school, bring the necessary documents, the child must benefit of a temporary admission(...)"*. It is said also that they do not stay enough time in the area. But these children have the same right to the same schooling conditions than the other children. Furthermore, deportations stop everything done for children at school.

4. The possible recourses to make one's right respected

- For any obstacle, contact the representative of CASNAV
- It is also possible to complain to the Human rights defender⁴³ (See file 1, 2.3)
- Administrative appeals: one asks the administration to review its decision.
 - o Appeal to the Mayor or the Prefect of the department: one has to send to the mayor a registered letter with acknowledgement of receipt. If he maintains refusal, it is possible to appeal to the prefect (see appendix 4). As a State representative, he can execute acts required by the law.
 - o If enrollment is refused, one can alert the administrative body of the National Education with an appeal to the Local Education Authority and the services of the Inspector of the school district with a registered letter with acknowledgement of receipt in order to have the law enforced.
- Appeal in court (see also file 9)

The victim must not be alone and if possible must be accompanied. There are many possibilities according to one's requests: obtaining the cancellation or the suspension of a decision of refusal

³⁶ <http://www.education.gouv.fr/cid51/aides-financieres.html>

³⁷ Caisse d'allocation familiale : family allowance fund

³⁸ <http://www.education.gouv.fr/cid51/aides-financieres.html#Bourse%20de%20fr%C3%A9quentation%20scolaire%20pour%20%27%C3%A9cole%20%C3%A9l%C3%A9mentaire>

³⁹ <http://www.education.gouv.fr/cid151/aides-financieres-au-lycee.html>

⁴⁰ rapport de la Halde de 2008 : http://halde.defenseurdesdroits.fr/IMG/pdf/Dossier_GDV_BAT_150908-3-2.pdf 2008

⁴¹ Rapport de Romeurop, 2010 : <http://www.romeurope.org/IMG/pdf/ETUDESCO.pdf>

⁴² <http://www.education.gouv.fr/botexte/sp10020425/MENE0201120C.htm>

⁴³ <http://www.defenseurdesdroits.fr/>

for schooling or to file a complaint against the administration or of the author of a discriminatory decision.

It is necessary to be able to produce the decision of the Mayor.
It could be successful but the procedure is long.

- Other options⁴⁴ are possible

SPAIN

1. The legislations applying this right.

The Right to Education in Spain is enshrined in the 1978 Constitution in its Article 27⁴⁵. As provided in the Constitution, education is a right for **all** (including EU citizen and non EU citizen), is compulsory and free, both in public schools (state-funded) and concertada schools (concertada schools funded by the state).

The Autonomous Communities have the state competences transferred about the management of education⁴⁶. Many of the organizational aspects, mainly those related to enrollment and curriculum processes, come from different rules emanating from Autonomic Laws. The school year begins in September and ends in June. Each Autonomous Community fixed the exact date of the beginning and end of the course, and the schedule of holidays.

The information presented in this file is at state level, ie, valid for any of the regions of Spain. The regulation of the conditions for obtaining, issuing and recognition of academic and professional qualifications and basic rules for the implementation of Article 27 of the Constitution is still state competition.

General Education law in force in the country is the LOE 2/2006, of 3 May, in this law are observed among other things, measures to achieve equity and compensate inequalities.

2. The implementation of the law.

1. The structure of the education system.

Early Childhood Education: from 3-6 years (not mandatory, but advisable for children to adapt to school life and develop skills)

Primary education: from 6-11 years (mandatory).

Secondary Education: from 12 to 16 years (mandatory). Overcoming this level, conduct to obtain the Secondary Education Graduate qualification, which allow to access other higher levels of education or to the labor market insertion. The minimum age to enter to the labor market is 16 years.

After Secondary Education there are two possibilities that grant access to higher degrees. :

Bachelor: With four specializations: Humanities, Science and Technology, Social and Art. Allows to access to Upper-Level Training Cycles and University studies.

⁴⁴ Outing, Media coverage, at local or national levels, Intervention with the elected representatives, Contact with the associations for the defense of Human Rights See the toolkit of the LDH : "les Roms migrants ont des droits »

⁴⁵ Spanish Constitution of 1978. Published in BOE no. 311 29 Diciembre, 1978. Art 27.1 Everyone has the right to education. The freedom of teaching. 27.4 4. Basic education is compulsory and free.

⁴⁶ To access to information for each region visit the website of the Ministry of Education, Culture and Sports : <http://www.mecd.gob.es/educacion-mecd/areas-educacion/comunidades-autonomas.html>

Training Cycles⁴⁷: Organized in modules from two different levels: Middle and Upper. With classroom-based and distance mode for some grades. It consist in training modes specifically for access to employment.

The official university degrees are:

- **Degree.** Four-year college career.
- **Master.** post-graduate training programme of one or two years duration.
- **Doctorate.** Graduate program for which registration is necessary to have a Master's Degree.

The Constitution recognizes the right of autonomy to the universities to the extent provided by law⁴⁸. Among the specific competences of the university, are developing of the curricula, admission, retention and evaluation of knowledge of the students as well as issuing official degrees.

Homeschooling: In Spain homeschooling is not expressly recognized by the legislation on education. There is a legal void in this regard, this is why some families in Spain have chosen in recent years to this system. However, many families have been denounced by the education administration for crime of family abandonment, being forced to enroll their children in schools⁴⁹.

2. Enrollment processes.

A. In Early Childhood Education and primary school stages:

The enrollment will be held every year by all students during the months of June or July and September, with specific dates for each stage of education.

Regular Process: The application for admission is usually done before the month of May (may be variations depending on the autonomous communities) within the calendar year in which they start the course for which they request. The centers offered vacancies and once they received the requests, if demand exceeds supply vacancy, they proceed to select the applications for admission on the registration process depending to a tabulated system according to autonomic legislation.

Special Process: Entails a deadline to resolve specific situations in the process of admission and enrollment of students.

B. Access to a training cycle:

- Comply with the academic requirements necessary access to the cycle they want to access, or, if not, pass the entrance exam for the corresponding cycle.
- Choose the training cycle(s) they want to apply, and look for centers where that are taught⁵⁰. For semi-distance or distance cycles the application will be submitted electronically.
- Request a square during the admission process.
- Wait for the award stage to be assigned a place and complete the registration or reservation, as appropriate.

⁴⁷ Organic law 5/2002 on Qualifications and Professional Training. Published in BOE no. 147 of 20 June, 2002.

⁴⁸ Organic law 6/2001, of 21 december, on Universities. Published in BOE no. 307 on 24 of december, 2001.

⁴⁹ Cases as : http://elpais.com/elpais/2010/12/16/actualidad/1292491045_850215.html (Consulted on 2/05/2013)

⁵⁰ To access the training programs : <http://www.todofp.es/todofp/formacion/que-y-como-estudiar/oferta-formativa/donde-estudiar.html>

Applications for admission to the first course must be submitted in any school they choose on the first place. They can also complete and submit the application electronically for the first course through the virtual office.

C. Adult Education.

The adults (over 18 years) have at their disposal many and different ways to complete their training, both for back to school that did not end, to acquire new professional skills or for those who already have professional skills but can not prove it by a official qualification. It seeks to improve their job opportunities and social integration⁵¹.

Currently in Spain the Ministry of Education, in its field of management, and the Departments of Education of the Autonomous Communities, through public schools, private schools or through agreements and grants with social initiative organizations nonprofit, impart formal and non-formal lessons for adults.

For enrollment in adult education centers should formalize the advance registration in any of the modalities offered by the centers of the regions within the deadlines established for this purpose or through online applications managed by each region, submit documentation (depends on the autonomy, and the type or level of training you want to attend) check results pre-admitted lists and formalize the enrollment before the corresponding deadline.

The mode of training can be classroom-based or distance, each region will determine which qualifications are taught in each modality.

Among the most frequent training offers are; access to adult secondary education, entrance exam for training cycles, bachelor, Spanish for foreigners, computer, etc⁵²...

E. Training for the unemployed:

The persons registered as job seekers may opt to specific training courses⁵³ and qualifications through programs at state or regional level. The modalities may be, classroom based, distance or mixed. To access these training courses will be necessary to present the employment card demand together with the application form in training centers accredited for the provision of these courses.

F. Specific programs for employment training developed by NGOs:

The most important entity in training for employment for Roma communities in Spain is Fundación Secretariado Gitano (FSG). Through the program "Acceder" provides training specifically aimed at the Roma community related employment programs. To access this program, interested parties must attend to one of the existing offices throughout the Spanish territory and register as a user⁵⁴.

3. What are the financial assistance that are accessible to Roms?

⁵¹ L.O.E . 2/2006, of 3 de may. Published in BOE no. 106 on 4 may, 2006. Art. 66. The adult education aims to offer to all adults the ability to acquire, update, supplement or extend their knowledge and skills for personal and professional development.

⁵² Autonomous communities are those that establish the Training Catalog and distribution of modalities on presential or distance.

⁵³ Consult the catalog by communities on the web: <http://cursosinem.info/cursos-inem.html>

⁵⁴ List of offices of attention for the formation the Roma people of FSJ: <http://www.gitanos.org/que-hacemos/servicios/fichas/82321.html.es>

Compulsory education, bachelor and training cycles are free in public schools. However, there is a national scholarship system that provides aids⁵⁵ for both the purchase of equipment and displacement, to promote permanence in education beyond compulsory education. The autonomous communities summon various grants and aids complementary to the central government grants. Obtaining general state grants is linked mainly to the family income and academic qualifications⁵⁶.

3. Discriminations made to the Roma and violations of the law

Currently the rate of school enrolment of the Roma population at the primary education is 94%. Although in recent years there have been positive developments regarding truancy, it still present at higher levels to the rest of the population and as well as in terms of failure and school dropout⁵⁷.

In secondary education levels the situation worsens. The failure and school dropout are close to 85%⁵⁸, mainly due to labor market entry by developing low qualification jobs or occupations working with parents (mainly hawking).

According to data collected by FSG in its 2012⁵⁹ report on discrimination, in education most of the situations are related to racist comments from school mates or teachers, exclusion from social activities by some families and rejection of certain centers to the registration of Roma students.

One of the most important aspects in the discrimination in this area is related to the intake system to schools. On numerous occasions segregation occurs to Roma students or from other minority groups to certain centers (usually public schools), in which the concentration of Roma students is higher than the proportion of the population of the area causing schools "ghetto"⁶⁰.

4. Possible recourses to be taken.

The general procedure for denounce discriminations or violation of rights caused by administrations, individuals or private companies to roma people, will be accessible to the general legal resources relating to racial discrimination referred to in the file 9.

Of course like any administration, educational, can be sued through administrative proceedings. Any administrative act and official document includes accurate information on how to appeal those acts.

⁵⁵ Calls for scholarships and financial aid are available online: <http://www.mecd.gob.es/horizontales/servicios/becas-ayudas-subvenciones/para-estudiar.html>

⁵⁶ The specific requirements for access to aid adopted will depend on the calls, varying from year to year. More information on ; <http://www.mecd.gob.es/horizontales/servicios/becas-ayudas-subvenciones/para-estudiar.html>

⁵⁷ Report on Segregation of Student Gypsy in Spain. 2012. Federation of Gypsy Women Kamira and Mario Maya Foundation.

⁵⁸ Fourth ECRI's discrimination report about Spain. 2010.

⁵⁹ Report on Gypsy community and Discrimination of 2012. FSJ. Madrid.

⁶⁰ Fourth ECRI's discrimination report about Spain. 2010.

CZECH REPUBLIC

1. The legislations applying the right to access education

On the territory of the Czech Republic, the right to access education is guaranteed by the Constitution of the Czech Republic⁶¹, the Charter of Fundamental Rights and Freedoms⁶², the legal order of the state and the obligations resulting from international conventions ratified by the Czech Republic that guarantees an equal right to education, regardless of the legal status of the individual (Convention of the Rights of the Child, Additional Protocol to the Convention on the Protection of Human Rights and Fundamental Freedoms or International Covenant on Economic, Social and Cultural Rights and so on).

On the constitutional level, the right to access education is regulated in the Charter of Fundamental Rights and namely in the Article 33.

The provisions of the Article 33 regarding the right to access education are as follows :

- (1) Everyone has the right to education. School attendance shall be obligatory for the period specified by law.*
- (2) Citizens have the right to free elementary and secondary school education, and, depending on particular citizens' ability and the capability of society, also to university-level education.*
- (3) Private schools may be established and instruction provided there only under conditions set by law; education may be provided at such schools for tuition.*
- (4) The conditions under which citizens have the right to assistance from the state during their studies shall be set by law.*

Although this freedom can be demanded directly and no other laws implementing the Charter provisions are needed to enforce it, the right to free elementary, secondary and possibly university-level education shall be applied solely to the citizens of the Czech Republic.

The right to access education is furthermore regulated by the Act on Pre-school, Basic, Secondary, Tertiary Professional and Other Education (Act no. 561/2004 Coll.)⁶³ and this law shall remain the key legal instrument stipulating the conditions for the access to education.

The abovementioned Education Act regulates also the right of foreign nationals to access the education. The provisions regarding such right are included in the Section 20 of the Education Act. According to the mentioned provision the citizens of European Union Member States shall have access to education and school services defined herein under the same conditions as citizens of the Czech Republic. Citizens of the countries that are not European Union members shall have, under the same conditions as citizens of the Czech Republic, access to basic education including institutional education and protective education, secondary education, tertiary professional education, including institutional education and protective education and also pre-school education provided that they legally reside in the Czech Republic, and basic artistic education and school services if they are in possession of a residence permit of the Czech Republic exceeding ninety days and reside in the Czech Republic, or are persons

⁶¹ The Constitution of the Czech Republic, The Constitutional Court of the Czech Republic, available at http://www.concourt.cz/clanek/czech_constitution, accessed on March 10, 2013

⁶² The Charter of Fundamental Rights and Freedoms, The Constitutional Court of the Czech Republic, available at http://www.concourt.cz/clanek/czech_charter, accessed on March 10, 2013

⁶³ Act on Pre-school, Basic, Secondary, Tertiary Professional and Other Education, The Ministry of the Education, Youth and Sports, available at <http://www.msmt.cz/dokumenty/act-no-561-of-24th-september-2004>, accessed on April 2, 2013

enjoying subsidiary protection, international protection seekers, or persons enjoying temporary protection.

2. The implementation of the law

The compulsory schooling in the Czech Republic starts at 6 years of age. An enrolment to primary schools takes place at the date specified in advance (in general one day in January and one day in February). It is up to parents' (legal guardians') decision to which school they enrol their child. If a demand surpasses the number of offered places, children with permanent residency in the local area or with older siblings studying at the school take precedence over the others. The headmaster makes the final decision.

Parents are allowed to ask for a postponement of schooling of their children (up to the school year during which the child reaches 8 years) if they support their petition with a recommendation of authorized educational-psychological consulting office or a paediatrician. Parents are also allowed to enrol 5 years old child to the school if they prove child's ability for schooling supported by a statement of authorized pedagogical institution and a paediatrician. It is again the headmaster who decides about postponement and acceptance.

Post-secondary education is mainly offered by universities (public or private) and colleges (*"Vyšší odborná škola"* more oriented on practical trainings than universities). Admission criteria vary among institutions – some organize entrance exams, some take account of study results at secondary school, some accept all applicants.

NGOs provide help to children from socially disadvantaged families with preparation for secondary and post-secondary education (tutoring, mentoring, career counselling).⁶⁴ They can also offer retraining programmes, in which all citizens with finished education (primary/secondary) can participate. Conditions for inclusion of individuals in the retraining course are following: a person shall be registered by a labour office as a job seeker or a person interested in work, have an appropriate entry qualifications for the retraining course and for the profession to which the retraining aims (e.g. appropriate level of education, some knowledge and skills - depending on the type of retraining), be physically fit for retraining course completion and performance of a new profession, retraining should be necessary - the existing qualifications do not allow the person to get a suitable job, retraining must be effective - after retraining is a real chance to get a job.⁶⁵

Homeschooling is an allowed form of schooling for children at primary school from 1st to 5th class (from 6 to 10-11years). A headmaster of a school to which a child is enrolled decides about an application for homeschooling. Parents have to state reasons for homeschooling must provide a confirmation about their finished secondary education and must prove that personal and material conditions for homeschooling (regarding studying environment, schoolbooks etc.) are met. Homeschooled pupils have to undertake exams every half a year in accordance with curriculum of the school to which s/he is enrolled. A school can provide textbooks and other teaching aids to homeschooled children. The ministry is nowadays working on legislation which will allow homeschooling of children up to 9th class (15 years old) but with more strict criteria (on parents' qualification, conditions under which children can be homeschooled etc.).

⁶⁴ For instance IQ Roma Servis (<http://www.iqrs.cz/>), Slovo 21 (<http://www.slovo21.cz/nove/>), R-mosty (<http://www.r-mosty.cz/>), Step by step (<http://sbscr.cz/?t=1&c=26>)

⁶⁵ On website www.rekvalifikace.com the candidate can choose suitable retraining.

Long distance courses are offered by both private and public secondary schools⁶⁶, colleges and universities. Offer is bigger at private schools. Public secondary schools prefer so-called combined studying system which comprise individual consultations, home studying and specified amount of classes during the year (in general 1-2 days every 2 weeks).

Studying at public schools and universities is free of charge. Costs linked with studying at public secondary schools (books etc.) are paid by parents of students or by students themselves (in case of adult students). In case of poor students school expenses are taken into consideration in calculation of welfare benefits. Public universities offer scholarship on merit (excellent study results, representation of the university at competitions, etc.) and need basis (social scholarship, scholarship for accommodation). Private universities may offer merit scholarships or social discounts on school fees at their discretion. There are also NGOs⁶⁷ and funds⁶⁸ which support financially specific groups of students (socially disadvantaged, disabled) or activities (studying abroad, scholarships for particular research). Some local authorities also provide specific scholarships (e.g. for books or other school materials).

3. Discriminations made to the Roma and violations of the law

The level of education of Roma minority is continuously low compared to majority population, even though improvement of this sphere is the basic factor in overall improving of their social status. Recent research studies point out that the educational system in the Czech Republic does not provide equal access to education to the Roma children, although this commitment stems from the national legislative texts, as well as from other international treaties binding on the Czech Republic. The improvement is not occurring even after the education has become one of the European integration policies. The experiences from practice reveal that discrimination of Roma in access to education continues even after the European Court of Human Rights in 2007 found that there was inclination to place children of Romani origin mostly in former special schools, and ruled that this practise amounted to discrimination.⁶⁹

In the Czech Republic, the segregation of Roma concerning the education has two different forms. The first one is expressed in the fact that the Roma children are more often educated in the special schools intended for "children with mental deficiencies."⁷⁰ The second form of segregation is educating of Roma children at schools with high proportion of Roma pupils. Education at such segregated schools generates complications for further coexistence for both Roma, and majority population.⁷¹

⁶⁶ In general it concerns vocational secondary schools which offer 3 years programme after which students can follow 2 years study programme to obtain „maturita“ (final exam which students of 4 years programme at technical secondary schools and grammar schools pass)

⁶⁷ Project Dza dureder (<http://www.dzadureder.cz/index.php>) realized by NGO Slovo 21 of which main objective is to prepare Roma students for entrance exams to universities, on this website are also information about scholarship at universities.

⁶⁸ Roma Education Fund, available at <http://www.romaeducationfund.hu/vyhlaseni-stipendijniho-programu-na-akademicky-rok-2012-2013>

⁶⁹ The original 18 Romani applicants lodged a complaint with the European Court alleging discrimination by the Czech government against them in the enjoyment of their right to education.

⁷⁰ In 2005, the special schools were renamed "practical elementary schools", but the curriculum being taught was not changed.

⁷¹ Report on the Roma Minority Situation in 2011, p. 50, 2012, The Council of the Government of the Czech Republic for Roma Community Affairs, available at <http://www.vlada.cz/cz/ppov/zalezitosti-romske-komunity/aktuality/zprava-o-stavu-romske-mensiny-v-cr-za-rok-2011-100979/>, accessed on March 16, 2013

Concerning the preschool education⁷², the attendance of Roma children is considerably lower in comparison to non-Roma children from the excluded localities (27 %, respectively 64 %). In consequence, the Roma children are less prepared for the primary school and the first year of compulsory education becomes though a very difficult moment of their educational process.⁷³ Among other reasons for such low attendance is the fact that parents were used to former preschool education that was free of charge, and nowadays are often not willing or able to pay for it. Also, the parents often do not see the importance of this level of education. In consequence, the chances of Roma children to succeed at primary school are very limited. Equal access to education in primary schools was the subject matter of the survey of the Public Defender of Rights. According to this survey, the proportion of Romany pupils at the ratio of one third in special schools is proof of the persistent indirect discrimination against Roma in terms of access to education.⁷⁴ Following this conclusion, the Defender reiterates that improving education for the largest minority group living in the Czech Republic is an essential condition for the integration of that group.⁷⁵ Results of the survey also reiterate the fact that even five years after the judgement of the European Court of Human Rights that alleged discrimination, the situation has not improved.

The Czech government itself has failed to address the problem of discrimination against Romani pupils in education and it has not carried out the necessary systemic reform in order to comply with the decision of the European Court of Human Rights. As a result, pupils in practical and Roma-only schools are re-living the same violations of their right to equal education experienced by their parents and relatives.⁷⁶ Those schools hamper a pupil's possibilities for further professional development and after completion of such schooling, the choice of additional vocational training is very limited.⁷⁷

As a consequence, lower proportion of Roma students can be discerned at secondary schools and at university level of education as well. Considerably worse position when applying for secondary education stems from the mere fact that the level of knowledge acquired at "practical" school is incomparably lower than at regular primary school. The proportion of Roma students at secondary school thus ranges only around 2 % of Roma youth. However, the reasons for this situation are more complex and manifold. Firstly, part of Roma pupils finish the primary education earlier than in the 9th grade (i.e. earlier than at 15 years of age) that is obligatory before starting the secondary school education, other part of children simply does not continue on studying at secondary school. Weak aspirations on the side of parents and difficult financial situation of the family also significantly impede access to higher levels of education.⁷⁸

4. Possible recourses to be taken

⁷² Preschool education is provided to children attending the last year of kindergarten, i.e. children reaching 6 years of age in the given school year.

⁷³ Ibid., p. 51

⁷⁴ Survey of the Public Defender of Rights into the Ethnic Composition of Pupils of Former Special Schools, p. 13, 2012, The Public Defender of Rights, , p. 13, available at http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/Survey_Ethnic_Special-schools.pdf, accessed on April 10, 2013

⁷⁵ Ibid., p. 14

⁷⁶ Five more years of injustice: segregated education for Roma in the Czech Republic, p. 23, 2012, Amnesty International, European Roma Rights Centre, available at <http://www.errc.org/cms/upload/file/five-more-years-of-injustice-november-2012.pdf>, accessed on April 10, 2013

⁷⁷ Education and employment of Roma people, p. 21, 2008, Frištenská, Hana; Dluhošová, Helena; Sulitka, Andrej; Slovo 21

⁷⁸ Report on the Roma Minority Situation in 2011, p. 57-59, The Council of the Government of the Czech Republic for Roma Community Affairs

The equal access for all citizens of the Czech Republic to education without any discrimination is set in the law No. 561/2004 dealing with the pre-school, basic, secondary, tertiary professional and other education at schools and school facilities. The law also lays down the conditions, under which can be established a class where the members of national minorities are educated in their own language.

An example of discrimination can be a recommendation to shift a Roma child to the former special school without any objective reasons. An important fact is that a child can be shifted only with the agreement of his/her statutory representative. That is why the parent (or the statutory representative) should always read thoroughly every document and know all the rights and duties relating to such document. If any uncertainty occurs, this should be explained before signing a document or contract.

In case a person has suspicion of discriminatory treatment at school, he/she can at first try to solve the issue with director of the school, as pedagogues have to obligation to treat children non-discriminatory. At the same time the person can make a complaint to founder of the school, that can be the municipality, the region or The Ministry of the Education, Youth and Sports. The municipalities and regions establish special school departments that shall, among other things, deal with such issues. Simultaneously it is convenient to make to complaint to the Czech School Inspectorate that is in charge of controlling the school laws and rules.

Therefore, in case of violation of the rule of law it is possible to submit a recommendation, suggestion or complaint directly to this institution. The inspection is entitled to order the reparation of the current situation in a school facility and impose a fine in a case of not meeting the measures. The Czech School Inspectorate does not have any power over the high schools.

Like in other cases of discrimination, the person can turn to the Public defender of Rights that can provide relevant information, assistance and suggest further procedure in the case.

File 5 - Right to access employment

Article 15

Everyone has the right to engage in work

Article 29

Everyone has the right of access to a free placement service

THE EUROPEAN LEVEL

The legislations applying this right

Whoever wants to **access employment should be treated equally**¹ and this equality also applies within the selection criteria and conditions of recruitment. In addition member states shall repeal any legislative texts going against equal treatment².

To apply the **freedom of circulation of workers**, no discrimination should be made between EU citizens³. They have the right to apply to job offers, to move freely for work within the EU, to reside in another member states and while working they are under the same conditions as national EU citizens. They also have the right to look for a job, but they need to make sure they have enough resources to live in the country. They can also be asked to give proofs of their job searches.

However, an **unequal treatment is made to citizens from Bulgaria, Romania and Croatia** who, due to the fact their countries have just joined the EU, are under transitional measures⁴. Consequently workers **have a restricted freedom of circulation**. The decisions under which condition a citizen of these countries can work in another member state are made at the national level. However, not all member state applies restriction to access their working market⁵.

Regarding the case of **an unemployed person from one of these countries**, according to the conditions imposed by some member states, the job seeker may not be able to reside there to seek for a job after 3 months stay⁶. Only student and non-working persons such as retired persons⁷, have the right to reside in another member state for more than 3 months without being employed.

Nevertheless, between a non-EU citizen and a EU citizen from one of these countries, priority to hire someone should be given to the EU citizen.

¹ Directive 2000/43/EC Article 3 Scope paragraph 1: *"Within the limits of the powers conferred upon the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to: (a) conditions for access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion"*

² Directive 2000/78/EC Article 16 Compliance: *"Member States shall take the necessary measures to ensure that: (a) any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished; (b) any provisions contrary to the principle of equal treatment which are included in contracts or collective agreements, internal rules of undertakings or rules governing the independent occupations and professions and workers' and employers' organisations are, or may be, declared null and void or are amended."*

³ No difference should be made between a EU national citizen of a member state and a EU citizen of another member state.

⁴ To avoid destabilising the working market of a member state, with for example a flood of job seekers, for a period of 2 years minimum to 7 years maximum, a citizen of these countries can have a restricted access to its working market that-is-to-say the member state has the right to put conditions for working within its territory. However, the conditions should never be more restrictive than the ones for non-EU citizens.

⁵ For Bulgarian and Romanian citizens, member states choose whether to give a free access to their working market, to restrict the access but keep it simple or to restrict it totally. Since 2011, Spain which used to give a free access to its market decided to restrict it for Romanian citizens. See the list of the decisions taken by each member states: ec.europa.eu/social/BlobServlet?docId=119&langId=en (For Croatian citizen, to be added when available)

⁶ Any citizen of the EU has the right to be in another member state for 3 months. However, if a country restricts the access to its working market, workers from Bulgaria, Romania and Croatia, need after these 3 months to be employed to reside legally there.

⁷ However, students and non-working persons still needs to have enough resources to afford their living.

For EU job seekers, member states must have implemented **special services⁸ in charge of advertising job offers**, which may encounter applicants in another member states, as well as the **applications of workers** who wish to work in another member states⁹. Concerning the applications, the member states employment service for which an application is addressed to, should answer within a month to the applicant¹⁰. These services should also inform job seekers about opportunities in another member states when they mentioned that they wish to work abroad¹¹.

In addition, **non-EU citizens have the right to work and reside within the EU¹²**. The rules to work in a member state depend on the agreements made between the country of the citizen and the member state country he/she wants to work in. Member states have the right to set a quota on the number of citizens to seek for a job in their country¹³.

UNITED KINGDOM

1. National Legislative Texts

Employment law and policy are reserved to the competence of the UK Parliament. Accordingly, there is very limited scope for the four countries of the UK to have distinct employment policies. However, there is room for each to develop different approaches to prepare individuals for work e.g. skills development, employability policies etc.

The two relevant provisions in the Equality Act 2010 for promoting equality are:

⁸ To ease the encounter between an employer and a job seeker, especially in fields in needs of workforce, the EU implemented employment services. EURES (European Employment Service) is the EU service to encounter a work/an employee in another member state. Every member state has an employment service. EURES website: <http://ec.europa.eu/eures/home.jsp?lang=en> and the list of the national employment services: <http://ec.europa.eu/eures/main.jsp?catId=0&lang=en&acro=links&orgTypeld=0&myOrgTypeld=1>

⁹ Regulation 492/2011 article 11 paragraph 1: "(...) *The central employment services of the Member States shall cooperate closely with each other and with the Commission with a view to acting jointly as regards the clearing of vacancies and applications for employment within the Union and the resultant placing of workers in employment.*" And article 13 paragraph 1: "*The specialist service of each Member State shall regularly send to the specialist services of the other Member States and to the European Coordination Office referred to in Article 18: (a) details of vacancies which could be filled by nationals of other Member States; (b) details of vacancies addressed to third countries; (c) details of applications for employment by those who have formally expressed a wish to work in another Member State;*"

¹⁰ Regulation 492/2011 article 14 paragraph 2: "*The applications for employment referred to in point (c) of the first subparagraph of Article 13(1) shall be responded to by the relevant services of the Member States within a reasonable period, not exceeding 1 month*"

¹¹ Regulation 492/2011 article 13 paragraph 1 bullet d "*information, by region and by branch of activity, on applicants who have declared themselves actually willing to accept employment in another country*"

¹² Treaty of the Functioning of the European Union, consolidated version, title IV Article 45: "*1. Freedom of movement for workers shall be secured within the Union. 2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment. 3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health: (a) to accept offers of employment actually made; (b) to move freely within the territory of Member States for this purpose; (c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action; (d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in regulations to be drawn up by the Commission.*"

¹³ Treaty on the European Union article 79 paragraph 5 : "*This Article shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed*"

(a) Public Sector Equality Duty¹⁴, which requires organisations exercising functions of a public nature to have due regard in exercising those functions to the need to (i) eliminate unlawful conduct as prohibited by or under that Act; (ii) to advance equality of opportunity through addressing disadvantage, or meeting distinct needs, or to encourage greater public participation; and (iii) to foster good relations between groups as defined by different protected characteristics e.g. between, for instance, indigenous Scottish and Romani Gypsy and / or Scottish Traveller communities.

Provision, in recruitment and employment, to treat a person more favourably because they share a protected characteristic that suffers disadvantage connected to that characteristic; or if there is disproportionately low participation by persons who share a protected characteristic in the relevant activity. There are strict criteria governing lawful use of this provision: first, it must be reasonable for the recruiter or employer to think there is such disadvantage or low participation; second, use of the provision cannot be based on a policy of positive action but may only be applied reactively e.g. when there is a recruitment or employment "tie-break"; third, the beneficiary of the positive action must be "as qualified" as the rejected candidate; and finally, the use of such positive action - which is essentially positive discrimination - must be a proportionate means of achieving a legitimate aim.

The right to work in the UK is available to UK nationals and residents with the requisite proofs: including valid passport, birth certificate, and National Insurance number. However, for non-UK nationals and residents, the right to work is contingent on whether one is a national of a country within the European Economic Area (EEA)¹⁵ or Switzerland. If one is such a national then they enjoy full rights to work in the UK, unless they are Bulgarian or Romanian nationals, in which case certain, temporary restrictions apply to the right to work in the UK.

If one is not an EEA or Swiss national then their right to work in the UK is contingent on satisfying the requisite criteria within the UK's immigration categories. These categories are: (a) "Highly Skilled Migrant Programme"; (b) "Skilled Workers"; (c) "Temporary Workers"; (d) "Workers and Business Persons from Turkey"; (e) "Commonwealth Citizens with UK Ancestry"; and (f) a miscellaneous category encompassing groups such as contract seamen, domestic workers in private households, and representatives of overseas businesses.

The UK has well-established legislation for protecting individuals from non-discrimination on the "protected characteristics" as set out in the Equality Act 2010. Race is one of these protected characteristics and encompasses various sub-categories, including colour, national origins, and nationality (inc., citizenship), as well as ethnicity. Romani Gypsies¹⁶, Irish Travellers¹⁷, Roma¹⁸ Scottish Travellers¹⁹ are all recognised ethnic groups in UK equality jurisprudence.

This express recognition of Romani Gypsies, Irish Travellers, Roma, and Scottish Travellers in UK equality legislation and through its associated case law provides important protection for these communities against unlawful discrimination, harassment, and victimisation. Moreover, it

¹⁴ Section 149 Equality Act 2010.

¹⁵ The list of EEA States is available at: <http://www.companieshouse.gov.uk/about/miscellaneous/listeeaCountries.shtml>.

¹⁶ Commission for Racial Equality v Dutton [1989] 1 All ER 306.

¹⁷ O'Leary v Allied Domecq, 29/8/2000, CL 950275.

¹⁸ Regina v. Immigration Officer at Prague Airport and Another, Ex parte European Roma Rights Centre and Others, [2004] UKHL 55, United Kingdom: House of Lords (Judicial Committee), 9 December 2004.

¹⁹ MacLennan v Gypsy Traveller Education and Information Project, Employment Tribunal (Aberdeen) S/13272/07 f599/132.

also enables, potentially, positive measures available in the Equality Act 2010 to be taken into account in order to promote equality for these communities, including the right to engage in and pursue work in the UK

2. Implementation of the law

The Judicial Committee of the Privy Council is the highest court of appeal for several independent Commonwealth countries, the British overseas territories, and the British Crown dependencies. There are also immigration courts with UK-wide jurisdiction — the Asylum and Immigration Tribunal and Special Immigration Appeals Commission. The Employment Tribunal and the Employment Appeal Tribunal have jurisdiction throughout Great Britain, but not in Northern Ireland.

United Kingdom has been a home to a diverse range of migrants including Asylum Seekers, Refugees, European Union and non-EU migrants who came to the UK to work, study or to make a better life for their families. In 2004 there was an increase in Romanian communities entering the UK following their right of free movement in hope of an improved standard of living. Although many Roma migrants to the UK moved voluntarily, a number of migrants were forced to enter the UK in the hope of capitalising on the UK's economic growth at that time.

Like the existing domestic Gypsy traveller community within the UK, the Roma population gained classification as an ethnic group. Residing in their thousands in the UK, across London, Doncaster, the Midlands, East and North London and around Glasgow (Scotland), Wales and Northern Ireland, most of these communities are from Slovakia, the Czech Republic, Romania and Poland.

These particular, temporary restrictions on the right to work on Bulgarian and Romanian nationals are that (a) they require permission to work from the Secretary of State for the Home Department; (b) such permission if granted can only apply to specific work, namely (i) work under the UK's "Highly Skilled Migrant Programme", (ii) the "Seasonal Agricultural Workers Scheme", or (iii) in certain, low-skilled, vacancies within the UK's food manufacturing sector through the "Sectors Based Scheme"; but (c) they do not need such permission if they are self-employed in the UK; and (d) the requirement for permission to be employed expires if and when a Bulgarian or Romanian national has worked as an employee in the UK for a continuous 12 month period. Finally, all these restrictions generally and especially in terms of permission to work in the UK, expire from 31st December 2013.

3. Common Abuses / Discriminations Occurring and Faced by the Roma

Worklessness has a negative impact on communities' health, wealth and happiness and results in isolation, low confidence, segregation and lower accessibility to mainstream opportunities, due to poverty and lack of connectivity.

Gypsies / Travellers,²⁰ and particularly Roma, experience serious disadvantages due to their inability to access appropriate employment opportunities which result in under employment. Their lifestyle choices leaves them vulnerable to high levels of prejudice, discrimination, and hate crime, disproportionately poor outcomes in terms of access to appropriate accommodation, educational attainment, health and employment, and they are often portrayed negatively in the media.

²⁰ an umbrella term encompassing a variety of groups including but not limited to Romani Gypsies, Roma, Irish Travellers, and Scottish Travellers

More specifically, Gypsies / Travellers throughout the UK experience:

(a) Systematically poor education outcomes across the learning spectrum including, but not limited to, high levels of (i) absence, (ii) exclusion, (iii) categorisation as "special educational needs", (iv) school drop out, and (v) low attainment²¹;

(b) Disproportionately poor health as reflected in an excess prevalence of miscarriages, stillbirths, and neonatal deaths, chronic ill health characterised by more than one health condition, and significantly lower life expectancy for Gypsy / Travellers, and higher levels of stress and depression²² ; and

(c) Widespread lack of equality, appropriate, and culturally sensitive accommodation as demonstrated, inter alia, through a persistence of a significant minority of sites being unauthorised – mainly due to there being a lack of adequate legally approved provision being available, both generally and in particular parts of the country²³.

All of the above directly lessens the ability of the Roma to secure employment, which is a key driver to race harmony, community cohesion and inclusion. As this basic right is denied to the Roma, it has resulted in secondary discrimination factors as described above. There has been systematic failure in Britain to explicitly include Gypsies and Travellers in national (state?) employment monitoring systems, such as through the quarterly Labour Force Survey; in the ethnic monitoring practices of the Department for Work and Pensions; as well as within any distinct (national?) regional ethnic monitoring systems in Northern Ireland, Scotland, and Wales²⁴.

Surveys demonstrate the wider community's views on these marginalised communities "There are also relatively high levels of prejudice, discrimination, and racial incidents towards Gypsies and Travellers. For instance, the Scottish Social Attitudes Survey in Scotland, through its module on attitudes to discrimination and positive action, found that (a) 37% of respondents would be unhappy if a close family member formed a relationship with a Gypsy / Traveller – the second highest level of discomfort; (b) 46% said Gypsy / Travellers were unsuitable to be primary school teachers – the highest level of unsuitability; and 42% considered public funding for organisations to work with Gypsy / Travellers was "bad / very bad" – the highest level of negativity. Finally, in 2011/2012, a significant minority of all reported racial incidents in Scotland (12%) were against groups classified in this dataset as "White Other" which includes particularly Gypsy / Travellers²⁵."

Thankfully, this gap is now starting to be rectified, primarily through (a) the inclusion of Gypsies and Travellers in the ten-yearly National Census of the population as part of its ethnicity

²¹ pp.90-94, Equal Rights Review, "Educational Equality for Gypsy, Roma and Traveller Children and Young People in the UK" (London: Equal Rights Review).

²² Parry, G. et al. (2004) "The Health Status of Gypsies and Travellers in England"(Sheffield: University of Sheffield).

²³ The Department for Communities and Local Government publish a twice-yearly Caravan Count for across England documents the number of authorised and unauthorised sites for Gypsy / Travellers. In Wales, accommodation issues are progressed through the Welsh Government strategic framework for Gypsy / Travellers. And, in Scotland, the accommodation gaps for Gypsy / Travellers for appropriate and high quality accommodation have been documents in The Scottish Parliament's Equal Opportunities Committees three reports on this and other matters affecting Gypsy / Travellers since 2001, with the most recent dedicated to the accommodation issue and published in 2013.

²⁴ Point 7.9, p.30, Department for Communities and Local Government (2012) "Progress Report by the Ministerial Working Group on Tackling Inequalities Experienced by Gypsies and Travellers"(London: Department for Communities and Local Government).

²⁵ Table 8, "Ethnic Origin of Victims of Racial Incidents 2004/05 to 2010/11" in "Racist Incidents Recorded by the Police in Scotland, 2011-12" (Edinburgh: The Scottish Government).

category; and (b) its inclusion within the afore mentioned Labour Force Survey. Nonetheless, there is wide consensus that there are high rates of unemployment amongst Gypsies and Travellers²⁶. It is, accordingly, difficult to be precise on the employment disadvantage experienced by Gypsies and Travellers, but it seems likely that there are significant connections between disadvantage in the labour market and the earlier quoted disadvantages in education, health, and accommodation.

There has been (past?) systematic failure in Britain to explicitly include Gypsies and Travellers in national (state?) employment monitoring systems, such as through the quarterly Labour Force Survey; in the ethnic monitoring practices of the Department for Work and Pensions; as well as within any distinct regional (national?) ethnic monitoring systems in Northern Ireland, Scotland, and Wales. Romanian and Bulgarian migrants rights to come to Britain were restricted. However on 31st Dec 2013 this ban will be lifted and they will be able to move freely to the UK. In many ways, this will serve the purpose of European freedom of movement, thus harming (but potentially harm?) the (perceived?) job prospects of British people. The government will have to introduce some measures to have Romanian and Bulgarian migrants engaged in employment. There needs to be more work done around building the capacity of and empowering the Roma/Romanian community to have their voices heard by policy makers. Local authorities, as the main service providers, may need to adapt new ways of working with diverse community groups and they should be given training on staff recruitment from minority communities eg particularly for "first contact" staff dealing with housing, social work and childcare needs.

More training needs to be delivered to local authorities on mainstreaming equalities and ensuring appropriate resources are available to support the Roma/Romanian communities and ensure monitoring of policies on their issues are implemented and scrutinized in order for it to work across the UK. However, all the policies that apply to British citizens will also apply to Roma/Romanian and Bulgarian communities; variations are likely to be few in number. The Bridges Programme's "Ladders to Employability and Integration" aims to improve the economic and social integration of refugees and asylum seekers generally (not just in Govanhill in Glasgow), as well as other ethnic minority groups, including Roma women.

4. Possible recourses to make these rights respected:

The UK Home Office has committed to better enforcement of immigration law and has introduced new laws on illegal working. Measures such as pre-boarding electronic checks on entry and departure, the fingerprinting of all visa applicants prior to arrival and plans for identity cards for foreign nationals resident for more than three months, have all been heralded as means to "crack down" on illegal immigration.

There has also been a significant increase in immigration-related workplace investigations and inspections. Policy has shifted towards accelerated removals and mandatory detention for failed cases, although this area of enforcement is remains open to judicial challenge and/or review in the courts.

Liability for illegal working: the old law

The UK government made the unlawful employment of an overseas worker a criminal offence from 27 January 1997. Under Section 8 of the Asylum Immigration and Nationality Act 1996, it was, and still is, a criminal offence to have employed an adult between 27 January 1997 and 28 February 2008 who had no permission to be in the UK, or whose immigration status did not allow them to take that particular job. A statutory defence could be established if the employer

²⁶ Point 7.3, p.29, Department for Communities and Local Government (2012) "Progress Report by the Ministerial Working Group on Tackling Inequalities Experienced by Gypsies and Travellers"(London: Department for Communities and Local Government).

had, before the employment commenced, inspected and retained copies of documents prescribed by the Home Office establishing that person's entitlement to take that job. Even where personal documents turned out to be fraudulent, provided they appeared to be genuine to the employer on reasonable inspection, there was an effective statutory defence, since the prosecution was required to prove that the employer actually knew that the documents were false.

In practice, there have been persistent difficulties with the enforcement of this legislation, and prosecutions remain at a low level, despite considerable evidence of a growing problem. A major weakness is the legislation's inability to distinguish between careless, negligent and wilfully criminal employers. A well-meaning employer who had insufficient regard to the detail of document checking, but sincerely believed the employee had the right status was technically as guilty as an ill-intentioned individual deliberately exploiting vulnerable migrants as a source of cheap labour. The lack of a continuing obligation to ensure correct immigration status was also identified as a weakness.

Liability for illegal working: the new law ²⁷

Legal liability: the practical implications

Under the old regime, investigation and prosecution of illegal working usually followed a tip-off or other event bringing it to the attention of the immigration authorities. There were high-profile (and often media-managed) raids, but in reality resourcing for such action was limited. Under the new arrangements, a link with the sponsorship register and greatly enhanced resourcing means that employers can expect a much more pro-active approach from the authorities. 'Visiting Officers' will attend the employer's premises, and will have authority to inspect documentation to ensure that there are no illegal workers present. They will be empowered to issue penalty notices where civil (and/or criminal?) breaches are found. This is a significant development reflecting an enhanced, proactive approach and a much higher level of risk exposure for employers who fail to comply with the new law.

Avoiding discrimination in recruitment

Under the old law on illegal working, a Code of Practice was introduced in 1999 to help employers avoid racial discrimination when seeking to comply with immigration legislation. The line can be a fine one to tread. The Code recommended the avoidance of all obviously discriminatory practices, such as restricting inspection of documents and checks only to those workers who looked or sounded 'foreign'. This Code for employers on the avoidance of unlawful discrimination in employment practice while seeking to prevent illegal working has been updated and reintroduced in an amended format² by Section 23 of the 2006 Act; breach of the Code of Practice continues to be admissible in employment tribunals.

²⁷ Sections 15 to 25 of the Immigration, Asylum and Nationality Act 2006 set out the new law on illegal working, in force from 29 February 2008. There are two distinct breaches: civil and criminal. The breaches apply only to employment which commenced on or after 29 February 2008.

By distinguishing between the careless and the ill-intentioned, and imposing a new continuing obligation to ensure legality, the new regime offers greater flexibility and therefore a better basis for the firmer, fairer policy, including enforcement, to which the government has publicly committed.

The civil penalty – Section 15 : An employer who employs an adult subject to immigration control, who is not entitled to take that employment, or whose eligibility to be in that employment has lapsed, is subject to a civil penalty under Section 15 of the 2006 Act. There is a maximum fine of £10,000 per illegal worker. A statutory excuse is established by the employer if it has checked, copied and retained copies of specified original documents, prescribed by the Home Office from time to time. Currently, these documents reside in two lists, A and B. A document (depending on the document and status, or combination of two documents) from list A establishes the excuse for the duration of the employment; from list B, the excuse stands for a 12-month period only, with a re-check required thereafter unless a Section A document is inspected, copied and retained. The civil penalty is aimed at the careless rather than the criminally intentioned employer.

The criminal penalty – Section 21 : Actual knowledge that a worker is illegal constitutes a criminal offence under Section 21 of the Act. Any statutory excuse under section 19 is overridden by actual knowledge. The penalty is an unlimited fine or up to two years' imprisonment.

FRANCE

1. The national legislative texts relating to the right to access employment:

- In the Constitution: "The French people solemnly proclaim their attachment to the Rights of Man and the principles of national sovereignty as defined by the Declaration of 1789, confirmed and complemented by the Preamble to the Constitution of 1946 (...)" where it is said "Everyone has the duty to work and the right to have a work. No person shall suffer prejudice in their work or employment on account of their origin, opinion or beliefs"
- Law **69-3 of 3 January 1969**²⁸ **concerns Travellers. It governs itinerant activities and stipulates that persons who have** not resided more than six months in a member state of the European Union must carry specific identification papers issued by the competent authorities.
The employers must verify that the employee holds this document.
- The Movement of Citizens of the European Community is governed by the directive on free movement of EU citizens of 29 April 2004²⁹: "Citizenship of the Union confers on every citizen of the Union a primary and individual right to move and reside freely within the territory of the Member States" and "Any National of a Member State shall, irrespective of his or her place of residence, have the right to take up an activity as an employed person, and pursue such activity, within the EU in accordance with the regulation for Nationals.
But Romanians and Bulgarians workers are subject to exemption clauses until December 31.³⁰

2. The implementation of this right regarding:

Formalities for Bulgarians and Romanians³¹

- At present, and until the 31st of December 2013, a Bulgarian or Romanian citizen who wishes to work in France must have a residence permit. This permit is free of charge on the first application. It is not required after the 1st of January 2014.
To obtain it :
 - The application is submitted with the local *prefecture* or sub-*prefecture* of the *Département*. The applicant receives a receipt.
 - Required documentation :
 - an identity card or passport
 - a confirmation of engagement from the employer or a certificate of employment or a proof that they are self-employed
 - in case of paid employment, a work permit
- They may also be self-employed under the same conditions as French citizens.

²⁸ "Loi n° 69-3 du 3 janvier 196 relative à l'exercice des activités ambulantes et au régime applicable aux personnes circulant en France sans domicile ni résidence fixe, Version consolidée au 06 octobre 2012" <http://legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000317526>

²⁹ http://europa.eu/legislation_summaries/internal_market/living_and_working_in_the_internal_market/l33152_fr.htm

³⁰ <http://www.gisti.org/IMG/pdf/norimim1000116c.pdf>

³¹ <http://vosdroits.service-public.fr/F2739.xhtml#N1010F>

Romeurop³² offers factsheets for the creation of self-employed activities for Romanians and Bulgarians in France.

- An employed worker must have a work permit during their first five years in France.

294— Two hundred and ninety-one “skill shortage profession” are more easily accessible. There are jobs open to foreigners because local demand is strong. **The list is defined by a decree³³ and include hair-dresser, cook, baker, pastry cook, construction worker, waiter, call center operator, general practitioner and specialised doctor, etc.**

- **The employer should request the work permit with DIRECCTE, the** Regional directorate for companies, competition, consumption, work and employment,.

- Travellers.

Most Travellers are self-employed: small traders, craftsmen (vehicle repair, material recycling, scrap merchant, door-to-door sales, etc). Seasonal work is common mainly in tourism and agriculture, and is covered by labour laws.

All self-employed activities must be listed in the “Répertoire des métiers”.

One must also hold a degree (most commonly a CAP - a certificate of professional competence) or have practiced the job for 3 years.

Many Travellers are skilled in one or more trades, but they don't have experience as employees or the degree needed to register as self-employed.

Another difficulty is the high illiteracy rate which among Travellers. Many activities are regulated and the administrative procedures are complicated for people unfamiliar with forms. Not only are Travellers challenged by the red-tape, but civil servants are not familiar with Travellers either.

Associations, many of them part of the FNASAT³⁴, help Travellers with administrative procedures³⁵ and organize training sessions.

3. Common abuses/discriminations faced by the Roma

- Foreign Roma are discriminated against as foreigners, and also specifically as Roma.
- According to an IFOP survey published on January 2012 for the Human rights Defender and for the International Labour Organization (ILO)³⁶, Travellers are more discriminated against than the handicapped, racial minorities, or women.

4. Possible appeals to restore rights:

- One may appeal to the Human Rights Defender (DDD)³⁷ (See file1) or to go before court. (see file 9) But job discrimination is hard to prove and time-consuming.
- When there is a flagrant abuse of human rights, It is recommended to seek the help of groups such as the “Information and support group for immigrants (Gisti)³⁸”

³² Romeurop is a collective of associations that defend Roma people http://www.romeurope.org/IMG/pdf/Fiches_non_salaries_a_jour_juillet_2011DEF.pdf

³³ <http://www.immigration-professionnelle.gouv.fr/proc%C3%A9dures/m%C3%A9tiers-en-tension>

³⁴ <http://www.fnasat.asso.fr/codipe/initiativesterrain.htm>

³⁵ <http://www.angvc.fr/pages/vieprofessionnelle.html>

³⁶ <http://www.depechestsiganes.fr/wp-content/uploads/2012/02/barometre-discrimination-emploi.pdf>

³⁷ <http://www.defenseurdesdroits.fr/>

³⁸ Gisti : Groupe d'Information et de Soutien aux Immigrés, <http://www.gisti.org/index.php>

- The Solvit³⁹ may also be contacted. It is an agency of the General Secretariat for European Affairs in charge of “problems with a cross-border dimension and resulting from incorrect application of Community law by public authorities in Member States”.
- It is also recommended to complain directly to the European Commission. The plaintiff must e-mail jls-citizenship@ec.europa.eu.⁴⁰

SPAIN

1. The legislations applying this right:

According to Article 35 of the Spanish Constitution⁴¹, Spanish citizens have the right to work freely.

For non-Spanish citizens there is a straight connection between a work authorization and the legal residence in Spain.

In line with the general law of foreigners, extra-EU citizens are required a work authorization in order to work as employed or self-employed in Spain.

The people who are subject to the Community scheme (i.e. belonging to the countries of the European community, European Economic Area and Switzerland)⁴², are exempt from this authorization⁴³ to work as employed or self-employed, as well as those extra-EU citizens who have permanent residence status.

Exceptions: workers from Romania are affected by the moratorium on access to employment proposed by Spain and endorsed by the European Commission⁴⁴ in place until the end of 2013:

- Thus, those Romanians who were registered as unemployed or had an employment contract dated before 22/07/2011, can live and develop any type of work activity within the country.
- Those who were neither working nor registered as jobseekers at the given date, are entitled to reside, but can only work on a self-employed basis or with a work permit as extra-EU citizens.

2. The implementation of the law:

2.a Requirements to Obtain work permits.

³⁹ http://ec.europa.eu/solvit/site/index_fr.htm

⁴⁰ http://ec.europa.eu/justice/mission/index_en.htm

⁴¹ Spanish Constitution of 1978. Published in BOE no. 311 29 Diciembre, 1978. [Art. 35](#): 1. All Spanish have the duty to work and the right to work, to free choice of profession or trade, to advancement through work and an income sufficient to meet their needs and those of their family, but in no case may be discriminated against on grounds of sex. 2. The law shall be regulated the status of workers

⁴² Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italia, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom, Liechtenstein, Iceland, Norway and Sweden.

⁴³ Except for citizens of Romania.

⁴⁴ Instruction SGIE/3/2012 as renewing of SGIE/1/2012 instructions on the regime applicable to domestic employees and their families of Romania applicable until December 31, 2012.

Requirements for obtaining a work permit as an employee for those citizens non-belonging to the Community framework:

The Work authorizations will be granted together with the permits of residence. The applicants should not be residing irregularly in Spain, hold a prohibition of entry in the country or find themselves within the period of a non-returning commitment programme. They should not have a criminal offences recorded in Spain or any other offences contained in the Spanish law committed in other countries.

Working as employed: such a permit will be managed in the country of origin after having a job offer in Spain. The job of the contract must belong to occupations of difficult coverage that the Public Employment Service publishes quarterly⁴⁵, or hold a certificate issued by the Public Employment Service certifying that there are no qualified applicants within the activity in which is intended to work (which must be requested the employer). It is not needed to have a contract of a job belonging to the catalogue of occupations or to have the certificate of the Public Employment Service, if the applicant can be included into any of the cases referred to in art.40 of the immigration law⁴⁶.

The employer must apply for the authorization bringing with it the signed employment contract that guarantees the validity of the authorization. Such documents shall be presented at the immigration office in the province where the services will be provided. If the request is granted, the worker has one month to apply for the visa in person by submitting: a passport, criminal record, medical certificate, and proof of payment of visa fees (amounting to approximately € 60).

Once the visa is collected, the worker must enter in Spain within the three months of its issue. After entering into the country, the employee will have three months to make his/her affiliation, registration and social security contributions.

Self-employment: it requires a proof of having sufficient financial resources for affording subsistence and accommodation in the country, after the deduction for the maintenance of the activity has been carried out.

It is an obligation to comply with the current legislation for the opening and operation of the planned activity.

The request must be filed at the Spanish consulate in the country of residence. It is required to present a copy of the passport application form duly completed, authorizations and licenses relating to the procedures for opening and operation of the activity, training and qualifications, accreditation of financial means for the development of the activity indicating the planned investment.

Within the three months after the submission of the documentation, the application shall have a resolution (if there is no answer at this period of time, it means that the application has been

⁴⁵ Catalogue available online : http://www.sepe.es/contenido/empleo_formacion/catalogo_ocupaciones_dc/

⁴⁶ Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social. Art. 40 : The reunited family members of working age foreign resident in Spain. The prior authorization holders who intend to renew their work authorization. Workers needed for a fitting renovation of a facility or production equipment. Those who have had the condition of refugees, during the year following the cessation of the application of the Geneva Convention of 28 July 1951 relating to the Status of Refugees, for the reasons set out in section 5 of the section C of Article 1. Those who have been recognized as stateless persons and those who have lost the status of stateless the following year to the termination of such status. Foreigners who are responsible for ancestors or descendants of Spanish nationality. The foreign-born and living in Spain. Children or grandchildren of Spanish origin. Foreign minors working age with residence permits that are protected by the child protection agency for those activities which, in the opinion of that body, could promote their social integration, once proven unable to return to their family or country of origin. Foreigners who obtain a residence permit for exceptional circumstances in cases specified in the regulations and, in any case, in the case of victims of domestic violence or human trafficking. Foreigners who have held work permits for seasonal activities for two calendar years, and have returned to their country. Foreigners who have given up their residence and work permit under a voluntary return program.

denied). If the authorization is granted, the worker will have one month to apply for the visa in person submitting the following documents: passport, criminal record, medical certificate, and proof of payment of visa fees (amounting to approximately € 60). Once the visa is collected, the workers must enter Spanish territory within three months of their issue. After entering in the country, affiliation, registration to make social security contributions must be done within a three month period.

Exceptional cases for obtaining a work permit⁴⁷:

Social roots: being irregularly in the country for more than three years and able to prove so with official documents, as well as by not having criminal records in Spain or in the country of origin, nor holding a prohibition of entry into Spain or Schengen and having a yearlong job contract.

Working roots: being able to prove two years of permanent stay in Spain, having been working one of those years (the company must be reported) with a resolution of a judge or of a work inspection confirming that he has been working a year without permit job.

Family roots: first-degree relatives of Spanish nationality.

Requirements for obtaining a work permit as an employee for Romanian citizens⁴⁸: The employer will personally present the following documents at the Foreign Office in the province where the services are to be provided.

- Official application forms in duplicate, duly completed and signed by the employer.
- Copy of passport or national identity card.
- Copy of documentation attesting to possess training and, where appropriate, professional qualifications legally required for the practice of the profession.
- Documentation that identifies the company seeking approval.
- Signed employment contract.
- Evidence that the company can guarantee the necessary solvency.

2b. Register as job seekers:

The National Employment System⁴⁹ has the function of offering the jobs of employers to workers and to offer a quality service of labour intermediation. In addition, it must provide adequate training to enable applicants to find employment and to ensure equal access of workers and employers to the public employment services.

The registered jobseekers are required to renew in person their application for employment on the dates indicated at the Employment Office, communicate the outcomes of job interviews achieved through this service, and to communicate the changes in their professionals features.

Jobseeker registration can be done at attending to the closest employment office and providing the following documents:

Roma national EU citizens (except Romania), from the European Economic Area countries (Iceland, Norway and Liechtenstein) and Switzerland⁵⁰:

⁴⁷ Organic Law 4/2000 of 11 January on the rights and freedoms of foreigners in Spain and their social integration. Published in BOE no. January 10, 2010. Art. 31.3 y 68.3.

⁴⁸ Instruction SGIE/3/2012 as renewing of SGIE/1/2012 instructions on the regime applicable to domestic employees and their families of Romania applicable until December 31, 2012.

⁴⁹ Law 56/2003 of 16 December on Employment. Posted in BOE. 301, December 17, 2003

⁵⁰ Data from the employment guide of Job Ministry. : http://www.empleo.gob.es/es/Guia/texto/guia_1/contenidos/guia_1_1_1.htm

1. National Identity Card, Identity Card or Passport.
2. Social Security card, if they have previously worked in Spain.
3. Proof of qualifications (diplomas, certificates, degrees, seminars, etc.).

Rome from third countries and Romania:

1. Identity card for foreigners (NIE) to be affixed to all documents issued or processed.
2. Corresponding Certification of the Unit or Area Provincial Labor and Social Affairs or work permit in force.
3. Social Security card, if they have previously worked in Spain.
4. Proof of qualifications possessed by the person concerned (diplomas, degrees, seminars, etc.).

2c. Procedure to register as self-employed:

The registration is to be carried out at the Provincial General Treasury of the Social Security, or delegations of this Administration, within thirty calendar days after the start of the activity. It is also required to register with the tax on economic activities (IAE) in the appropriate Tax Office, or online: agenciatributaria.es.

The registration as self-employed involves paying a monthly fee consisting of a 29.9% of the contribution base⁵¹.

The opening of a local establishment license shall be processed at the corresponding municipality.

2d. Usual occupations.

Itinerant trade⁵²: This type of activity shall be subject to approval by the city councils of the towns in which they are to perform the activity. The municipalities must verify that the natural or legal persons who have applied for municipal approval, are registered in the corresponding section of the business tax and the Social Security system that meet those requirements during the term of authorization. Nevertheless, the number of available authorizations is limited due to the shortage of public land for that purpose and to the conditions and municipal laws. They will have to pay taxes to the municipality in relation on occupied meters in the markets (ranging from 70 to 150 € per year).

Collecting and selling scrap⁵³: after the Law 22/2011 on waste and contaminated soil came into force in 2011; the development of this activity by the Roma population has been affected due to the ban on the collection and transportation of scrap, considered as municipal property for being in public streets. It also requires sellers a technical license of carriers of non-hazardous waste as well as being registered as self-employed. The collection and sale of scrap metal has been a basic subsistence activity for people with low income. Therefore, this regularization that entails tax payments and adjustment to the regulation has led many families to leave their practice or to perform it illegally.

3. Discriminations made to the Roma and violations of the law:

⁵¹ The minimum contribution base is 858.60 euros, so the quota for self-employed in 2013 for the minimum contribution base is 256.72 euros per month.

⁵² Law 1/2010 of 1 March, amending the Law 7/1996 of 15 January on the Retail Trade. BOE, no. 53, March 2, 2010

⁵³ Law 22/2011, of 28 July, about waste and contaminated soils. Published in BOE no. 181 of July 29, 2011.

The Roma population is currently experiencing a high level of discrimination in access to employment in Spain. The decline in their traditional professions⁵⁴ (itinerant trade and markets) and their low qualifications causes serious difficulties in accessing the job market.

This is why the unemployment rate of Roma communities is greater than that of the rest of the population (36.4% of the Spanish Roma population, Roma population 37.9% 33.5% Bulgarian and Romanian Roma population, compared to a 20.9% of the rest of the Spanish population⁵⁵). One of the main difficulties Roma faced when looking for work, are the stereotypes and prejudices employers have⁵⁶. The report on Roma Discrimination, 2012 conducted by FSJ⁵⁷, describes many cases of breaking job contracts when the employer or the company finds out the worker's ethnicity. Besides, it reports cases in which discrimination entails not hiring a person to cover a job for which the person is appropriately qualified.

In addition, insecurity of work strongly affects this population which often accept low-skilled jobs (in greater proportion Roma in Eastern Europe than Spanish Roma), partial days, seasonal jobs and self-employment.

4. Possibles recourses to be taken⁵⁸

In case of violation of the rights of the worker, the worker may complain to the Work Inspectorate (administrative claim) or to the courts (judicial complaint).

There are different types of legal proceedings for the protection of workers:

-If it is a violation of rights, it can be filed at the ordinary courts of social conciliation, after a previous attempt of conciliation at the corresponding autonomous Conciliation Service.

-However, in the most serious cases of labor exploitation and similar behavior, the worker could attend criminal proceedings to require the condemnation of the employer or any person responsible for such exploitation.

Where to turn for support: In addition to labor unions in Spain, there are other NGOs with specific services to support allegations about discrimination and racism. Affected individuals may go to organizations that work specifically the Roma situation (FSG, Romani Union, etc.) or to other organizations involved in the fight against racism and discrimination (APDHA, SOS Racism, CEAIN...).

Usually, the probability of success of these complaints is very low, due to difficulties to provide evidence to prove reported facts.

Procedure for denounce:

⁵⁴ According to the report of Social Inclusion Policies and Roma in Spain made in 2012 by FSJ. Ed Soros Foundation Romania. Bucharest.

⁵⁵ Data from the report about Spanish Roma and Eastern Europe: Employment and Social Inclusion 2011, Fundación Secretariado Gitano, Madrid. 2012.

⁵⁶ Data from the report about Spanish Roma and Eastern Europe: Employment and Social Inclusion 2011, Fundación Secretariado Gitano, Madrid. 2012.

⁵⁷ Annual Report 2012 Discrimination and the Roma Community, Fundación Secretariado Gitano Madrid. 2012.

⁵⁸ Guide of Employment discrimination . Spanish Commission for Refugee Aid. 2007. Madrid. http://www.informateyactua.org/Guia_CEAR.pdf

The general procedure for denounce discriminations or violation of rights caused by administrations, individuals or private companies to roma people, will be accessible to the general legal resources relating to racial discrimination referred to in the file 9.

CZECH REPUBLIC

1. The legislations applying the right to access employment

On the territory of the Czech Republic, the right to access employment is guaranteed by the Constitution of the Czech Republic⁵⁹, the Charter of Fundamental Rights and Freedoms⁶⁰, the legal order of the state and the obligations resulting from international conventions ratified by the Czech Republic (e.g. the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights or the European Social Charter).

On the constitutional level, the right to access employment is regulated in the Charter of Fundamental Rights and namely in the Article 26.

The provisions of the Article 26 regarding the right to access education are as follows:

- (1) Everybody has the right to the free choice of her profession and the training for that profession, as well as the right to engage in enterprise and pursue other economic activity.*
- (2) Conditions and limitations may be set by law upon the right to engage in certain professions or activities.*
- (3) Everybody has the right to acquire the means of her livelihood by work. The State shall provide an adequate level of material security to those citizens who are unable, through no fault of their own, to exercise this right; conditions shall be provided for by law.*
- (4) Different rules for aliens may be provided for by law.*

Although this freedom can be demanded directly and no other laws implementing the Charter provisions are needed to enforce it, as results from the provision of the Article 26 mentioned above, the right to access employment is subject to limitation and conditions and aliens are not guaranteed the same conditions.

The right to access employment is furthermore regulated by the Act No. 262/2006 Coll., the Labour Code, as amended (the Labour Code)⁶¹ and Act No. 435/2004 Coll., the Employment Act, as amended (the Employment Act)⁶². Although the Labour Code itself does not include the provisions guaranteeing the right to access employment, it protects the stability of labour relations that had been already established.

According to the Employment Act, the right to employment shall indicate the right of an individual who is willing and able to work and who is effectively seeking an employment, to consult the

⁵⁹ The Constitution of the Czech Republic, The Constitutional Court of the Czech Republic, available at http://www.concourt.cz/clanek/czech_constitution, accessed on March 10, 2013

⁶⁰ The Charter of Fundamental Rights and Freedoms, The Constitutional Court of the Czech Republic, available at http://www.concourt.cz/clanek/czech_charter, accessed on March 10, 2013

⁶¹ The Labour Code, Ministry of the Interior of the Czech Republic, available at www.mvcr.cz/soubor/uz-326-k-1-5-2011.aspx, accessed on March 16, 2013, accessed on April 9, v

⁶² Basic information on the Employment Act can be accessed at Ministry of the labour and social affairs of the Czech Republic, section The Employment, available at <http://www.mpsv.cz/en/1604#nea>, accessed on March 16, 2013

competent authority (i.e. an Employment Office) that shall secure a suitable job, retraining programme or other related services for such citizen. The Employment Act also bans all forms of discrimination regarding access to employment (i.e. discrimination on grounds of sex, sexual orientation, racial or ethnic origin, nationality, citizenship, social background, gender, language, health status, age, religion or belief, property, marital or family status, family responsibilities, political or other opinion, membership and activity in political parties or political movements, trade unions or employers' organizations).

As for the transitional measures that a state can impose on Romanian and Bulgarian citizens, the Czech Republic did not use these provisions concerning the right to access employment. In general, the Government of the Czech Republic does not support this kind of provisions and promotes cancellation of transitional regimes. However, the government of the Czech Republic in its resolution from January 2004 decided not to give up the possibility of using these provisions according actual situation.⁶³

Concerning the provisions of the EU, following legal instruments securing the right to access employment and preventing discrimination has been implemented; the Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions and Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

2. The implementation of the law

In the Czech Republic, the citizen requiring the assistance when looking for the job has to address the labour office at the place of his/her residence. The registration into the register of job seeker takes place only after the person submits the official form and fulfils the required conditions. The job seeker can be only a natural person that is not in any kind of labour-law relation, self-employed person, person continuously preparing for future profession, etc. The applicants in need of increased care (e.g. due to age, state of health, low qualifications) are provided with the individual action plan that aims to improve the position of the job seeker on the labour market. The individual action plan is a document prepared by the regional branch of the labour office in coordination with the jobs seeker. This plan shall always be prepared by labour office if the job seeker is continuously kept in the register of jobs seekers for more than 5 months.

The Labour Office of the Czech Republic is realizing activity policy programs⁶⁴ concerning employment aimed at all groups of disadvantaged job applicants, regardless of their ethnicity. For this purpose, the vulnerable group of Roma is treated by the Act on Employment (Section 33) that deals with e.g. handicapped persons, pregnant women, persons over 50 years of age, persons in the register of job seekers for more than 5 months, persons temporarily in critical living conditions, etc. The Roma applicants included in this section are provided with increased care from the part of the Labour Office staff.

There are implemented several measures with the aim of improvement of the situation of Roma on the labour market. As part of its active employment policy, the Ministry of Labour and Social Affairs implements programmes with the objective of providing job applicants with long-term or

⁶³ Transitional Measures on Free Movement of Employees, 2010, Ministry of Labour and Social Affairs, available at <http://www.mpsv.cz/cs/1282>, accessed on March 17, 2013

⁶⁴ Examples of programs or measures: Institute of public service; Prevention of indebtedness; Social business (supporting of entrepreneurship in socially excluded localities); Prevention of illegal work; Creation of local employment nets/programs in socially excluded localities. More information about these programs can be found at the website of Agency for Social Inclusion, part Employment - <http://www.socialni-zaclenovani.cz/zamestnanost>

temporary engagement on labour market. This particularly concerns job applicants with job placement difficulties – among others, from the Roma minority.

For young people (usually after 15 years of age) they, and also several NGO's, organise employment services – special courses⁶⁵. Roma youth, however, have relatively limited motivation, often also as a result of misgivings and lack of interest of the part of their parents. Therefore, only a small percentage of Roma job applicants finish the aforementioned courses. Also other state measures fail to have any impact, as it is clear that this set of activities lack the ability to address and motivate members of the Roma communities in specific ways that would make the measures more practical and effective. The social support system with relatively high financial benefits also plays a demotivating part.⁶⁶

As for the concrete measures, the Roma are in most cases provided with the individual action plans as they belong to the group of job seekers for more than 5 months. According to actual surveys the Roma participation in the frame of public services⁶⁷ has rising trend while their participation in requalification courses is at the second place. Besides the classic community service, the Roma applicants can be included in the so-called Regional individual projects financed by the European Social Fund that are realized by the regional branches of the Labour Office of the Czech Republic. The Roma thus can be provided with assistance in increasing their motivation, qualification and in looking for the employment.⁶⁸

3. Discriminations made to the Roma and violations of the law

The transformation to a market economy after 1989 left the Roma population completely unprepared for the developing situation, with a comparably much worse starting position and a lack of interest on the part of the majority population in dealing with the implications ensuing from this new situation for the Roma community.⁶⁹

Participation of Roma on the labour market is thus incomparably lower compared to majority population. Although the EU member states, including the Czech Republic, committed themselves to apply measures aimed at increasing their qualifications or employability, the Roma minority continues to be one of the most poverty endangered groups in the society. High unemployment negatively influences the picture of Roma in the rest of society that usually does not realize the system barriers in access to employment and discrimination on labour market.

The Roma unemployment has complex character when the Roma applicants are not able to fulfil the requirements of the proposed position as their education and experiences are usually unsatisfactory. Also, the segregation in education with territorial segregation are other crucial factors impeding in the consequence their access to employment. According to research studies,

⁶⁵ Examples: Project „Personality“ (Osobnost) aimed at improving of different skills to have better job opportunities, information available at <http://www.romea.cz/cz/zpravodajstvi/domaci/iq-roma-servis-vzdelavani-mladych-romu-v-ramci-projektu-osobnost-a-zivotni-smet>, Project „The Right Chance“ (Správná šance), working with young people coming from institutional care, information available at <http://www.esfcr.cz/projekty/spravna-sance-zacleneni-mladeze-ohrozene-socialnim>, Project „3B Social Company“ (3B sociální firma) aiming at providing job opportunities to vulnerable people like youth with Roma background, information available at <http://www.esfcr.cz/projekty/3b-socialni-firma>

⁶⁶ Education and employment of Roma people, p. 25, 2008, Frišenská, Hana; Dluhošová, Helena; Sulitka, Andrej; Slovo 21

⁶⁷ Public service (not the same as community service that is paid) represents different kinds of work provided for the municipality, concerning e.g. the environment, culture, or cleanliness of public space. Public service is performed by persons in material need and it is not paid.

⁶⁸ Report on the Roma Minority Situation in 2011, p. 69-70, 2012, The Council of the Government of the Czech Republic for Roma Community Affairs

⁶⁹ Education and employment of Roma people, p. 24, 2008, Frišenská, Hana; Dluhošová, Helena; Sulitka, Andrej; Slovo 21

the unemployment in the segregated areas ranges between 70% and 100 % that is very critical. Those people often have no other possibility than to accept illegal forms of work.⁷⁰

The position of the Roma on the labour market is also hampered by instances of discrimination – whether concealed or open. The discrimination can lean on stereotypical assumptions about the different approaches to work and the social behaviour of Roma people as a whole. Also, employers tend to make use of the disadvantaged position of the Roma and take them on as tradesmen rather than employing them on the basis of a normal job contract. Moreover, instead of employing Roma, employers give preference to immigrant workers.⁷¹

As for the discrimination itself, this can stem from xenophobic reasons but most often there exist “individual rational” reasons for such behaviour of employer. For instance, the employer pay lower wage to Roma employee than to non-Roma just because the first one is in worse bargaining position. By this behaviour, the employer is maximizing its profit by using discriminatory practices. Other employers are refusing Roma because they are not able to recognize a good worker, and according the statistics the ethnicity is in this sense perceived as negative signal because the Roma are in general seen as not hard-working employees. The statistical discrimination is thus a self-fulfilling prophecy, as the awaited discrimination decreases motivation of Roma and the sceptic view of employers can in consequence become true.⁷²

The overall discrimination of Roma on the labour market is individually rational from the perspective of the employer, but from the long-term perspective it harms the whole society. Although, since the individual motivations to discrimination are strong and the ways how to prove discrimination are weak, this form of discrimination can disappear only after the statistical reasons for it disappear. It is necessary that the state provide measures such as financial incentives motivating to gain better education. As far as the situation of Roma is complex, the overall improvement of legal and economic situation with specific pro-Roma measures, especially in the housing and education, can help the Roma to integrate and participate on the labour market.⁷³

4. Possible recourses to be taken

The Employment Act forbids discrimination in access to employment and also determines what information the employer can demand from the prospective employee. If, for instance, the human resources officer says to Roma job seeker that the offered position is already occupied and afterwards offers it to another person, this practise violates the abovementioned provision. The employer cannot demand information concerning race or family status, if there are no special reasons to do that. Likewise, it is forbidden to demand extract from the Penal register record or to ask if the person was or was not prosecuted. The exception could be the case when the position itself requires person of irreproachable character.

The Employment Act forbids also discriminatory advertising but on the other side, there exist reasons that objectively limit access to employment and according to them it is possible that only a person with certain characteristics will be chosen. In this case, we speak about unequal but justifiable conduct and not discrimination.

⁷⁰ Report on the Roma Minority Situation in 2011, p. 65-68, 2012, The Council of the Government of the Czech Republic for Roma Community Affairs

⁷¹ Education and employment of Roma people, p. 24-25, 2008, Frištenská, Hana; Dluhošová, Helena; Sulitka, Andrej; Slovo 21

⁷² Romové na trhu práce (Roma on the labour market), p. 14-15, 2005, Hůlová, Kateřina; Steiner Jakub, available at <http://www.kellogg.northwestern.edu/faculty/steiner/htm/laborczech.pdf>, accessed on April 14, 2013

⁷³ Ibid., p. 15-16

If a person think that the employer refused his/her job application on the basis of discriminatory reason, he/she can at first refer to the employer and ask for the explanation, ideally in written form. If the communication is oral, the person can record it and later use such material as a proof.

As for legal recourses, the person can address with the written complaint to the labour inspectorate that is in charge of employment relations control. The inspectorate shall inform the complainant about the method and results of such control. The complainant can but does not have to be the exact person that was discriminated. The inspectorate has to provide assistance if a person needs information concerning labour relations, and this assistance is free of charge. Further, the inspectorate can impose a fine if the employer violated the right on equal treatment.

The person can also bring the case before the court where the victims of discrimination have the right to demand that discrimination be stopped, to demand elimination of the consequences and that redress and satisfaction be given. Although, with regard to the complexity of discrimination causes, it is more appropriate to turn to labour inspectorate and/or Public Defender of Rights at first, as their comments or findings can be very important source for prospective judicial proceeding.

File 6 - Right to access health care services

Article 35

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under

THE EUROPEAN LEVEL

The legislations applying this right

The European Union recognises the right to access to health care for preventive cares and medical treatments. However member states are in charge of their systems and decide the conditions of their functioning. Nevertheless, the EU considers that everyone should be highly protected in matter of health and member states should take this into account¹. In addition, health care services should not discriminate anyone and their access should be equal for all². The access of children to cares, including for rehabilitation purposes, pre-natal and post-natal cares for mother, has been recognised through the international level by member states³. Through this international level still, member states have recognised the right for everyone to be on the top of his/her physical and mental health. Consequently, they must ensure to everyone, in case of illness, medical services and cares⁴.

UNITED KINGDOM

1. The National Legislative texts which apply the right to access health care services:

Healthcare in England is a National Health Service and free to all residents living in the UK. Although health is a devolved matter and has different provisions elsewhere in the UK. Under the National Health Service it provides primary care, in patient care and long-term healthcare and ophthalmology and dentistry etc. NHS across UK is divided into primary and secondary care and Trusts are given responsibilities to deliver health care. Similarly in Welsh health care system is similar to that of Scotland and rest of the UK, the health care is free and prescriptions are free

¹ Charter of Fundamental Rights of the European Union Article 35 « *Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all the Union's policies and activities*»

² Directive 2000/43/EC Article 3 paragraph 1 : « *Within the limits of the powers conferred upon the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to: (e) (...) healthcare; (h) access to and supply of goods and services which are available to the public(...).* »

³ Convention on the rights of the child, article 24 « *1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services. 2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: (a) To diminish infant and child mortality; (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care; (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution; (d) To ensure appropriate pre-natal and post-natal health care for mothers; (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents; (f) To develop preventive health care, guidance for parents and family planning education and services.* »

⁴ International Covenant on economic, social and cultural rights, article 12: « *1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.* »

but it is not free for refused asylum seekers in Wales and Ireland although this was rectified in 2009 and were given free medical treatment when needed. ⁵(see link for full details)

Since 1948 health services had been based on a charity and voluntary sector. Private hospitals were fee paying or insurance based. In 1948 NHS was formed which is the core of state hospitals. Everyone has the right of access under the article 35 of the Fundamental Rights charter to preventive health care and the right to medical treatment regardless of their background. NHS provides service, to all irrespective of age, gender, disability, race, sexual orientation, religion or belief, and respecting their human rights. UK has one policy and legislation which applies to both EU citizens from outside the UK Who have the same rights to free NHS (National Health Service) medical treatment as UK residents when they take up residence in the UK, either as temporary migrant workers or as Permanent Residents of the UK. Any EU citizen moving to Britain must register with General Practitioner (GP) in order to access adequate medical care in the UK. Health care in England provides National Health Service to all permanent residents of the UK and is free. Health care is a devolved matter and devolved countries Scotland, Wales and Ireland can set up their own benchmarks. UK has its own National Health Service law in relation to access to health records Act 1990 and other relevant acts (see link in foot notes)⁶

“The EU directives states that no member state is obliged to fund treatment in another country if that same treatment is available at home within a medically justifiable period, or if that treatment is not normally funded by the local health service of the home state (except in exceptional circumstances).”⁸. The new Directive covers planned healthcare in EU member states and the directives do not effect the emergency treatment as it is also covered by the EU healthcare Card (EHIC). **“The new EU Directive on the application of patients’ rights in cross border healthcare does not, in itself, give you any new rights. However, it does formalise the way in which you can take advantage of those rights, incorporating the case law established in the European Court of Justice, to make the system more transparent and easier to access.”**

The Dublin Declaration on partnership to fight HIV/AIDS in Europe and Central Asia, UK is signatory to this in 2004 and in 2007 it also reflects in legal policies which ensure migrants are able to access healthcare, including HIV prevention, treatment and care services. There are unclear consistencies in the migrant’s access to care in the legal framework.⁹ The UK government under these declarations and directives showed limited interest to exceed its obligations to provide health care to trafficked people which still seen as an issue. However the UK is a signatory to a number of international EU legal instruments which doesn’t necessarily relate to trafficking only but general health rights. The International Convention on Economic, Social, and Cultural Rights (ICESCR), the European Social Charter (ESC) and the Charter of Fundamental Rights of the European Union (“Charter of Fundamental Rights”), which underlines the general health rights of all persons regardless of residence status.

⁵<http://www.lawcentreni.org/policy/policy-briefings/865%20Refused%20asylum%20seekers%20and%20access%20to%20free%20healthcare>

⁶ <http://www.sochealth.co.uk/health-law/>

⁷ <http://www.treatmentabroad.com/eu/what-are-my-rights/overview-of-the-directive-on-cross-border-healthcare/>

⁸ http://www.scan-health.co.uk/wp-content/uploads/2011/08/EU-Treatment-Guide_270611.pdf

⁹ The EU Ministerial Conference on HIV held in Ireland in early 2004 resulted in the Dublin Declaration on Partnership to Fight HIV/AIDS in Europe and Central Asia 3, reaffirmed in the Vilnius Declaration later in 2004 and the Bremen Declaration in 2007. The 2008 WHO Europe and UNAIDS progress report on the Dublin Declaration commitments identified migrants as particularly vulnerable to HIV4.

¹⁰ A conference on HIV and migration in June 2007 produced an important report: The right to HIV/AIDS prevention, treatment, care and support for migrants and ethnic minorities in Europe: The community perspective

Table 1: International and regional legal instruments governing the health rights of trafficked adults

| Category | Instrument Name |
|-------------------|--|
| International | <ul style="list-style-type: none"> • International Convention on Economic, Social and Cultural Rights (ICESCR) • Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) • International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (the UN Migrant Workers Convention) • United Nations Optional Protocol on the Prevention, Suppression and Punishment of Trafficking in Persons, Especially Women and Children (the Palermo Protocol) |
| Council of Europe | <ul style="list-style-type: none"> • European Social Charter • Council of Europe Convention on Action Against Trafficking in Human Beings (ECAT) |
| European Union | <ul style="list-style-type: none"> • Charter of Fundamental Rights of the European Union • Directive 2004/81/EC on the Residence Permit Issued to Third Country Nationals Who Are Victims of Trafficking in Human Beings, or Who Have Been the Subject of an Action to Facilitate Illegal Immigration, Who Cooperate With the Competent Authorities. • Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and Protecting its Victims |

The UK has also signed and ratified two international legal instruments which are specific to trafficking: the Palermo Protocol and ECAT. These instruments each recognize the health consequences of trafficking and make limited requirements for States to provide health care to trafficked people.¹⁰

2. The Implementation of the Law in the UK

i) Once the EU migrants have established address and they must get registered with their local doctor. They will need proof of their address and a utility bill or some form of a proof that they reside at that said address. It is not necessary to have proof of EU citizenship but you will need your passport so that they can apply for a medical card, you don't need to show your card to access medical care. If English is not your language and have difficulty speaking it then you have the right to ask for an interpreter. Everyone has the right to free medical. Prescriptions are free in Wales since 2007 but charges still apply in England and Prescriptions are also free in Scotland, although many EU migrants are exempt from paying prescription charges, as well as children, full time students, pregnant women, disabled patients, elderly and low income patients are all exempt from it and can get free contraception,

ii) However the health system in Ireland is different from rest of the UK as many Roma have no access to health care. Roma community often lives in extended families, socially isolated, where overcrowding is a serious issue. Roma families are known to live in extended families which often present a higher incidence of genetic diseases and disorders than expected, these are often contagious diseases such as tuberculosis, hepatitis, scabies and pediculosis can be found in some Roma communities in the UK. Roma have lower life expectancy compared to the general population. Although they faced a lot of discrimination from the health systems in their own countries which violated their human rights in access to health, which often resulted in coercive sterilisation, thus this is not the case in the UK. Those who have given birth to children

¹⁰ <http://www.hhrjournal.org/index.php/hhr/article/view/432/708>

in the UK have had similar rights to all vaccination and health care for their infants, although the vaccination rates are low among children from the Roma and Bulgarian communities.

iii) People who are Trafficked to the UK do not have access to health care entitlements, they need to go through the UK National Referral system from the Border Agencies or from police or NGO's, UK at present doesn't have any systems in place for trafficked people to offer them assessment and forensic examination to help them take cases against criminals. There is no free training given within the health care sector to entitlement of free medical care to trafficked people; which is another reason why such systems are not in place by the NHS and other health authorities. However, the National Referral system started in 2009 and UK was to ensure referrals to health service were taking place; unfortunately the referral procedures were costly and required a lot more administrative support than for any other vulnerable migrant. The transposition of Directive 2011/36 of ¹¹ EU parliament and of the council were applied in the UK and elsewhere in Europe which provided an opportunity to address these issues over the next two years.

iv) All patients are entitled to quality of care under the NHS from an experienced staff, patients under their rights should be treated with respect and dignity, patients have the right to accept or refuse treatment and should be given information regarding their treatment and ensured about their privacy and confidentiality and to ensure the information is kept safe. The NHS is obliged to inform its patients of local health care services that are available to them in their areas. The residents also have the right to be involved in their own healthcare and in the NHS. All treatments on NHS are free in Hospitals both for EU migrants and citizens of the UK. UK has private sector medical care where one has to pay fee or take out an insurance, often private sectors can be contracted by the NHS and some are non profit making trusts. The Mental Health care services under the NHS is available to everyone living in the UK; in addition there are NGO's who also provide mental health services to migrants and asylum seekers who faced trauma in their country before coming to the UK through advocacy and counselling work. In addition, the local clinics for women where they can access contraception and additional support can also be accessed from various NGO organisations who work with migrants with Aids and other illnesses who also provide contraception e.g. to undocumented migrants without asking too many questions about their personal circumstances.

3. The Common Abuse/Discrimination occurring and faced by the Roma in the UK

UK has established legal framework to combat discrimination and promote equality, which protects all individuals, including Roma, Gypsies and Travellers from racial and other forms of discrimination, due to the transposition of the EU Race Directive (2000/43/EC) which came into domestic law in 2003. Although there are various acts and legislations in the UK yet institutional discrimination prevails throughout the sectors and institutions, e.g. in Ireland there are "allegations of Gypsy-Travellers being given double-doses of vaccinations on the assumption that they do not take care of their health and are ¹²therefore unlikely to have been vaccinated". One of the reasons why the discrimination faced by the Roma in the UK is due to lack of monitoring of data collection from local authorities, and from the census and other organisations who provide support to the Roma community. The following strategies need to be developed with various stakeholders in order to combat discrimination. Some of the key points include:

- A strategic action plan should be developed
- Adequacy of accommodation is essential
- All aspects of mother and child services merit top priority
- Men's health issues need to be addressed specifically

¹¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>

¹² http://fra.europa.eu/sites/default/files/fra_uploads/180-ROMA-HC-EN.pdf

- There is a concerted need to address cause-specific issues for respiratory and cardiovascular disease.

As the Roma community is legally recognized as an ethnic group. The Irish health authorities will need to consider the following which were highlighted in the summary from DHSSPS (and DOHC) which will need to be considered and taken forward appropriately in conjunction with Health and Social Care bodies and other Government Departments.¹³

4. Possible recourses to be taken

One of the recourses taken by the UK government in relation to mental health, the Mental Health Act 2013 which removes three legal barriers that contribute to a stigmatised view of mental health problems which states that mental health discrimination will not be tolerated.

“The three provisions in the Act:

- repeal section 141 of the Mental Health Act 1983, under which a Member of the House of Commons, Scottish Parliament, Welsh Assembly or Northern Ireland Assembly automatically loses their seat if they are sectioned under the Mental Health Act for more than six months
- amend the Juries Act 1974 to remove the blanket ban on “mentally disordered persons” undertaking jury service
- amend the Companies (Model Articles) Regulations 2008 which states that a person might cease to be a director of a public or private company “by reason of their mental health”

These three pieces of legislation fed into the discriminatory and outdated idea that people with mental health problems can never recover, and cannot be trusted to participate in social, political or economic life.¹⁴ In addition, enhance the health of Roma and Gypsy Travellers and to develop hand held patient records in recognition of their lifestyles and the difficulties they experience in accessing health services. The single equality act 2010 will apply to the current framework of anti-discrimination law against race, gender, health, education, and employment and also the additional characteristics which provides extended legislations on the grounds of discrimination which is a remedy taken to combat discrimination and a way forward both in health and other areas of life where discrimination prevails and the additional characteristics are added as a protection from discrimination in the single equality act 2010.

FRANCE

1. The national legislative texts applying the right to access health care services:

- **Public Health Code.** Code de la santé publique –art L1110¹⁵

¹³ <http://www.dhsspsni.gov.uk/index/hss/equality/eq-travellers/all-ireland-traveller-health-study.htm>

¹⁴ http://www.mind.org.uk/policy/equality_and_human_rights/mental_health_discrimination_act_2013#propose

¹⁵ Code pénal, article 225-1 « Discrimination is any distinction made between individuals because of their origin, sex, marital status, pregnancy, physical appearance, their name, their state of health, disability, genetic characteristics, their morals, their sexual orientation or gender identity, age, political opinions, union activities, membership or non-membership, true or supposed, ethnicity, nation, race or religion http://www.legifrance.gouv.fr/affichCode.do;jsessionid=BF1ACFF6362DA8057A7FEEA17B329E69.tpdjo04v_3?idSectionTA=LEGISCTA000006170991&cidTexte=LEGITEXT000006072665&dateTexte=20130421

“The fundamental right to health protection must be implemented by all available means for the benefit of any person”.

Health networks, including professionals, health insurance organisations or other such institutions and their users, contribute together with the health authorities to develop and provide equal access to and for each and every person needing assistance depending on their state and condition, thus continuing and ensuring the best quality of health and safety care.

- On possible discriminations
 - o Code de la santé publique Article L1110-3 No one should be discriminated against access to prevention and health care »¹⁶

Health care providers cannot refuse care to anybody on the grounds covered by the law on discrimination¹⁷ or because one receives aid such as State medical aid (AME).

- For rules on doctor/patient confidentiality and conditions of application¹⁸
« Anyone taken into care by a professional institution, a health network or any other organization involved in the prevention and health care has the right to respect his private life and secrecy of information about it.¹⁹

In case of serious diagnosis or prognosis, medical confidentiality does not preclude notifying the family. The relatives of the sick person or the person of trust defined in the [Article L. 1111-6](#)²⁰ receive the necessary information to provide them with direct support, unless otherwise opposed / refused by them.

Only a doctor is allowed to disclose the cause and to issue this information under his responsibility”

2. The implementation of this right

Every major French town has a local hospital with an emergency ward capable of receiving anyone. Payment will occur later. In the case of an emergency, a special fund can cover the expenses if the emergency is deemed necessary and certified by the doctors. These conditions apply to all children under 18, to women in labour and delivery, the monitoring of pregnant women and to babies up to six months.

The French health care system is one [universal health care](#) system largely financed by government [national health insurance](#). In its 2000 assessment of world health care systems, the [World Health Organization](#) found that France provided the "close to best overall health care" in the world.

In 2010 France spent 11.2% of its GDP²¹ on health care, a figure much higher than the average spent by countries in Europe. Approximately 77% of health expenditures are covered by government-funded agencies.

¹⁶ <http://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000026268225&cidTexte=LEGITEXT000006072665>

¹⁷ <http://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000006417831&cidTexte=LEGITEXT000006070719>

¹⁸ Code de la santé publique - Article L1110-4 http://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=BF1ACFF6362DA8057A7FEEA17B329E69.tpdjo04v_3?idArticle=LEGIARTI000024462526&cidTexte=LEGITEXT000006072665&dateTexte=20130421

¹⁹ http://www.legifrance.gouv.fr/affichCode.do;jsessionid=C7014C575C857DC2ED413CBC10B87B7D.tpdjo06v_2?idSectionTA=LEGISCTA000006170991&cidTexte=LEGITEXT000006072665&dateTexte=20130421

²⁰ http://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=BF1ACFF6362DA8057A7FEEA17B329E69.tpdjo04v_3?idArticle=LEGIARTI000006685773&cidTexte=LEGITEXT000006072665&dateTexte=20130421

²¹ GDP : Gross Domestic Product : PIB (Produit intérieur brut)

Most general practitioners (G.P.) have a private practice but earn their income from the public insurance funds. The French National Health Service generally refunds patients up to 70% of most health care costs, and 100% in the case of costly or long-term ailments. Extra coverage may be bought from private insurers, most of them non-profit, [mutual insurers](#).

Up to the year 2000, coverage was restricted to those who contributed to social security (generally, workers or retirees), excluding poorer categories of the population; the government put into place the [universal health coverage](#) (CMU²²) and extended the coverage to all those legally resident in France. Only about 3.7% of hospital treatment costs are refunded through private insurance, but a much higher share of the cost of spectacles and prostheses (21.9%), drugs (18.6%) and dental care (35.9%) is paid back. There are public hospitals, non-profit independent hospitals (which are linked to the state's public system), as well as private for-profit hospitals.

The State medical aid (AME)²³ takes charge 100% of medical prescriptions and hospitalization for foreigners in irregular or unstable situations. The State medical aid allows illegal aliens to have their medical prescriptions and hospitalization taken care of 100% and without advancing money.

Foreigners who may qualify must have lived in France for less than three months, must be « irregulars » and have an income below a definite threshold.

- The administrative procedure and the requirements

To benefit from the AME or CMU a form has to be obtained from the health and social centres or from the hospitals, be completed with the requested documents and returned to a social centre or the social service of the hospital.

The allocation of AME is valid for a year and is renewable. The application for the renewal must be made two months before the end of the previous period.

One of the requested documents for AME is a permanent address. CCAS (Community Centre for Social Action) or some associations can provide a home address²⁴ to help foreigners obtain the AME.

CMU and AME are valid for any member of the family registered on the parents' form.

The permanent access to health care (PASS)²⁵ functions within the medico-social sector, which should facilitate the access of poor people not only to the hospital system but also to institutional networks or associations of home care and social support.

Within the framework of the permanent access to health care (PASS), and in accordance with both public and private health facilities, the regional programme for the access to prevention and necessary health (PRAPS)¹¹ was set up. This is adapted for people in precarious situations to facilitate their access to the health system, and to accompany them with any necessary dealings regarding their rights.

The concluded agreement engages the State to provide, if necessary and free of charge, the taking care of outpatients, diagnosis, therapeutic acts and treatments.¹²

²² CMU : Couverture médicale universelle- <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000198392>

²³ AME : Aide médicale d'Etat, <http://vosdroits.service-public.fr/F3079.xhtml>

²⁴<http://vosdroits.service-public.fr/F17317.xhtml>

²⁵ Pass : Permanence d'accès aux soins de santé : <http://www.sante.gouv.fr/les-permanences-d-acces-aux-soins-de-sante-pass.html>

For children under six and pregnant women, PMI centres²⁶ (Protection Maternelle et Infantile) are free of charge. They provide medical and social support and vaccinations. Some of them have also a family planning service. There is a PMI in every town and the list can be obtained at the town hall.

Some diseases, such as tuberculosis, HIV, contagious diseases, are treated in hospitals free of charge.

3. The common abuses/ discriminations:

The health status of Travellers is similar to any population in precarious situations. Determining factors of deteriorated health²⁷ are delaying seeking medical care, neglected preventive approaches, living conditions and an unhealthy way of life, which include a degraded habitat and weak environment, dangerous occupational activities (metal recovery, pruning...). This is further intensified by discriminations based on origin, special legal status and substandard housing. There is very little early disease detection. Travellers do not meet or consult school doctors or work doctors²⁸

For the foreign Roma as for other foreign populations and for the poor, access to health care is not simple because of various problems.

Except within public structures and institutions, any medical act is most of the time paid directly to the doctor after consultation and one must wait before getting the money back from the national security system. Poor people cannot afford the initial medical fees, and cannot wait to be refunded at a later date either.

Some private doctors prefer not to have Roma in their waiting-room among other patients, for fear of losing their patients.

Most Romanian and Bulgarian Roma don't speak French and can't communicate with the doctors or social workers. Very often they are not welcomed because they come as a group, and don't always respect the time of the appointment given to them.

As they are very often forced by the police to leave their camping site and move on, the follow up and eventual monitoring of treatments is stopped prematurely.

Without the help of volunteers or associations, access to AME or any public structure is difficult because of all the administrative prerequisites such as giving a home address and providing family certificates....

4. The possible recourses to make these rights respected

- Anyone who believes to be a victim of an illegitimate refusal to be treated can refer to the director of the local health insurance body, or the professional Board. It will be considered as a complaint²⁹.
- Recourse to the Human Rights defender³⁰ (see file 1, 2.3). She/He is in charge of fighting against discrimination, and also defending the rights of public service users. He can use mediation, carry out a transaction, or even take legal action.
- In the event of serious misconduct, the victim could appeal to the labour courts³¹

²⁶ Mother and child Center

²⁷ Investigation in the department of Deux-Sèvres : <http://fr.calameo.com/read/000960180c8627661c1e1>

²⁸ Magazine "Santé de l'homme" N°390 : <http://www.inpes.sante.fr/slh/articles/390/07.htm>

²⁹ <http://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000026268225&cidTexte=LEGITEXT000006072665>

³⁰ Défenseur des Droits DDD <http://www.defenseurdesdroits.fr/>

³¹ <http://vosdroits.service-public.fr/F10342.xhtml>

SPAIN

1. The legislations applying this right:

The Spanish Constitution³² recognizes the right to health protection, being public the provision of the service.

All Spaniards, in addition to foreigners with legal residence within the national borders, are entitled to health protection and attention³³.

The national health system establishes a common portfolio of services for the entire Spanish territory³⁴ and leaves Spanish autonomous communities the complementary services portfolio³⁵.

The Official Spanish Gazette (BOE) published on 24 April 2012 the Royal Decree-Law 16/2012, of 20 April, of urgent measures to guarantee the sustainability of the National Healthcare System, it includes modifications to the previous situation of the service which cut access rights to irregular immigrants to public health services. Exception: Some regions have declared themselves disobedience regarding the cut on care to irregular immigrants and continue offering complete attention to these people³⁶.

Only those citizens with the status of insured have the right to healthcare assistance³⁷.

The requirements to obtain the insured status are:

- To be to be an employee or a self-employed person and to pay contributions.
- To be pensioners of the social security system.
- To be recipient of any social security benefit (including unemployment and jobseekers allowances).
- To have exhausted unemployment benefits and to be registered in the job office as a job seeker.
- Individuals with Spanish nationality or of other countries of the UE, European Economic Space or Switzerland residing in Spain.
- Foreigners with residence permit and NIE (Foreign Citizens Identification Number) into force, as long as they do not surpass the income limit determined by regulation. (The income limit to be determined. Nevertheless, in the project that will regulate insurance, sets the amount of € 100,000).
- Spouse or person with an equivalent sentimental relationship (accredited by official inscription in the official registration of partnerships).

³² Art. 43 of Spanish Constitution of 1978. Published in BOE no. 311 29 December, 1978.

³³ in line with Article 1.2 of the General Law of Health 14/1986, of 25 April.

³⁴ Available in: <http://www.msc.es/profesionales/prestacionesSanitarias/CarteraDeServicios/ContenidoCS/Home.htm>

³⁵ Information relating to each region: http://www.seg-social.es/Internet_1/Pensionistas/Derechos/Asistenciasanitaria/37522#37522

³⁶ Consulted on 23/04/2013: <http://www.elmundo.es/elmundo/2012/08/30/espana/1346348494.html>

³⁷ The Royal Decree 1192/2012, of 3 August, gives a detailed account of all the possible situations that allow a person who lives within the Spanish territory to access public health assistance financed from public funds through the National Healthcare System.

- Former spouses eligible to receive compensatory aid and descendants and assimilated people under 26 or over 26 with disability equal to or greater than 65%, as long as they live in Spain and are legally dependant on the insured.

Those who do not hold the position of insured, being foreigners without residence permits, will receive health care through the National Health System in the following cases:

- Urgent care, serious illness or accident, from any cause to medical discharge
- During pregnancy, childbirth and postpartum.
- All children under 18 years.

People who cannot be considered as “insured” are only able to access healthcare services if they pay for themselves or subscribe to a “special provision”. This “costs €59.20 / month for those under 65 and €155.40 / month if they are over 65. Furthermore, the services included in this special provision are limited to the “basic package of services”³⁸

Rules on doctor/patient confidentiality and the conditions of application

The right to confidentiality of information is protected in Article 7 of Law 41/2002³⁹: “Everyone has the right to respect the confidentiality of information relating to their health.”

However, the law also regulates the obligation to disclose medical confidentiality in the following situations:

- a) In case of infectious diseases.
- b) In the case of knowledge of the commission of a crime.
- c) When the professional is acknowledged as an expert, witness or accused in court proceedings.

2. The implementation of this right:

The Spanish National Health System includes benefits for public health, primary care, specialized care, emergency care, pharmaceutical services, orthoprosthesis, dietetic products and medical transport.

Benefits are effective through a set of techniques, technologies and procedures structured as follows:

- **Basic care services:** These include prevention, diagnosis, rehabilitation, emergency medical transport taking place in health care and social health centres and which is covered entirely with public funds.
- **Supplemental services:** Includes benefits whose provision is made by outpatient dispensing, such as pharmaceuticals, orthoprosthesis, medical, non-emergency medical transportation, is subject to user contribution.
- **Accessories Services:** Delivery Without benefit nature, they are considered support to improve pathologies. These services are subject to contribution and / or reimbursement by the user.

Application for individual health card: To access the health service benefits is necessary to seek individual health card (TSI).

³⁸ Doctors of the World Report about Access to healthcare in Europe in times of crisis and rising xenophobia. 2012. Edited by MDM Greece.

³⁹ Article 7 Ley 41/2002, of 14 November, on the Autonomy of the Patient and the Rights and Obligations with regard to Information and Clinical Documentation. Published in BOE no. 274, 15 November 2002.

This is necessary to Spanish and foreign citizens regularized⁴⁰: For citizens who meet the requirements of insured, the card will be requested at the office of National Institute of Social Security (INSS) corresponding to the domicile of the person concerned⁴¹.

It will need to bring your ID, passport or alien identification card into force, registration certificate and family book.

For irregular immigrants the situation varies according to the autonomy in which they reside, however, they should go to a non-governmental⁴² organization in the field of immigration due to the usual incidents that happen even when regional governments are declared in default with respect to central government.

In a health centre, hospital or specialty centres:

On admission, the patient's condition is checked.

In case the patient is not insured or beneficiary, the following conditions apply: If the patient requires urgent attention, or finds himself/herself in a special situations due to serious mental illness or to processes that affect public health, the necessary attention will be provided and a payment compromise will be delivered.

Once verified by the health administration that the user does not lack resources, it will issue an invoice.

In any other conditions, the demand will be met and a healthcare invoice will be delivered to the country or origin if exist an agreement with it, or will be paid by the national system if the patient is national beneficiary or ensured.

3. The common discriminations faced by the Roma:

There are several factors that might difficult the access to health care by the national Roma or immigrant Roma population:

The regulatory and administrative barriers, although the Immigration Law⁴³ grants foreigners with the sole registration of residence, the right to health care access, those who do not have social security, must present a certificate of finances to support their lack of economic resources, otherwise they are only entitled to basic health care under the conditions explained before. Besides, the registration required for the normal exercise of this right may also involve other means of exclusion as some municipalities hamper for registering people living in slums, in shacks or controlled or urbanized settlements.

Another factor that condition the access of Roma and other immigrant population to the public health system, is the fear that when going to the official public services their irregular status can be detected and notified to the police. The recent legislation that renders municipalities listing

⁴⁰ http://www.seg-social.es/Internet_1/Masinformacion/TramitesyGestiones/AsistenciaSanitaria/index.htm

⁴¹ To identify the appropriate location of INSS office use the following web link: http://www.seg-social.es/Internet_1/Oficinas/index.htm

⁴² Directory: <http://www.guiaongs.org/directorio/inmigrantes-5-3-15>

⁴³ Organic Law 4/2000 of 11 January on rights and obligations of foreigners in Spain and their social integration. Published in BOE no. 10, 12 January 2000.

accessible to the police, may also favor migrants without residence permits avoidance of registering in the place of residence.

The passive rejection by the system or by health professionals⁴⁴. One of the main discriminations faced by Roma similarly to other immigrant groups, is the passive rejection by the system or by health professionals. Not only they face discrimination due to the administrative reasons outlined above, but also related to their language or culture that lead to attitudes ranging from passive rejection (in the form of not taking responsibility), to xenophobia or racism. This adds up to the lack of professional training in dealing with cultural diversity and attention to rare diseases in our environment and the lack of incentives to their attention. Thus, all of these are factors increase the risk of exclusion of migrants from any public health system.

4. Possible recourses to be taken

In case of violation of the right to health, difficulties and discrimination in the exercise of this, affected persons may be addressed to:

- Citizen's Office⁴⁵; telephone or email service in which users can get information or make a complaint.
- Making a complaint in writing⁴⁶ to the Complaints and Suggestions unit of the Ministry.
- Book of claims from health centers or health districts concerned.
- Through associations working in the health field (APDHA, Doctors of the World, Andalucia Acoge, etc...).

The general procedure for denounce the discriminations or violation of rights caused by administrations, individuals or private companies to roma people, will be accessible to the general legal resources relating to racial discrimination referred to in the file 9.

CZECH REPUBLIC

1. The legislations applying the right to access health care services

On the territory of the Czech Republic, the right to access health care services is guaranteed by the Constitution of the Czech Republic⁴⁷, the Charter of Fundamental Rights and Freedoms⁴⁸, the legal order of the state and the obligations resulting from international conventions ratified by the Czech Republic (e.g. the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights or the European Social Charter).

⁴⁴ As mentioned in the Handbook for the Attention of Immigrants in Andalusia (2007),

⁴⁵ Access in: <http://www.msc.es/oficialInformacion/home.htm>

⁴⁶ Official form; <http://www.msc.es/servCiudadanos/docs/QuejaSugerenciaMSSSI.pdf>

⁴⁷ The Constitution of the Czech Republic, The Constitutional Court of the Czech Republic, available at http://www.concourt.cz/clanek/czech_constitution, accessed on March 10, 2013

⁴⁸ The Charter of Fundamental Rights and Freedoms, The Constitutional Court of the Czech Republic, available at http://www.concourt.cz/clanek/czech_charter, accessed on March 10, 2013

On the constitutional level, the right to access health care services is regulated in the Charter of Fundamental Rights and namely in the Article 31.

The provisions of the Article 31 regarding the right to access health care services are as follows:

„Everyone has the right to the protection of her health. Citizens shall have the right, on the basis of public insurance, to free medical care and to medical aids under conditions provided for by law.“

Although this freedom can be demanded directly and no other laws implementing the Charter provisions are needed to enforce it, the right to free medical care is provided only on condition the individual is a participant of public insurance system. The opportunity to participate in the public insurance system is not limited by the citizenship of Czech Republic.

The right to access health care services is furthermore regulated by the the Health Services Act⁴⁹ and furthermore by the Public Health Insurance Act⁵⁰.

The Health Services Act provides inter alia a regulation of doctor/patient confidentiality. According to the Health Services Act, a patient has a right to privacy regarding the information about his health condition. The patient shall decide, whether the information about his condition may be communicated to other individuals or not. Without the consent of the patient, the medical personnel is entitled to communicate the information about the condition of the patient solely to the persons close to patient⁵¹, and persons that came into contact with the patient and the information about his/hers condition is relevant for their health protection. The patient is entitled to disallow communicating of the information about his/hers health condition to close persons. In that case they are entitled to be provided the information exclusively on condition such information is relevant for their health protection.

Concerning the EU directives, for example the following were implemented into following legal instruments securing the right to access health care services and preventing discrimination has been implemented: Regulation No. 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems and Directive 2011/24/EU of The European Parliament and of The Council of 9 March 2011 on the application of patients' rights in cross-border healthcare (implemented by the Health Services Act).

2. The implementation of the law

The healthcare system in the Czech Republic is based on several principles which are: solidarity (between healthy and ill people, between economically active and economically inactive people), a high degree of self-administration, multisource financing with major share of public health insurance (funded also from direct payments, the national and regional budgets), an equal availability of health care for all insured persons and an obligatory vaccination against infectious diseases.

Health care provided on the basis of public health insurance and reimbursed from this insurance covers:

- outpatient care

⁴⁹ Full title: Act No. 372/2011 Coll., on health services and terms of their provision; Basic Information available at Ministry of the Healthcare of the Czech Republic: http://www.mzcr.cz/Cizinci/obsah/basic-information_2649_23.html, accessed on April 9, 2013.

⁵⁰ Full title: Act No. 48/1997 Coll., on public health insurance; Basic information about public health insurance can be accessed at Ministry of the Healthcare of the Czech Republic (2013), at http://www.mzcr.cz/Cizinci/obsah/public-health-insurance_2650_23.html, accessed on April 9, 2013.

⁵¹ A close person shall be defined as a relative in direct line, brother or sister and the spouse; other persons in a family or other relation shall be considered close to each other if a detriment suffered by one of them is reasonably felt as own by the other.

- is provided by primary care physicians (general practitioners for adults, general practitioners for children and youth, dentists and gynaecologists) or specialists. An insured person must register with a physician – the only reason for a refusal of a registration is if the registration did not permit provision of quality care to the patient or other patients in the physician's care. A physician cannot refuse treatment in the case of essential and urgent care (an accident or a sudden acute illness). A patient can visit a specialist physician without a referral from the primary care physician.
- institutional (inpatient) care
 - a primary care physician or outpatient specialist can refer a patient for hospital treatment. Inpatient care is provided in hospitals and specialized institutions (psychiatric hospitals and rehabilitation centres, hospices, sanatoria, long-term care hospitals)
- ambulance services
 - health care assured in case of a less serious acute illness/accident outside physician's hours or in his/her absence. Provision depends on local conditions: it can be provided by collaboration of physicians who stand in for one another, emergency services in special consulting centres or in hospital emergency departments. Emergency services are also available for acute dental complaints.
- emergency rescue services
 - available to deal with cases of acute illness/accident when a patient cannot get to a physician and immediate treatment is needed. The national number for emergency health care 155 or the single European emergency number 112 can be used and dialled free of charge.
- preventive care
- dispensary care
- supply of medicaments, medical supplies
 - there is an extensive network of pharmacies dispensing medicaments and medical devices, both on prescription and over the counter
- balneological care, care in specialized children's hospitals and sanatoria
 - an entitlement is claimed on a pre-printed form by the registering general physician or attending physician in case of hospitalization.
- industrial health care
 - industrial health care staff counsel employees in matters involving protection and promotion of health, regularly inspect workplaces, determine the effects of work and working conditions on employees' health, and perform preventive health examinations of employees (incoming, ongoing, outgoing).
- transport of the sick, reimbursement of travel expenses,

Every insured person pays an insurance premium as a percentage of their income regardless of what health care they receive. In some cases the state pays the insurance contributions (for children without means of subsistence, old-age pensioners, registered unemployed people, women on maternity leave, etc.). The essential condition for the provision of reimbursed health care is that it must be provided in a health care facility which has a contract with the patient's insurer. If urgent health care is needed, it may be provided by a health care facility which does not have the contract. Medicaments can be distributed by any pharmacy. Within the public health insurance system, health care is reimbursed by the insurer on the basis of its contract with the health care facility.

All participants in public health insurance (or their legal representatives) are obliged to pay regulation fees. These are:

- *fee for visit to a physician* – 30 CZK, if a clinical examination is carried out⁵², children under 18 are exempt from the fee.
- *fee for prescription medicament* – 30 CZK, applies to dispensation of one type of a medicament.
- *fee for an emergency visit* – 90 CZK, first-aid service, dental emergency service, institutional emergency service on Saturdays, Sundays, public holidays and on working days from 17:00 to 07:00
- *fee for a hospital stay* – 60 CZK, for each day patients are provided with institutional care (in hospitals, specialized health care institutions, after-care centres and long-term facilities), comprehensive balneological care, institutional care in children's hospitals and sanatoria; newborn children are exempt from the fee

Some groups may be exempt of all regulatory fees. These are: insured persons placed in children's homes, institutional education establishment or protective education; insured persons producing a certificate issued by an authority for assistance in material need; citizens placed by court order in protective care (applies on to healthcare provided in protective care); an insured person placed in institutional care against their consent but with court approval, citizens who must submit to special measures to protect public health (treatment of an infectious disease), fees associated with blood/organ donation procedure (medicaments included).

Some procedures require person's co-financing. These are some dental procedures, some balneological care and some medicaments or medical devices. Some medicaments are reimbursed in full whereas some are co-financed by the patients. In every category of medicaments there must be at least one reimbursed in full. Health care to which public health insurance does not apply and which patients must pay directly is defined by law (for example acupuncture, aesthetic plastic surgeries on patient's request, etc.).⁵³

Every foreigner that wants to stay on the territory of the Czech Republic has to have health insurance. Foreigners who do not participate in the public health insurance are provided in the Czech Republic with free health care only on certain circumstances defined by the law.⁵⁴

3. Discriminations made to the Roma and violations of the law

Although the current legislation shall guarantee equal access of citizens to health care, there exist groups of population for whom the access is endangered. The socially excluded Roma are one of these groups. The state of health and the health care provided to Roma is influenced by many structural social factors. Several studies concerning the link between health and socio-economic situation confirm the so-called "stratification access" to health care and differentiated access to information about health risks.⁵⁵

Concerning the discrimination in access to health care, the most often violation is refusal to register clients as patients with the reasoning of full capacity. The refusal is even interlinked with the reluctance or again refusal to give confirmation about this refusal, although the law states this action as obligatory for the doctor. When trying to resolve this situation directly with insurance companies, the only support response given by the companies was pronouncement of

⁵² An insured persons do not pay a physician's visit fee also in case of preventive examination, dispensary care for a pregnant woman, laboratory or diagnostic examination (e.g. taking a blood sample), telephone consultation between physician and patient or procedures done by order of a court, public prosecutor, state administration authorities, Czech Social Security Administration, job centre, the police.

⁵³ Ministry of Health of the Czech Republic, available at <http://www.mzcr.cz/prevence/uk/uk.html>, accessed on April 14, 2013

⁵⁴ Further information on the concrete circumstances, see the link: <http://www.mzcr.cz/prevence/uk/uk.html>

⁵⁵ Report on the Roma Minority Situation in 2011, p. 78, 2012, The Council of the Government of the Czech Republic for Roma Community Affairs

the obligation to provide such confirmation and the pledge to inform concerned doctors about this obligation.

Sometimes, various ways of incorrect treatment occurs outside the ambulances when the doctors and nurses are providing medical care accompanied by stigmatization or unacceptable comments in front of the patient. One of the reasons is undoubtedly the communication barrier on both sides. Some clients are not able to explain comprehensibly their problem and they do not understand the information and instructions of doctors and nurses, so that they are not able to follow them and abide by them. The doctors often argument by bad experiences (unreliability of patients, problems with paying the fees etc.) and these stereotypes and prejudices consequently are afterwards transferred onto other individuals or family members. Unequal treatment to clients is expressed as well by unwillingness to assist with filling in forms, or sometimes even refusing to give such form to client. This kind of stigmatization from the part of medical institutions and the employees decreases trust of Roma clients towards them and prevents them e.g. from preventive care.⁵⁶

As for instance of proven discrimination against Roma in access to health care, the Public Defender of Rights confirms such behaviour in the following case when a dentist refused to treat the clients. The non-profit organization that represented the victims had a suspicion that the dentist systematically refused to treat Roma patients, and therefore conducted a test⁵⁷. The testing showed that Roma patients were not treated, unlike a non-Roma patient who was provided treatment.

The Defender came to the conclusion that a medical doctor has the right to decline a patient only on the grounds stated by the law, and cannot decide whether or not he accepts a new patient based on the personal meeting. The patient can be declined only in case if the doctor's acceptable workload would be exceeded. The doctor cannot decide about accepting of patient right in place and from different reason than the law specifies. Violating of this law is even more serious when based on ethnic aspects.

The recordings of communication with the dentist as well as the recording of a telephone call regarding the appointment was as an evidence at the legal proceeding since they did not have a nature of manifestation of personal or private life. According to the Defender, discrimination based on ethnicity is as serious as racial discrimination. As such, it is the most serious kind of discrimination, because the victims are treated as persons of lower category and are thus being humiliated.

4. Possible recourses to be taken

If a patient is not satisfied with the treatment or approach of a doctor, if the information provided by the doctor is not sufficient or the patient even has a suspicion of medical malpractice, he/she can complain about such issue. It is possible to try to solve the problem directly with the doctor or his/her immediate superior but if this way is not successful, official complaint can be lodged.

The complaint can be lodged to the provider of health care, i.e. the concrete doctor or head of the healthcare provider (e.g. the director of hospital), or to the administrative body that licensed the provider for providing the health care, or to the Czech Medical Chamber and Czech Dental Chamber (e.g. in the case of violating the professional ethics). These professional chambers have the disciplinary control over all the members. A disciplinary action can be taken in the

⁵⁶ Ibid., p. 81-82

⁵⁷ Further information on this case available at: http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Kauzy/zdravotni_pece/Neposkytnuti_zdravotni_pece_z_duvodu_etnickeho_puvodu.pdf

cases that the doctor did not examine a patient properly or his approach to a patient was unethical.

The complaint cannot be anonymous and should contain enough information so as the relevant body can assess it. Lodging of the complaint is not limited in time, except for the Czech Medical Chamber where the time-limit for lodging the complaint is one year from the date of the incident.

The healthcare provider has to suggest oral settling of the issue at first (if it is appropriate according to the issue). Afterwards the provider has the obligation to deal with the issue within 30 days from the date of complaint delivery, or can prolong the term with another 30 days (but only on legitimate reason).

The administrative body can be referred to only after the complainant was not satisfied with the settlement of the issue by the healthcare provider. The time-limit for dealing with the complaint depends on complexity of the issue (30, 90 or 120 days).

The complaint lodged to the Czech Medical Chamber does not have to be put only by the involved patient, it can be put e.g. by a relative or anybody else. The complaint has to be written and shall be settled within 6 months. In case the person is not satisfied, it is possible to appeal against the decision within 15 days. The Chamber can impose a fine on the doctor up to 30.000 CZK and exclude the doctor from the Chamber, i.e. he/she will not be able to provide further the healthcare.

The patient usually turns the court only after the out-of-court settlement or settlement by the healthcare provider was not sufficient. In such case, the civil proceeding can be of use. Beforehand, it is worthy to discuss the issue with a lawyer that is well acquainted with the medical law matters. The civil proceeding is often complicated and expensive.

Sometimes, the medical malpractice can be so serious that we can speak about criminal act (particularly bodily harm). In such case it is possible to file a criminal charge to the Police of the Czech Republic or to the public prosecutor.

Even the outcomes of the doctor's medical assessment can be discriminating. A doctor can provide several types of documents with different purposes such as a labour purpose (the certificate of working capability - „fit note“), an administrative-legal purpose (a confirmation necessary for a driving licence application) or social-legal purpose (the confirmation about the incapability for work „sick note“). Dissatisfied patient can request for an examination of the outcomes. The request is submitted to the management of the medical facility or to the doctor itself in the case he/she runs a private office. The result of the examination can be appealed and an administrative proceeding will follow. In such a case, the patient can look into the documents and can express his/her opinion.⁵⁸

⁵⁸ Further and more detailed information about complaints or judicial proceedings concerning healthcare can be found on the website of League of Human Rights, available at <http://www.ferovanemocnice.cz/reseni-sporu-29/stiznosti-273.html>

File 7 - Defence of the vulnerable members of Roma community

Article 1

Human dignity is inviolable. It must be respected and protected

Article 33

The family shall enjoy legal, economic and social protection

Article 21

Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited

THE EUROPEAN LEVEL

The European and International legislations protecting vulnerable persons

Apart from the fact that Roma people are discriminated due to their ethnic origin, some members of the community are twice discriminated due to their conditions and therefore turn to be even more vulnerable. In a report, the Commissioner for Human Rights of the Council of Europe pointed out the vulnerability of Roma women who are forced to be sterilised, and for some of them, they have not been informed of it. He also stresses out the unfair removal of the children from their parents on ground only of lack of financial means. Besides, he also tackles the customary marriages, within some groups of Roma, which raise three issues: the violation of the rights of a child, when it is a minor who has been married, as well as perpetuating the subordinate position of women, and the denial of the social and economic rights of couples who did not get a civil marriage. Finally, Roma persons, and more specifically women and children, are greatly the victims of human trafficking through sexual exploitation, labour exploitation, domestic servitude, illegal adoption and begging¹. To answer this twice discrimination, you will find in this part laws referring to the protection of children, disabled persons and women as well as victims of human trafficking. This part also includes several articles from international legislation and not only the European one, simply because they include more rights than the EU one and Member States must have incorporated them in their national legislation.

Children

International organisations made rights specifically for children to protect them from exploitation and mistreatment and that the EU transposed into its legislation.

It comes down to states to legally define what a child is which, most of the times, consists in setting up an age limit between being a minor and a major. However, for the United Nations (UN), someone is considered as a child until he/she reaches the age of 18, except if national legislations have set another age majority².

For the EU, a child is usually below 18³. However, a minor can do activities, generally considered as "adult", before 18 if the national law says so (e.g. working, getting married⁴).

When it comes to working, someone has the right to start working from the age of 15 or when they reach the national legal age where school is not compulsory any longer⁵. This aims at providing children with a minimum of education and ensuring their well-being as well as avoiding the risk of exploitation due to their vulnerability. Besides, someone between the legal age of

¹ Human rights of Roma and Travellers in Europe, Commissioner for Human Rights of the Council of Europe, Council of Europe Publishing, February 2012

² Convention on the Rights of the Child entered into force 2 September 1990, Article 1 "For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier".

³ Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, Article 2: "(a) 'child' means any person below the age of 18 years".

⁴ The age to be legally regarded as an adult can be different if it concerns, among others, getting married, working or having sexual intercourses (when one of the partner is older than the other one).

⁵ Two EU legislative texts reinforce this idea that as long as school is compulsory, a child should not be working: Charter of Fundamental Rights, Article 32 "The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations (...)" and the Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work, Article 1 "Member States shall take the necessary measures to prohibit work by children. They shall ensure, under the conditions laid down by this Directive, that the minimum working or employment age is not lower than the minimum age at which compulsory full-time schooling as imposed by national law ends or 15 years in any event" and Article 3 (b) "child' shall mean any young person of less than 15 years of age or who is still subject to compulsory full-time schooling under national law".

working and 18 years old are considered as adolescent or young people and thus cannot be treated as adults and are under different working rules⁶.

Regarding the legal age to get married, this is decided at the national level. Following an UN Convention stating the need to set up an age⁷ for that, in most of EU country the age is of 18 years old and can be lowered with Court permission. Age consent is also decided at national level and within the EU the age is most of the time between 14 and 16.

In addition, States must protect children from sexual exploitation and sexual abuse (from prostitution to pornography)⁸ as well as protecting them from being sold⁹.

Disabled persons

Disabled persons also benefit of specific legislations. The UN made a Convention to avoid the exploitation, violence and mistreatment against them, including a definition on disabled person¹⁰. The Convention¹¹ tackles their equal treatment (Article 7) as well as their right to access to justice (article 13). Besides, they have the right to access on an equal basis to their environment (transportation and information and communications – Article 9), to have an adequate standard of living, including an adequate housing with access to clean water (Article 28) and have their privacy (Article 22) and their home and family respected (Article 23). In addition, they have the rights to access education at all level and on a lifelong learning perspective (Article 24) and to access to healthcare (Article 25). Access to work and employment shall also be ensured by member states (Article 27).

⁶ The Charter of Fundamental Rights, Article 32 says that "(...) Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education". Besides, the Council Directive 94/33/EC of 22 June 1994 sets up some minimum requirements on the protection of young people at work such as general obligations by employers (Article 6), working time (Article 8), night work (Article 9), rest period (Article 10), annual rest (Article 11), breaks (Article 12).

⁷ The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages entered into force in 9 December 1964, Article 2 « States Parties to the present Convention shall take legislative action to specify a minimum age for marriage. No marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses. ». Otherwise, the Convention has not been ratified by all Member States. See the list of countries which ratified it:
http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVI-3&chapter=16&lang=en

⁸ Convention on the Rights of the Child entered into force 2 September 1990, Article 34 "States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: (a) The inducement or coercion of a child to engage in any unlawful sexual activity; (b) The exploitative use of children in prostitution or other unlawful sexual practices; (c) The exploitative use of children in pornographic performances and materials." This Convention has been transposed at EU level in the Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography. This directive aims at establishing "minimum rules concerning the definition of criminal offences and sanctions in the area of sexual abuse and sexual exploitation of children, child pornography and solicitation of children for sexual purposes. It also introduces provisions to strengthen the prevention of those crimes and the protection of the victims thereof."

⁹ The Article 2 of the Optional Protocol to the Convention on the Rights of the child on the sale of children, child prostitution and child pornography entered into force 18 January 2002, defines the meaning of selling, prostituting and using a child for pornography purposes: "For the purpose of the present Protocol: (a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration; (b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration; (c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes."

¹⁰ Convention on the Rights of Persons with Disabilities and Optional Protocol, Article 1 "Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others"

¹¹ The following articles (Articles 7, 9, 13, 22, 23, 24, 25, 27 and 28) and mentioned in the text are extracted from the Convention on the Rights of Persons with Disabilities and Optional Protocol.

This Convention has been approved by the EU which inserted it in its legislation through a compulsory legislative text meaning that it has implemented the Convention¹² and therefore Member States shall apply it as well.

Women

The UN made a Convention, ratified by Member States, to protect women from any type of discrimination¹³, which includes a definition of discrimination itself¹⁴. In this Convention¹⁵, States should cancel or modify any legislative texts discriminating women as well as forbid any discrimination based on gender, through sanctions for examples, and ensure the access of women to justice (Article 2). In addition, women should access to education like men (Article 10), as well as access to healthcares (Article 12). Besides, regarding work, they should have the right of working and access to employment without discrimination, and not be fired due to the fact they are pregnant or married (Article 11). Furthermore, they should be free to choose their spouse and to decide whether or not they want to get married (Article 16). Engagement or marriage of children should not be legal and marriages should be registered in an official registry (Article 16). The Convention also tackles traffic in women and their exploitation for prostitution purposes which both should be suppressed (Article 6).

At the EU level, legislation towards women concerns equal treatment with men. Therefore, even though the Charter of Fundamental Rights widens the principle of equal treatment to all fields¹⁶ most of the EU binding legislation is about employment and work¹⁷. Regarding the rights of women in their private life, the EU does not have real competency on this level. However, the European Parliament asked in 2011 for the creation of a directive, which is a binding legislative tool, for all member states to recognize rape and any sexual violence made to women as a crime, punishable by the law. Even though the initiative has been accepted by the European Parliament, the Directive still does not exist¹⁸. Nevertheless, in 1995, the European Court of Human Rights stated that a spouse can take the other spouse to court in case of rape within the couple¹⁹. In addition, to avoid medical abuses and among other forced sterilisation, the Charter of Fundamental Rights states the right of the patient to have a free and informed consent before receiving any medical care²⁰.

¹² The Council Decision 2010/48/EC of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities, states that the EU approves the Convention and will implement it.

¹³ Convention on the elimination of all forms of discrimination against women, entry into force 3 September 1981

¹⁴ Convention on the elimination of all forms of discrimination against women, Article 1, *"For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field"*

¹⁵ The following articles (Articles 2, 6, 10, 11, 12 and 16) and mentioned in the text are extracted all from the Convention on the elimination of all forms of discrimination against women

¹⁶ Article 23

¹⁷ directive 2006/54/CE

¹⁸ For more information on this initiative, see the text adopted by the European Parliament: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2011-127> as well as its press releases: <http://www.europarl.europa.eu/news/en/pressroom/content/20110405IPR16956/html/Parliament-urges-automatic-prosecution-for-sex-crimes>

¹⁹ For more information, the text of the case judgement which led to this conclusion: Case of S.W. v. The United Kingdom [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57965#{"languageisocode":\["ENG"\],"appno":\["20166/92"\],"documentcollectionid2":\["CHAMBER"\],"itemid":\["001-57965"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57965#{)

²⁰ Charter of Fundamental Rights, Article 3 paragraph 2 *"In the fields of medicine and biology, the following must be respected in particular: (a) the free and informed consent of the person concerned, according to the procedures laid down by law"*

Besides, in 2011 the Council of Europe made a binding legislative text, the Istanbul Convention, which aims at combating violence against women, including domestic violence through prevention and the implementation of legal remedies for the victims. The Convention has been so far ratified by four States only²¹.

Families

The only definition existing on family is the one within the Directive on freedom of circulation of EU citizens which states that someone's family members are the spouse or legal partner, the direct descendant under 21 years old (children) and direct relative on an "ascending line" who is dependant for living on this person (parents and parents-in-law)²². However this definition is not considered as the only one possible.

As States must protect children, they have the right to take them away from their parents in case of their mistreatment²³. States are also allowed to sue parents if needed. However, separating children from their parents should always be in line with the best interest of the child, especially if the child wants to stay with his/her parents. Besides, if the child wants to keep contacts with them, States should allow it. In case the separation is due to an imprisonment or expel, ordered by the State, parents and children should be informed of the place where the other(s) one(s) is (are). Still, parents and children should ask to the State which does not deliver information without a request. Nevertheless, for any action made by the State, the persons involved (e.g.

²¹ The Istanbul Convention or officially called "Convention on preventing and combating violence against women and domestic violence" has been ratified only by Portugal as a EU State. The Chapter V contains the different topics where States should provide legislative texts (e.g. legal remedies, psychological violence, sexual violence including rapes, child custody, forced abortion or sterilisation, compensation...). The Chapter VI tackles the legislative texts to be created by States on the different stages of the investigation, prosecution, procedural law and protective measures. To see the updated list of countries which ratified the Convention:

<http://www.conventions.coe.int/Treaty/Commun/ChercheSig.asp?CL=ENG&CM=&NT=210&DF=&VL=>

²² Directive 2004/38/EC of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, Article 2 "*Family member*" means:

(a) the spouse; (b) the partner with whom the Union citizen has contracted a registered partnership, on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State; (c) the direct descendants who are under the age of 21 or are dependants and those of the spouse or partner as defined in point (b); (d) the dependent direct relatives in the ascending line and those of the spouse or partner as defined in point (b)". See File 2 (Freedom of circulation and installation and prohibition of collective expulsions) for an explanation of this directive.

²³ Mistreatment can be done through physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation (extracted from the Article 19 of the Convention on the Rights of the Child)

parents, children...) have the right to express their views and the State should always behave in the best interest of the child.²⁴

Furthermore, in the Convention to eliminate discrimination towards women, it is said that States must ensure that the spouses have equal rights and responsibilities regarding matters related to their relationship (e.g. in case of divorce, ownership, regarding the children...)²⁵.

Besides, regarding someone seeking divorce within the EU, when he/she does not live in his/her country or married someone with another citizenship, it is possible to do so in the spouse's habitual residence, or the previous one (if one of them still live there), or the one of one the spouse (if both wish to divorce), or else in the seeker habitual residence (if this person lives there for at least one year before the application was made). This also applies to legal separation or marriage annulment²⁶. In addition, a legal decision taken in a Member State should apply to all of them²⁷.

Human trafficking

²⁴ This paragraph refers to the **Convention on the Rights of the Child** entered into force 2 September 1990, **Article 19**: « 1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. 2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement» and **Article 9**: "1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence. 2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known. 3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests. 4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned". It also refers to the **Charter of Fundamental Rights**, **Article 24**: "2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration. 3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests".

²⁵ The Convention on the Elimination of All Forms of Discrimination against Women, entered into force on 3 September 1981, Article 16, Paragraph 1: "States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (...) (c) The same rights and responsibilities during marriage and at its dissolution; (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount; (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights; (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount; (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation; (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration(...)".

²⁶ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, Article 3 "1. In matters relating to divorce, legal separation or marriage annulment, jurisdiction shall lie with the courts of the Member State (a) in whose territory: — the spouses are habitually resident, or — the spouses were last habitually resident, insofar as one of them still resides there, or — the respondent is habitually resident, or — in the event of a joint application, either of the spouses is habitually resident, or — the applicant is habitually resident if he or she resided there for at least a year immediately before the application was made, or — the applicant is habitually resident if he or she resided there for at least six months immediately before the application was made and is either a national of the Member State in question or, in the case of the United Kingdom and Ireland, has his or her 'domicile' there; (b) of the nationality of both spouses or, in the case of the United Kingdom and Ireland, of the 'domicile' of both spouses. 2. For the purpose of this Regulation, 'domicile' shall have the same meaning as it has under the legal systems of the United Kingdom and Ireland".

²⁷ Ibid. Article 21, paragraph 1 "A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required"

Human traffic means forcing someone for purposes of exploitations (labour, services or sexual ones). Any act related to this traffic (from recruitment to reception and including the control over someone) is forbidden and punishable. If it has been proven that there was a use of any force or threat over someone else there is no need to check if the person agreed on it. Regarding children, if human trafficking is proven, there is no need of proving any use of force or threat over them²⁸. To face the traffic of human beings, member states must provide assistance to the victims, for them to recover physically, psychologically and socially, which among other includes providing housing, health cares and employment, educational and training opportunities²⁹. Besides, they should have the right to remain in the member states' territory temporarily or permanently³⁰. In case of repatriation, the member state should make sure this person is safe³¹. Furthermore, the EU made also a legislative text where are defined the conditions for granting a non-EU citizen a resident permit with a limited duration, in order to for him/her to cooperate in the criminal proceeding. It is mentioned that Member States must give a time of reflection to the person to decide whether he/she wants to cooperate. The length should take into account the recovering of the person who should not be expelled during that period³².

UNITED KINGDOM

²⁸ Council Framework Decision 2002/629/JHA on combating trafficking in human beings of 19 July 2002

²⁹ **Council decision 2006/618/EC** on the conclusion, on behalf of the European Community, of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women And Children, supplementing the United Nations Convention Against Transnational Organised Crime concerning the provisions of the Protocol, in so far as the provisions of this Protocol fall within the scope of Articles 179 and 181a of the Treaty establishing the European Community of 24 July 2006, **article 6**: "2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases: (a) information on relevant court and administrative proceedings; (b) assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence. 3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organisations, other relevant organisations and other elements of civil society, and, in particular, the provision of: (a) appropriate housing; (b) counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; (c) medical, psychological and material assistance; and (d) employment, educational and training opportunities. 4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care. 5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory. 6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered".

³⁰ Council decision 2006/618/EC, Article 7: "1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases. 2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors"

³¹ Council decision 2006/618/EC, Article 8: "1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay. 2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary"

³² Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, Article 6: "1. Member States shall ensure that the third-country nationals concerned are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities. The duration and starting point of the period referred to in the first subparagraph shall be determined according to national law. 2. During the reflection period and while awaiting the decision of the competent authorities, the third-country nationals concerned shall have access to the treatment referred to in Article 7 and it shall not be possible to enforce any expulsion order against them. 3. The reflection period shall not create any entitlement to residence under this Directive. 4. The Member State may at any time terminate the reflection period if the competent authorities have established that the person concerned has actively, voluntarily and on his/her own initiative renewed contact with the perpetrators of the offences referred to in Article 2(b) and (c) or for reasons relating to public policy and to the protection of national security".

1. National Legislative Texts

1. Previous file submissions have dealt with how and where equality and other statute in the UK apply and / or offer protections for Gypsy and Travellers, so the focus here is on family law and legislation for vulnerable persons, respectively. There are three jurisdictions of family law in the UK: (a) England and Wales, (b) Northern Ireland, and (c) Scotland. Family law includes adoption, civil partnership, marriage, divorce, child abduction, and parental responsibility, and many other issues. There is no code or law in any of the jurisdictions that encompasses all family law matters.

2. Article 8 of the European Convention on Human Rights, which was also incorporated into UK law through the Human Rights Act 1998³³, is the bedrock in the UK for the right to respect for one's established family life. Family life should include close family ties but, importantly including for Gypsies and Travellers, this right is not limited to any pre-determined model of a family or family life. It may encompass any stable relationship: (a) married, engaged, or de facto; (b) involving parents and children; siblings; grandparents and grandchildren etc; and (c) those that live a more transient lifestyle in terms of location and other aspects of life.

3. Starting with family law, in terms of England and Wales it is scattered throughout primary and secondary legislation. Certain aspects are dealt with in dedicated legislation concerning, for example, aspects of marriage e.g. the Matrimonial Causes Act 1973³⁴, or the Children Act 1989³⁵ deal with many issues of parental responsibility for children. Further, some issues are not dealt with through legislation but are governed by common law principles e.g. the ownership of assets during marriage.

4. Scotland has taken a different approach by bringing many core family law issues – marriage, divorce, parental rights and responsibilities – into one piece of legislation, namely the Family Law (Scotland) Act 2006³⁶. This legislation is, in effect, complemented in Scotland by other key statute, such as the Children (Scotland) Act 1995³⁷ that sets out the core parental responsibilities and rights in terms of children, including: (a) to safeguard and promote the child's health, development and welfare; (b) to provide direction and guidance to the child; and (c) to maintain personal relations and direct contact with the child on a regular basis.

5. Similar to other jurisdictions, Northern Ireland also does not have one comprehensive law encompassing all family law matters. Rather, family law matters are dispersed, however, some key issues are brigaded in one piece of legislation, especially with regard to children, notably through the Children (Northern Ireland) Order 2001³⁸, which (a) governs practice on the care, upbringing, and protection of children; (b) regards parental responsibility as the principal organising concept in child law, and (c) places children's welfare as the paramount throughout.

6. Similarly, there is significant devolution across four jurisdictions in the UK - England, Northern Ireland, Scotland, and Wales – in terms of legislative competence in those policy areas most

³³ See: <http://www.legislation.gov.uk/ukpga/1998/42/introduction>.

³⁴ See: <http://www.legislation.gov.uk/ukpga/1973/18>.

³⁵ See: <http://www.legislation.gov.uk/ukpga/1989/41/introduction>.

³⁶ See: <http://www.legislation.gov.uk/asp/2006/2/contents>.

³⁷ See: <http://www.legislation.gov.uk/ukpga/1995/36/contents>.

³⁸ See: <http://www.legislation.gov.uk/nisi/1995/755/contents>.

relevant to issues affecting vulnerable persons. Relevant policy and legislation includes criminal justice, child protection, and health. Again, there is no code or law in any of the four countries that encompasses all issues concerning vulnerable persons across these and other policy areas.

7. Dedicated legislation on appropriate treatment of vulnerable groups in certain settings e.g. criminal justice and care, exists in the UK, particularly: (a) the Safeguarding Vulnerable Groups Act 2006³⁹ that applies in England, Northern Ireland, and Wales and (b) the Vulnerable Witnesses (Scotland) Act 2004⁴⁰, Adult Support and Protection (Scotland) Act 2007⁴¹, and the Protection of Vulnerable Groups (Scotland) Act 2007⁴², all legislation introduced through The Scottish Parliament.

2. Implementation of the law

1. It is widely acknowledged across the UK that the communities under the umbrella term Gypsy / Travellers are (a) disadvantaged in many areas of life and public policy; (b) that they suffer disproportionate levels of prejudice; and (c) from a human rights perspective have internal problems, which whilst not unique to these communities, nonetheless exist; an example being how gendered power inequities result, sometimes, in domestic violence towards females members of the community⁴³.

2. In 2009, the Equality and Human Rights Commission, Britain's National Human Rights Institution, published comprehensive research on inequalities experienced by Gypsy and Travellers in a range of settings, including: (a) accommodation; (b) education including pre-schooling, nursery, and in the early years from 0-3; (c) employment and employability and training opportunities; (d) criminal and civil justice and in other employment settings; (e) health and social care; (f) vulnerability to prejudice and violence; and (g) in levels of public and political participation⁴⁴.

3. A key theme of this research was not only that disadvantage and prejudice are pervasive and deep but also that there have been many reports, inquiries, and research detailing these issues for Gypsy / Travellers, but nonetheless the problems persist. The authors postulated a "cultural trauma" for Gypsies and Travellers, reflected by "pervasive and corrosive impact of experiencing racism and discrimination throughout an entire lifespan and in employment, social and public contexts. Existing evidence ... highlights high rates of anxiety, depression and at times self-destructive behaviour (for example, suicide and / or substance abuse)"⁴⁵.

4. There are different approaches taken across the four countries of the UK, to overcome the vulnerabilities and disadvantages affecting the communities under the umbrella term, Gypsy / Travellers. All share recognition of discrimination and disadvantage; that gaps in the appropriate and quality accommodation are at the root of other indices for disadvantage; and that leadership is needed locally and nationally to overcome these challenges.

³⁹ See: <http://www.legislation.gov.uk/ukpga/2006/47/introduction>.

⁴⁰ See: <http://www.legislation.gov.uk/asp/2004/3/introduction>.

⁴¹ See: <http://www.legislation.gov.uk/asp/2007/10/introduction>.

⁴² See: <http://www.legislation.gov.uk/asp/2007/14/introduction>.

⁴³ Cemlyn, S., et al (2009) "Inequalities Experienced by Gypsy and Traveller Communities: a Review" (Manchester: Equality and Human Rights Commission)", accessible with many other relevant reports at <http://www.equalityhumanrights.com/key-projects/good-relations/gypsies-and-travellers-simple-solutions-for-living-together/gypsies-and-travellers-research-reports/>.

⁴⁴ See footnote 11.

⁴⁵ pp. iii-iv: footnote 11.

5. In 2012, the UK Government published its approach to community integration in, predominantly England, itself reflecting the significant devolution of power and legislative competence in most of the relevant policy areas to national assemblies in Northern Ireland and Wales and to The Scottish Parliament. Delivery of this approach is mainly through local government across England but, it should be noted, there are risks here, as organised, local hostility to Gypsy / Travellers, especially in terms of planning and eviction processes around lawful / unlawful sites has unfortunately been a persistent illustration of prejudice and poor communities relations across the UK⁴⁶.

6. In 2010, the then new UK Government established a cross-departmental Ministerial Working Group on Gypsy / Travellers. This welcome initiative is ongoing, is focused on enhancing the evidence base around the communities under this umbrella, including increasingly Roma communities, and ultimately is focused on disrupting many of the forms of disadvantage and prejudice detailed at 2 above and, in particular, intervening in the fundamental issue of gaps in suitable accommodation. On that, in January 2012, the UK Government announced £47million to for over 600 new, and refurbish over 160 existing, pitches for Gypsy / Traveller communities⁴⁷.

7. The approach to Gypsy / Travellers in Northern Ireland has focused on three key issues: (a) education, particularly to facilitate inclusive and productive school environments for children and young people in the Gypsy / Traveller communities, including relatively newly arrived Roma; (b) health, with focus since 2007, on identifying the health status and needs of Gypsy / Traveller communities across Northern and the Republic of Ireland then following up with actions to improve health outcome; and (c) accommodation with key legislation, The Caravans Act (Northern Ireland) 2011⁴⁸, the primary purpose of which is statutory protection for those who occupy a caravan as their main residence on sites approved for that purpose.⁴⁹

8. As with the approaches in England and Northern Ireland, attention in Scotland has centred on the widespread disadvantage suffered by Gypsy / Travellers with the main communities in Scotland being Scottish Gypsy Travellers, Irish Travellers, and Romani / Roma. The Scottish Government's Race Equality Statement in 2008 prioritised attention on these communities, in recognition of the depth and pervasiveness of disadvantage and distance from public services and opportunities. As in Northern Ireland the push has three priorities: (a) an education strategy for Gypsy / Traveller communities; (b) better meeting the accommodation needs of the communities through more local government-funded provision; and (c) dedicated work to enhance health outcomes for Gypsy / Travellers.⁵⁰ There has also been considerable work done,

⁴⁶ Commission for Racial Equality (2006) "Common Ground": Equality, Good Race Relations, and Sites for Gypsies and Irish Travellers", (London: Commission for Racial Equality).

⁴⁷ pp.3-6, UK Government (2012) National Strategy on Roma Inclusion (London: UK Government), accessible at <http://ec.europa.eu/justice/discrimination/roma/national-strategies/>.

⁴⁸ See: <http://www.legislation.gov.uk/nia/2011/12/contents>.

⁴⁹ Full details of work in Northern Ireland on Gypsy / Travellers are available at pp.19-24: footnote 15, see: <http://ec.europa.eu/justice/discrimination/roma/national-strategies/>.

⁵⁰ Full details of work in Scotland on Gypsy / Travellers are available at pp.10-18: footnote 15, see: <http://ec.europa.eu/justice/discrimination/roma/national-strategies/>.

since 2001, in The Scottish Parliament to articulate recommendations to improve the position of Gypsy / Travellers in Scotland⁵¹.

9. In recent years, Wales has also developed a strategic approach that recognises and seeks to overcome the disadvantage experienced by Gypsy / Traveller communities. In 2011, the Welsh Government published "Travelling to a Better Future: a Gypsy and Traveller Framework for Action and Delivery Plan"⁵². This, again, recognises the pivotal importance of appropriate and quality accommodation, for influencing other priority issues in the framework for Gypsy / Travellers: in participation and engagement, education and training, employment, and health and continuing care. Reflecting the importance of accommodation and to facilitate the development of Gypsy and Traveller sites, the Welsh Government has also made available a grant programme for local authorities to refurbish, extend, or build new sites. Receipt of a grant is contingent on the local authority having undertaken an accommodation needs assessment for Gypsy / Travellers and following this have made plans to meet any need identified.

3. Common Abuses and Discrimination

1. Many of the abuses and common forms of discrimination and disadvantage experienced by Gypsy / Travellers communities have been detailed and referenced in previous submissions - such as in employment outcomes - and are subject to detailed consideration in many reports, especially the afore-referenced "Inequalities Experienced by Gypsy and Traveller Communities: a Review", published by the Equality and Human Rights Commission in 2009. Accordingly, this submission will be confined to the most fundamental and systemic problems that have not been detailed elsewhere in our submissions. Three issues stand out, each of which are significant across all four countries in the UK, and they are: (a) lack of appropriate and quality accommodation; and (b) acknowledging and starting to address the issue of domestic violence in Gypsy / Traveller communities.

2. As conveyed in this and other submissions, the lack of appropriate and quality accommodation undergirds many inequalities experienced by Gypsy / Travellers. Planning policy has tended to move from publicly owned sites, which local housing authorities administer, to self-provision by the communities themselves. Many Gypsy / Travellers are caught between an insufficient supply of suitable accommodation and unauthorised encampments resulting in a cycle of evictions, typically linked to violent and threatening behaviour from private bailiff companies. Roadside stopping places, with no facilities and continued instability and trauma, can be a way of life. This insecurity influences, inter alia, poor education, employment, and health outcomes⁵³.

3. There is also a concern that the wider cross-ethnicity problem of predominantly gendered domestic violence (e.g. normally male perpetrators to female survivors) is also an issue in Gypsy and Traveller communities. While there is no evidence to suggest that domestic violence is any more of a problem in Gypsy / Travellers groups, nonetheless, there is some degree of gendering of roles as well as patriarchal attitudes with them, which again is not peculiar to these communities but still exists. Anecdotal evidence suggests that cultural barriers to leaving a domestic violence setting may be especially strong within Gypsy and Traveller families. As with

⁵¹ There have been four reports of significance, each completed by the Equal Opportunities Committee of The Scottish Parliament in 2001, 2005, 2012, and 2013, respectively, and they are accessible at: (a) <http://archive.scottish.parliament.uk/business/committees/historic/equal/reports-01/eor01-01-vol01-01.htm> (the 2001 Report); (b) <http://archive.scottish.parliament.uk/business/committees/equal/reports-05/eor05-05.htm> (the 2005 Report); (c) <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/54885.aspx> (the 2012 Report); and (d) <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/49027.aspx> (the 2013 Report).

⁵² pp.8-9: footnote 15.

⁵³ pp.5-34: footnote 15.

any hidden or private crime, particularly in communities not well understood by public authorities and in wider society, there is a need to empower community members – in this context especially girls and women – to challenge and encourage others to overcome any systematic cycles and experiences of domestic violence in their communities⁵⁴.

4. Recourse

1. The relevant basic detail for recourse to be mentioned in this submission concerns the locus, in the different family law jurisdictions in the UK, for most private family law issues, such as child contact or parental responsibility. Starting with England and Wales, most family law cases are heard in the [County Courts](#) and [Family Proceedings Courts](#), both of which operate under codes of [Family Procedure Rules](#). There is also a specialist division of the [High Court of Justice](#), the [Family Division](#), which hears family law cases; (ii) in Northern Ireland, most private family cases, such as residence and contact, start in the Family Proceedings Courts. More complex cases are heard in family courts called Family Care Centres or the High Court; (iii) in Scotland, most family law matters are dealt with in a Sheriff Court, and only the most complex matters are raised to the highest civil court in Scotland, the Court of Session.

FRANCE

1. The national legislative texts

The concept of « vulnerable person » was defined in the penal code of 1994. It is used to protect the people most at risk and exposed to the serious risks of society. Vulnerability does not constitute an offence as such but is considered as an aggravating factor.

- The Penal Code, Article 222-14⁵⁵ provides penalties for "regular abuses perpetrated against minors of 15 or against any person whose particular vulnerability due to age, illness, infirmity, physical or mental disability or pregnancy is apparent and known to the offending party (...)

For minors especially :

- The Penal Code, Article 227-15 paragraph 2⁵⁶ states that: « keeping a child under 6 on the streets or on collective passenger transport area, with the purpose of begging for money from passers-by" constitutes a denial of care.
- Civil Code, article 375⁵⁷ : « if the health, safety or morality of a non-emancipated minor are in danger, or the conditions for his/her upbringing, or social, intellectual, affective and physical development are seriously at risk, some educational measures can be ordered by courts at the request of the two parents or a single one, the person or authority with legal custody, the guardian, the minor child, or the Public Prosecutor (...)

⁵⁴ pp.136-146: footnote 15.

⁵⁵Code pénal, article 222-14 http://www.alma-france.org/IMG/pdf/ARTICLE_222-14.pdf

⁵⁶ http://www.legifrance.gouv.fr/affichCodeArticle.do?jsessionid=593CEC268996D07D21A231717169DBFE.tpdjo10v_2?cidTexte=LEGITEXT000006070719&idArticle=LEGIARTI000006418047&dateTexte=20130505&categorieLien=cid#LEGIARTI000006418047

⁵⁷ <http://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006070721&idArticle=LEGIARTI000006426776>

- In the social work and family Code, article L112-3⁵⁸ : “child protection is also aimed at preventing any parental deficiency, assisting families and, providing partial or total care of minors adapted to their specific needs. In this respect, a package of interventions for minors and their parents is included, also intended for less than twenty-year old adults experiencing difficulties likely to impair seriously their wellbeing. Child protection also aims at preventing any temporary or definite difficulties due to the lack of protection from their parents and providing for their care.

The concept of «foreign unaccompanied minors» is not explicitly defined under French Law. Their protection is based on the notion of children at risk as quoted above.

The Constitutional Court⁵⁹ believes that the Franco Romanian agreements of 2007 “on the protection of Romanian unaccompanied minors in France” added no extra guarantee of protection for Romanian minors, and that the children are essentially considered as a foreigner in an irregular situation and not as a child at risk in need of protection.

The lack of social investigation and the possibility of circumventing the children’s judge pose a serious risk for highly vulnerable minors. The law authorizing the ratification of the agreement was contrary to the Constitution, because derogating to the paragraphs 10 and 11 of the Preamble of the Constitution of 1946⁶⁰ and of the article 16 of the Declaration of Human and Civil Rights of 1789.⁶¹

The notion of “marginalized community” and thus vulnerable, emerges.

“Marginalized communities are defined as populations or groups of vulnerable persons, facing major housing problems in a specific area as well as a wealth of difficulties to overcome (health, employment, education, schooling, transportations, etc.). The implementation of adapted measures aims at promoting and facilitating their integration into the French society.

2. The implementation of their rights

- The missions of social action are defined by the social work and family Code⁶².
 - Article L116-1 of this Code gives a definition of the social and medico-social action: It aims “to promote (...) independence and protection”, “Prevent the risk of exclusion” with different benefits implemented by the State, local authorities, public establishments, associations, social or medico-social institutions.
 - Article L116-2 :
 - « The social and medico-social action is conducted in the respect of equal dignity for all human beings with the objective to meet with the needs of everyone in appropriate manner and by guaranteeing equitable access over the territory.”
 - Article L1226-3

⁵⁸ Code de l'action sociale et des familles, <http://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000006796426&cidTexte=LEGITEXT000006074069&dateTexte=20091231>

⁵⁹ Décision n°2010-614 du 4 novembre 2010, <http://www.conseil-constitutionnel.fr/decision/2010/2010-614-dc/decision-n-2010-614-dc-du-04-novembre-2010.50069.html>

⁶⁰ Les Articles 10 et 11 assurent la protection de la famille : <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/la-constitution/la-constitution-du-4-octobre-1958/preambule-de-la-constitution-du-27-octobre-1946.5077.html>

⁶¹ **Any society in which the guarantee of the rights is not secured, or the separation of powers is not determined, has no constitution at all.**

⁶² http://www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=47DC09AF658AB397C240B3A5218C7075.tpdjo10v_1?cidTexte=JORFTEXT000000215460&idArticle=LEGIARTI000006682019&dateTexte=20130505&categorieLien=id#LEGIARTI000006682019

“The president of the General Council is responsible for collecting, processing and evaluating, at any time and whatever the source, alarming reports about minors who are or may be at risk.

The law establishes departmental reception units on collecting, processing and evaluating alarming reports (Crip)⁶³. Their mission is to centralize data and organize the follow up of children at risk by the child welfare services.

The General Council helps families encountering difficulties in upbringing their children, protects children experiencing inadequate conditions of life and education, and supports in full some of the children by providing a foster family or institutional care.

- National Education⁶⁴ is also very active in the minor protection: “(...) The education staff, and especially the social worker, are daily relay of the national policy with the pupils (...)”

3. The common abuses/discriminations occurring and faced by them as well as in the framework of family law:

Roma people live under permanent insecurity because of the constant threat of eviction from their camps. The minors know unbearable living conditions owing to inadequate and precarious housing⁶⁵, the lack of financial resources combined with the impossibility of having a job⁶⁶, and the difficulty of schooling⁶⁷.

Moreover, some parents are forced to become beggars with their children because of the lack of income. This generates risks: an alert for education action in an open setting, (AEMO)⁶⁸, foster care, arrests. However, according to some case law, the children are not necessarily at risk⁶⁹

4. The possible recourses to make these rights respected:

- The children’s judge can take judicial measures to protect a minor at risk called “educational assistance measures”⁷⁰ and sometimes an “interim supervision order”(OPP)⁷¹ They are provided by the Civil code (article 375) : “(...) If the public prosecutor is advised by the general Council president, he/she makes sure that the minor’s situation falls within the scope of Article [L. 226-4](#) of the social work and family Code. The judge can attend to the matter on his/her own initiative on exceptional occasion
- It is possible to appeal to the Human rights Defender who has to defend the children’s rights⁷²

⁶³ Crip : cellule départementale de recueil, de traitement et d’évaluation des informations préoccupantes

⁶⁴ <http://www.education.gouv.fr/cid49632/la-protection-de-l-enfance.html>

⁶⁵ See file 3

⁶⁶ See file 5

⁶⁷ See file 4

⁶⁸ AEMO : action éducative en milieu ouvert

⁶⁹ <http://www.depechestsiganes.fr/?p=1637>

⁷⁰ <http://vosdroits.service-public.fr/F17777.xhtml>

⁷¹ OPP : Ordonnance de placement provisoire

⁷² <http://www.defenseurdesdroits.fr/connaitre-son-action/la-defense-des-droits-de-lenfant>

- Associations play an important role⁷³, in particular the platform of associations, called Infomie⁷⁴ and devoted to Foreign Unaccompanied Minors .

SPAIN

1. The legislations applying this right

The Spanish Constitution recognizes the right to equality in Article 14⁷⁵ "The Spanish are equal before the law ..." prohibiting discrimination among other conditions, gender or any other personal circumstance.

In addition, Article 9.2⁷⁶ lays down the obligation of the State to propose measures to guarantee freedom and equality of individuals in the political, economic, cultural and social life.

The Spanish Constitution also reflects the protection of the family in Article 39.1⁷⁷ for which public authorities⁷⁸ are responsible, within their competence, to provide families who need financial assistance or services to fulfill with their responsibilities, meet their basic needs and support them when they pass through particularly difficult situations.

The Organic Law 3/2007, of March 22⁷⁹, for the effective equality of women and men, incorporates substantial legislative changes to advance true equality between women and men and in the full exercise of the rights and implements transverse measures affecting all spheres of political, legal and social, to eliminate discrimination against women. This law determines the legal consequences⁸⁰ of discriminatory conduct and incorporate procedural safeguards to strengthen judicial protection of the right to equality. It also creates the State Observatory on Violence against Women⁸¹, which deals of counseling, assessment, institutional collaboration, reporting, studies and proposals for action on violence against women.

⁷³ See the toolkit of the LDH « Les Roms ont des droits », file 6

⁷⁴ <http://www.infomie.net/spip.php?article652>

⁷⁵ Article 14 of the Spanish Constitution; Spanish people are equal before the law without any discrimination on grounds of birth, race, sex, religion, opinion or any other condition or personal or social circumstance.

⁷⁶ Article 9.2 of the Spanish Constitution. It is up to public authorities to promote the conditions for freedom and equality of individuals and of the groups to which they belong are real and effective, removing obstacles that prevent or hinder their full enjoyment and participation of all citizens in the political, economic, cultural and social life.

⁷⁷ Article 39.1 of the Spanish Constitution. "Public authorities shall ensure the social, economic and legal protection of the family"

⁷⁸ In Spain there are three administrative levels: Central Government, Autonomous Regions and Local Authorities (Municipalities, Provincial ...). This competences distribution means that aid to families can be issued by different agencies in different territories or in different levels, so it may not be the same on all the autonomous regions or localities. However, the State guarantees all citizens access to basic social services.

⁷⁹ Organic Law 3/2007, of March 22, for the effective equality of women and men. Published in BOE no. 71, 23 march, 2007.

⁸⁰ *Article 10. Legal Consequences of discriminatory conduct: Acts and clauses of legal transactions which are or cause gender discrimination will be deemed null and void, and will give rise to liability through a real compensation system, effective and proportionate to the injury suffered, and, where appropriate, through an effective and dissuasive sanctions to prevent discriminatory conducts.*

⁸¹ <http://www.mssi.gob.es/ssi/violenciaGenero/ObservatorioEstatel/home.htm>

Protection against domestic violence is regulated in accordance with the Organic Law 1/2004, of 28 December on Integrated Protection Measures against Gender Violence⁸². This law establishes measures to ensure protection and care of women victims of gender violence and the creation of special courts.

The attention and care to people in situations of dependency is a right regulated by Law 39/2006, of December 14 of Promotion of personal autonomy and care for people in a situation of dependency⁸³. This law establishes a set of assistive devices, financial benefits and grants for the promotion of personal autonomy and care for people in situations of dependency⁸⁴. Spanish legislation⁸⁵ regulates the general principles of action in situations of social vulnerability of children, including the public entity's obligation to investigate the facts they know to correct the situation of lack of protection through the intervention of Social Services or, where appropriate, assuming the child custody by operation of law. The Childhood observatory, created by agreement of the Council of Ministers in 1999 and affiliated to the Ministry of Health, Social Services and Equality has the function of monitoring the welfare and quality of life of children and public policies affecting children.

Specific situations:

Marriage: Spanish legislation establishes through provisions in the Civil Code the conditions for possible marriage⁸⁶. They can not marry minors (or from age fourteen to eighteen without parental consent), people who are already married, lineal relatives to third grade⁸⁷, convicted for the death of the spouse of the person intended to marry.

Underage marriage: From fourteen years of age, a person may enter into a marriage contract in Spain, as stipulated in the Civil Code⁸⁸ (with the consent of the parents and the child). However, Spain's current government has stated its intention to include in the forthcoming reform of the Civil Code increasing the minimum marriage age of fourteen to sixteen⁸⁹, in addition to the punishment by law for forced marriage⁹⁰.

Divorce: It is only necessary that one of the spouses does not want to be married to be able to sue for divorce⁹¹. After three months from the marriage, either spouse may request a separation

⁸² Organic Law 1/2004 of 28 December on Integrated Protection Measures against Gender Violence. Published in BOE no. 313, 29 december, 2004.

⁸³ Law 39/2006, of December 14 of Promotion of personal autonomy and care for people in a situation of dependency. Published in BOE no. 299, 15 december, 2006.

⁸⁴ <http://www.laleydeladependencia.com/>

⁸⁵ Organic Law 1/1996, of January 15, of Protection of Minors, amending the Civil Code and the Civil Procedure law. Published in BOE no. 15, 17 january, 1996.

⁸⁶ Articles 44, 45, 46, 47 y 48 of the Civil Code. Royal Decree of July 24, 1889, edition of the text of the Civil Code sent post in compliance with Law of May 26 last (Effective through July 22, 2014).

⁸⁷ Article 48 of the Civil Code. The first instance court judge may exempt, for good cause and by request, third grade impediments between collateral and age from fourteen. In dispensation records must be heard the child and his parents or guardians.

⁸⁸ Article 48 of the Civil Code. The first instance court judge may exempt, for good cause and by request, third grade impediments between collateral and age from fourteen. In dispensation records must be heard the child and his parents or guardians.

⁸⁹ http://sociedad.elpais.com/sociedad/2013/04/05/actualidad/1365148818_690132.html (Consulted on 09/05/13)

⁹⁰ <http://www.lamoncloa.gob.es/ConsejodeMinistros/Enlaces/111012-enlaceanteproyectodelcp.htm>

⁹¹ Law 15/2005, on July 8, by amending the Civil Code and the Civil Procedure Act relating to separation and divorce. Publishe in BOE no. 16, 19 january, 2006

and / or divorce claim without good cause. Regarding the care and custody of the children, parents must decide whether exercised only by one of them or shared. To avoid damage to the children, any action that imposes obstacles or difficulties to the relationship of a parent to his/her descendants must be justified by strong reasons. If parents do not decide by mutual agreement, the judge will decide⁹², always for the benefit of children, who will take care of the minor children.

Child begging: The use of children in the practice of begging is treated in the Spanish Penal Code⁹³, with sentences of six months to four years (in cases in which violence is used to coerce).

Child work: According to the Statute of Workers⁹⁴, the work under sixteen are prohibited. Additionally the mandatory school age is from six to sixteen.

2. The implementation of the law:

There are state organizations that provide access to those who need to the remedies provided by law.

The Women's Institute⁹⁵, is responsible for promoting and fostering the conditions that enable social equality of both sexes and women's participation in political, cultural, economic and social life. To achieve this goal there are several programs⁹⁶, including specific programs for immigrant women who are victims of social and cultural barriers, risk or exclusion. These programs are offered throughout all the country, managed by non-profit organizations like the Red Cross⁹⁷, Foundation CEPAIM⁹⁸ or Fundación Secretariado Gitano⁹⁹.

The Women's Institute also has the function of receiving and channeling, in the administrative order, complaints made by women in specific cases of discrimination on issues of gender. To do this, those affected may address to this body filling a specific form:

Modelo de denuncia  and send it by the following ways:

- By letter: Women's Institute (legal area) C / Condesa de Venadito # 34. 28027 Madrid

- By email: juridico@inmujer.es

- Online consultation: <http://www.inmujer.es/servRecursos/consulta.do>

- In addition, is established a network of resource centers for equality in all the national territory.

To know the location of the centers:

⁹² Article 159 of Civil Code. If the parents live apart and do not get a agreement, the judge will decide, always for the benefit of children, which one of them will take care of the children. The court will hear, before taking this measure, to children who have sufficient judgment and, in any case, who were aged twelve.

⁹³ Organic Law 10/1995, of November 23, Penal Code. Published in BOE no. 281, 24 november, 1995. *Article 232* : 1. Those who provide or use minors or disabled people to practice begging, even if it is disguised, shall be punished with imprisonment from six months to a year. 2. If for the purposes mentioned above, they traffics with minors or disabled people, they use violence or intimidation or provides any harmful substances to their health, the penalty shall be imprisonment from one to four years.

⁹⁴ Royal Decree 1/1995, of 24 March, approving the revised text of the Law on the Statute of Workers (Effective until January 1, 2014). Published in BOE no.75, 29 march, 1995.

⁹⁵ <http://www.inmujer.es/elinstituto/conocenos/home.htm>

⁹⁶ <http://www.inmujer.es/areasTematicas/multiDiscriminacion/mujeresMigrantes/home.htm>
<http://www.inmujer.es/areasTematicas/multiDiscriminacion/minEtnicas/home.htm>

⁹⁷ <http://www.cruzroja.es/portada/>

⁹⁸ <http://cepaim.org/programa/>

⁹⁹ <http://www.gitanos.org/>

<http://www.inmujer.es/servRecursos/centrosAtencion/home.htm>

Where to go in case of gender violence: The Government Office for Gender Violence has available a free service of telephone information and care: the 016, which guarantees the confidentiality of the person making the call. They can also receive information on the Mistreatment Information Center to women; 900 100 009.

The mistreated person may also go personally to the Civil Guard (or call 062), National Police (091) to lodge a complaint and receive assistance.

The municipalities and autonomous regions have different services and information centers for women, in some cases, specific to battered women, which provides them information, guidance or derives to specialized services.

Human trafficking: sexual exploitation is a crime¹⁰⁰ that violates several fundamental rights as the right to life, liberty, physical and moral integrity, sexual freedom, health, privacy and dignity. It is the most serious manifestation of violence against women. The person who suffers this situation or others who know the existence of this situation may receive information and advice¹⁰¹ by calling 900 191 010 or 016. To lodge a complaint they have to go to the police station, to the Civil Guard station or the nearest court. If they can not move, the security forces can go in their quest, just phoning to the Telephone 112.

Separation or divorce: In the process of separation or divorce, the parties must be assisted by a lawyer or a solicitor. Legal aid may¹⁰² be requested from office through demonstrating evidence of lack of resources.

To apply for separation or divorce by mutual consent as both contentious, the Court of First Instance of the last domicile of the marriage or the residence of the defendant is competent, at the option of the person claiming the separation or divorce.

Dependent persons: Procedure for the recognition of the dependence¹⁰³: To request information, they may go to Community Social Services closest to the place of residence¹⁰⁴. They will have to submit an application on the official form concerned and an assessment of the applicant's dependency needs will be made. Depending on their situation will be determined the services or benefits that correspond¹⁰⁵ to the dependent person.

3. Discriminations made to the vulnerable persons:

The situation regarding gender equality of Roma women in our country is doubly affected, for being women, in a patriarchal¹⁰⁶ society and for belonging to an ethnic minority that suffers the

¹⁰⁰ Human Trafficking is provided in the Spanish Penal Code as a specific crime in Article 177a: Will be punished with five to eight years in prison as guilty of human trafficking which, either in Spanish territory, either from Spain, in transit or destined for it, using violence, intimidation or deception, or abuse of a position of superiority or of need or vulnerability of the victim national or foreign. The capture, transports, receives or hosted with any of the following purposes: a) the imposition of forced labor or services, slavery or practices similar to slavery or servitude or begging. b) Sexual exploitation, including pornography. c) The removal of body organs.

¹⁰¹ <http://www.inmujer.es/servRecursos/servInformacion/trataMujeres/home.htm>

¹⁰² <http://www.justiciagratis.es>

¹⁰³ http://www.dependencia.imserso.es/dependencia_01/tramitacion/solicitud_tramitacion/index.htm

¹⁰⁴ http://www.dependencia.imserso.es/dependencia_01/tramitacion/ccaa_dt_imserso/index.htm

¹⁰⁵ http://www.dependencia.imserso.es/dependencia_01/normativa/texto_ley/titulo_uno/prestaciones_saad/index.htm

¹⁰⁶ Grounds of discrimination in Spain. An exploratory study. Directorate General against Discrimination, Ministry of Equality. February 2009. Madrid. Pag. 62.

effect of the social prejudices of the population (exacerbated when besides this, they are migrants). According to the report on Roma discrimination of Fundación Secretariado Gitano in 2012, women suffer more discrimination than men in all areas.

From the point of view of health, Roma women are shown deficiencies in establishing family planning, birth control, and well-baby care. Roma¹⁰⁷ mothers start having children at an early age and continue until a very advanced age.

As for the care of the family, Roma women take responsibilities from very young, limiting their time available for job search or the exercise of a profession. Economically, discrimination of women is shown through the feminization of poverty and inequality into the labor market. In terms of employment, discrimination on ethnic grounds is high, however, in the case of Roma women discrimination in employment is higher than for men.

Child abuse is a situation that often goes unnoticed because most cases are not detected. A large number of these cases occur within the family, which are often not reported or are hardly detectable. Moreover, child poverty¹⁰⁸ levels are much higher in foreign children than in national children (32% in foreign children; 8.4% in national children).

Roma children are also affected by discrimination in schools. There is a tendency to concentrate Roma students in public schools and also by the existence of cases of opposition from non-Roma parents to share school with Roma students. In addition, the school failure is much more pronounced in girls than in boys Roma.

4. The possible recourses:

Specific resources for women: Women who suffer any violation on their fundamental rights, including greater discrimination because they belong to ethnic minorities, are immigrants or belong to context of poverty may address to the Information Centres of women. These centers perform a global intervention, providing comprehensive care and counseling.

The centers are scattered throughout the national territory¹⁰⁹, in direct dependence of municipalities and autonomous regions.

In case of discrimination in obtaining and implementing protection resources for women, children or any other vulnerable person from the government institutios or bodies they must recourse to the general procedures for denounce discriminatios or violation of rights referred to in the file 9.

In any case, those affected by discrimination on their rights could go to non-governmental organizations (Fundación Secretariado Gitano¹¹⁰, Romani Union¹¹¹, etc ...) to get support and guidance on the denounce process.

¹⁰⁷ Gypsy Women. Bimonthly Magazine Association Gypsy Secretariat. No. 5. June 2000. Pag 22.

¹⁰⁸ Grounds of discrimination in Spain. An exploratory study. Directorate General against Discrimination, Ministry of Equality. February 2009. Madrid.. Pag. 90.

¹⁰⁹ More information on : <http://www.inmujer.es/servRecursos/centrosAtencion/home.htm>
Ej. : For information on the location of the centers in Andalusia: <http://www.juntadeandalucia.es/institutodelamujer/index.php/informacion-y-atencion-128/centros-municipales-de-informacion-a-la-mujer>

¹¹⁰ http://www.gitanos.org/que-hacemos/areas/vivienda/nuestro_trabajo.html

¹¹¹ http://www.unionromani.org/union_es.htm

CZECH REPUBLIC

1. The legislations applying the defence of the vulnerable members of Roma community

On the territory of the Czech Republic, defence of the vulnerable members of Roma (or any other) community is guaranteed by the Constitution of the Czech Republic¹¹², the Charter of Fundamental Rights and Freedoms¹¹³ the legal order of the state and the obligations resulting from international conventions ratified by the Czech Republic (e.g. the Universal Declaration of Human Rights).

On the constitutional level, the defence of vulnerable persons is regulated in the Charter of Fundamental Rights and namely in the Article 1.

The provisions of the Article 1 are as follows:

„All people are free and equal in their dignity and rights. Their fundamental rights and freedoms are inherent, inalienable, non-prescriptible, and irrevocable.“

Other provisions of the Charter of Fundamental Rights concerning defence of vulnerable persons are following:

Article 3, paragraph 1

„Everyone is guaranteed the enjoyment of her fundamental rights and basic freedoms without regard to gender, race, colour of skin, language, faith and religion, political or other conviction, national or social origin, membership in a national or ethnic minority, property, birth, or other status.“

Article 10, paragraphs 1 and 2

“Everyone has the right to demand that her human dignity, personal honour, and good reputation be respected, and that her name be protected.”

“Everyone has the right to be protected from any unauthorized intrusion into her private and family life.”

Abovementioned rights can be demanded directly and no other laws implementing the Charter provisions are needed to enforce it.

The defence of vulnerable society members is furthermore regulated by the Act No. 40/1964 Coll. Civil Act, as amended (the Civil Act)¹¹⁴. The Civil Act specifies in more detail the issues of protection of personality e.g. in section 11 of the Civil Act, which stipulates following rule:

“An individual shall have the right to protection of his or her personhood, in particular of his or her life and health, civic honour and human dignity as well as of its privacy, name and expressions of personal nature.”

Also in section 13, which regulates the rights of the person in case the section 11 of the Civil Act had been violated (namely to demand that unlawful violation of his or her personhood be

¹¹² The Constitution of the Czech Republic, The Constitutional Court of the Czech Republic, available at http://www.concourt.cz/clanek/czech_constitution, accessed on March 10, 2013

¹¹³ The Charter of Fundamental Rights and Freedoms, The Constitutional Court of the Czech Republic, available at http://www.concourt.cz/clanek/czech_charter, accessed on March 10, 2013

¹¹⁴ The Civil Act, available at <http://www.czechlegislation.com/en/40-1964-sb>, accessed on April 30, 2013

abandoned, that consequences of this violation be removed and that an adequate satisfaction be given to him or her, and in case the satisfaction under paragraph 1 appears insufficient due to the fact that the individual's dignity or honour has been considerably reduced, the individual shall also have a right to a pecuniary satisfaction of the immaterial detriment).

Another act regulating the defence of vulnerable members of society is the Act no. 198/2009, on equal treatment and legal protection against discrimination, as amended (Anti-discrimination Act).¹¹⁵

Concerning the EU directives, the for example the following directives has been implemented into legal instruments securing the defence of vulnerable members of the society (e.g. Roma people); Racial Equality Directive No. 2000/43/EC and the Employment Equality Directive No. 2000/78/EC.

2. The implementation of the law

The policies/actions of the government targeting vulnerable people are considerably shaped by the ongoing financial crisis. The Czech government in the declaration from 2010 stated its purpose to reduce several categories of social benefits, allowances and contributions. For instance, the maternity grant was cut down and further available only for the first child. Similarly, the parental allowances were reduced and reductions also affected the conditions of providing the unemployment benefit. In the frame of the social reform in 2011 some benefit systems were changed, including the benefit in material need, handicapped people and labour-law legislation.

In relation to the abovementioned examples of current policies, all households (especially the vulnerable groups and individuals) are negatively affected by the economic crisis and relating governmental austerity measures in different spheres of state budget. Rising rates of unemployment worsen the situation of many families as well.

In the European context, the expenses of the Czech Republic spent on education, active employment policies, health care or social assistance are below average. The measures that government introduce in reaction to economic crisis significantly affect the situation of people endangered by the poverty or socially excluded people.

Concerning the vulnerable people of Roma background, the ethnic perception of their social exclusion contributes to further delay of searching for constructive solutions. Low levels of knowledge on the side of public administration and local authorities concerning the complexity of the social exclusion leads to underestimation of prevention and timely intervention and subsequently ends in slow reaction of the administration.

In relation to family law and more concretely to children rights, the Czech Republic following the judgements of the European Court for Human Rights adopted in 2010 measures of prevention of child withdrawal on the grounds of socio-economic reasons. These measures are supposed to ensure that in future there will not be inappropriate interventions in child right to parental care and to protection of family and private life. The basic principle here is the inadmissibility of child withdrawal based exclusively on inappropriate housing or other social and economic conditions provided that there is no danger for their life, health or favourable growing up.

Children rights and protection of the family are being strengthened also by the cases of law, for instance, the Supreme Court stated in 2010 that the material conditions cannot stand for the reason of institutional upbringing. The Constitutional Court as well in its judgements confirms

¹¹⁵ Basic information about Anti-discrimination Act can be found e.g. via following link: http://lastradainternational.org/?main=newsletter§ion=newsfacts&news_id=318, accessed on April 30, 2013

inadmissibility of child withdrawal on the basis of unfavourable social conditions and the Court likewise emphasizes the right of the children capable of formulating its opinions to be heard in the relevant proceedings. In the last three years the Czech Republic adopted several measures of child protection, e.g. the strategy on protection of children rights, campaign against the violence on children, or campaign against the sexual abusing of children.

3. Discriminations made to the vulnerable persons

The families living in the socially excluded areas and the families which are in threat to become socially excluded often suffer from the various types of the disadvantages. Actually, it may be claimed that there are cumulated reasons leading to the social exclusion of the family. The most of the municipalities with extended competence cannot handle the current situation and solve the problems; especially, the authorities and the organisations for the legal and social defence of children.

The public administration and other subjects take the steps to protect the legal and social rights of the children but the action is usually disunited. In addition, the cooperation between the organisations and the families in need misses any methodical leading. The single subjects do not communicate with each other and the repressive aspects prevails the supportive services. The intervention does not take into account the socio-cultural context of the families.

There is also missed any mechanism for a systematic and early analysis and for the determination of the level of the social threat to a child, the early determination and prevention of the school failure of the preschool age children as well as the determination of the socio-pathologic features and their development among the youth. For all these reasons, the families remain in a social separation too long or even permanently. Moreover, the number of the families broken apart as the consequence of the court decision that a child will be raised in institutional care is also very disconcerting. The European Union authorities have been criticising the high number of children (especially the children younger than 3 years of age and those coming from the poor families) placed in the institutional care since the Czech Republic entered the EU.

Between 45-50 % of the Roma children are estimated to be placed in the institutional care and the number reaches 70 % in several infantile institutions. In particular, the European Court of Human Rights criticised the courts of the Czech Republic for sending a child into the mentioned institutions on the base of the bad financial conditions, even though the relationships within a family were good.

The main problem of the social services for the socially excluded inhabitants is the lack of any distribution and the low number of the offered services in the regional and municipal areas where the socially excluded live. The offered services (especially the services of the social prevention and social consultancy) are in many of these regions only occasional and not very well-organised. Sometimes, the main aim of the well-projected medium-term plan of the service development is not so obvious. Moreover, the plans are supported by the analysis of the necessity of single social services and other additional services.

The optimally spread net of the social services is missed in the zones with the socially excluded inhabitants. In addition, in a case that there are more providers offering the same services in one region, the rendition of the services is not usually coordinated. The consequences are the unequal coverage of the offered services in the regions, which leads to a duplicate work or to the lack of the service. The absence of any municipal plans for the local social services leads to the deepening of the problem of the social exclusion. Moreover, the lack of the plans lowers the responsibility of the local authorities for organising the services in the particular areas. The middle-term plans for the social service development at the regional level can be characterised

as highly disunited and methodically uncertain. Any supportive methods of the creating the plans at the regional (even micro-regional) and municipal level are missed.¹¹⁶

4. Possible recourses to be taken

The socio-economic situation of vulnerable members of the society (not only with the Roma background) is getting worse as a result of the austerity measures adopted by the government in an alleged reaction to the economic and financial crisis. Abuses are thus often results of structural policies and measures. In this context, the potential defence against actions harming vulnerable people becomes rather complicated.

Although, a person can defend his/her rights in the case they are violated. For instance, the decision of providing concrete social benefit falls within the competence of relevant state office. If somebody considers this decision as unjust (and harming his/her social situation) he/she can appeal against such provision to the relevant superior organ. This organ renders a decision against which it is afterwards possible to bring a lawsuit to relevant administrative court (regional court). The court can afterwards forward the issue to the Supreme administrative court, although the provision can be cancelled only at the level of Constitutional court that can state the provision was violating fundamental rights and freedoms.

As for the concrete issue concerning institutional care, it poses a serious problem even though the decisions of the Czech courts strengthen the child rights position. If the court decides to place a child in institutional care and there exist a suspicion of unjustified withdrawal, the family can appeal against such decision. Body for social and legal protection of children ("OSPOD") possess an important role in the proceedings. If this body does not act in compliance with its mandate, a person can turn to relevant superior body. At this state, it is possible to address oneself to the Public Defender of Rights as well. At the same time, several NGO's can provide assistance, e.g. Counselling Centre for Citizenship, Civil and Human Rights, or Our Child Foundation.

¹¹⁶ Strategy on Fight against the Social Exclusion 2011-2015, p. 25-26, 2011, Agency for Social Inclusion , Prague

File 8 - Right to receive social assistance

Article 34

*...The European Union recognizes and respects
the right to social and housing assistance so as to ensure
a decent existence for all those who lack sufficient resources*

THE EUROPEAN LEVEL

The legislations applying this right

Providing social assistance is a topic dealt at national level since the EU does not have the competencies to decide whether or not Member States must include it in their law. Therefore, the EU recognises and respects the right to access social services, social help and housing assistance, but do not oblige Member States to provide any of them¹.

In addition, EU States are not obliged to provide social assistance to a EU citizen from another Member State during the first three months of residency, in its country, or during the period that the EU citizen is seeking for a job. Nor shall it be obliged to provide any educational assistance before the citizen having a permanent residence permit.

Basically, the only EU citizens that Member States are obliged to provide social assistance, while they are not from their countries, are workers, self-employed persons and members of their family². Therefore, workers have the right to register to the official list of housing seekers, if a Member State has one³, and they also benefit of the same social advantages than a citizen of the country where he/she lives⁴ has.

In addition and this applies to all EU citizens living in another Member State, they must receive the same assistance provided to national citizens, in terms of jobs search, from the employment agencies⁵.

UNITED KINGDOM

¹ Charter of Fundamental Rights, Article 34 "1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices. (...)3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices."

² Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, Article 24, Paragraph 2: "By way of derogation from paragraph 1, the host Member State shall not be obliged to confer entitlement to social assistance during the first three months of residence or, where appropriate, the longer period provided for in Article 14(4)(b), nor shall it be obliged, prior to acquisition of the right of permanent residence, to grant maintenance aid for studies, including vocational training, consisting in student grants or student loans to persons other than workers, self-employed persons, persons who retain such status and members of their families". Article 14 (4) (b) says: "By way of derogation from paragraphs 1 and 2 and without prejudice to the provisions of Chapter VI, an expulsion measure may in no case be adopted against Union citizens or their family members if: (b) the Union citizens entered the territory of the host Member State in order to seek employment. In this case, the Union citizens and their family members may not be expelled for as long as the Union citizens can provide evidence that they are continuing to seek employment and that they have a genuine chance of being engaged."

³ Regulation (EU) 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union, Article 9, Paragraph 2: "A worker referred to in paragraph 1 may, with the same right as nationals, put his name down on the housing lists in the region in which he is employed, where such lists exist, and shall enjoy the resultant benefits and priorities."

⁴ Ibid, Article 7, Paragraph 2: "He shall enjoy the same social and tax advantages as national workers."

⁵ Ibid, Article 5: "A national of a Member State who seeks employment in the territory of another Member State shall receive the same assistance there as that afforded by the employment offices in that State to their own nationals seeking employment"

1. National Legislative Texts Applying Welfare System

In the UK, social assistance refers, broadly, to social security, which is an area reserved to the competence of the UK Parliament. Social security includes, inter alia: (a) national insurance, (b) social fund, (c) housing benefit, (d) council tax benefit, (e) child support; (f) caring allowances, (g) disabled persons' allowances, and (h) accident-related benefits. The UK Parliament also has legislative competence for State pensions, the age entitlements for which are changing: it is currently 65 for men and by November 2018 it will be same for women, before increasing again to 66 by October 2020.

From October 2013, a new arrangement has been established for the payment of social security. The new scheme, "Universal Credit", Universal credit is a new way of paying benefits, bringing together different benefits, and combines them into one monthly payment. There is a strong element of "conditionality" in this arrangement with continuing receipt of benefit ultimately dependent on satisfying criteria around (a) looking for work and (b) taking action to find work.

More specifically, "Universal Credit" comprises a standard allowance and, depending on a claimant's circumstances, potentially one of the more of five "elements": (a) child or disabled child element, (b) childcare element, (c) carer element, (d) limited capability for work element, and (e) housing element. Payments will commence from October 2013, albeit it will not take full effect until April 2014 at the earliest.

The "Universal Credit" is underpinned by the "benefit cap". This is a limit on the financial amount of benefit a single individual, single parents, or couples with or without children may receive. It applies to all those aged 16 to 64, covers most but not all benefits, and is being phased in gradually between April and September 2013. The main benefits subject to this limit are: (a) income support, (b) job seeker's allowance, (c) housing benefit, (d) employment and support allowance, (e) child benefit and child tax credits, (f) carer's allowance, (g) maternity benefits, and (h) widow's benefits.

There is no one single piece of legislation encompassing all elements of social security and pensions in the UK. However, the afore-mentioned "Universal Credit" was part of the wide-ranging Welfare Reform Act 2012⁶ as well as some of the ancillary regulations that flowed from it. In summary this Act makes provision for (a) "Universal Credit" and the various benefits it encompasses and (b) changes many other social security and tax credit matters.

2. Implementation of the Law

Bulgaria and Romania joined the European Union in January 2007. People from these countries have many of the same rights as other EEA/EU nationals, but most need authorizations to work in the UK. This restriction will be lifted from 2014. Romanian and Bulgarian who has right to remain in the UK and has the right to apply for benefits, social housing, and help from the council if they become homeless, this applies to whole of the UK.

Social security is, as mentioned above, a competence reserved to the UK Parliament. Executive and administrative responsibility for social security is with the Department for Works and Pensions (the DWP). Social security is a highly complex matter in the UK, with a myriad of various benefits, rules governing entitlements to these, and exceptions and restrictions. Accordingly, space does not permit a proper explication of these benefits; rather it is best to access the DWP's "Benefits Entitlement" webpage which provides a wealth of clear, concise, and helpful factual information⁷.

⁶ See: <http://www.legislation.gov.uk/ukpga/2012/5/contents>.

⁷ <https://www.gov.uk/browse/benefits/entitlement>.

The old benefit system is being replaced by - Universal Credit was introduced on April 2013 which is currently been practiced in England and which will cascade to other parts of the UK which will cause difficulties in accessing the benefits as it will depend on where one lives and on personal circumstances. This benefit will replace the 6 existing benefits with a simpler, single monthly payment will be paid if one is unemployed or workless. It will apply across Britain, namely England, Northern Ireland, Scotland, and Wales.

This may have an adverse effect on the migrants, especially the Roma / Gypsy Travellers. For those that do not have an address, in order to potentially receive benefit, an applicant must at least presently take one of the following two steps: (a) declare to the DWP, through its agency Job Centre Plus, they have "No Fixed Abode", but receipt of benefit through this channel is contingent on the applicant being able to access their local JCP office to collect payment; or (b) a person applies for benefit in their own name and they have the informed consent of another person to give use their address for the purpose only of making the application, this path is known informally throughout the UK as the "Care Of" option.

Universal Credit will eventually replace:

- Income-based Jobseeker's Allowance
- Income-related Employment and Support Allowance
- Income Support
- Working Tax Credit
- Child Tax Credit
- Housing Benefit

3. Common Abuses and Discrimination

The widespread and deep disadvantages experienced by Roma and Gypsy / Traveller communities throughout the UK connect to a need to have practical access to not only to employability services and, ideally, appropriate work, be it employment or self-employment; they also reflect the importance of accessing social security entitlements. In particular, the comparably low levels of education attainment and literacy; relatively high levels of prejudice towards; and generally low levels of access to public services combine to make Gypsy / Traveller communities especially vulnerable in terms of accessing, using, and moving away from social security. Fuller details of some of the general and specific issues relating to economic exclusion and social security are set out in the EHRC's excellent review of inequalities experienced by Gypsy / Traveller communities in the UK, as referred to in other submissions.⁸ There is a universal push for the universal credit to be accessed online which will discriminate many communities.

Romanian and Bulgarian and some other migrants from the EU countries can lose their benefits if they lose their job and don't have access to social security as they required to be registered under the Home Office scheme for twelve months without interruption for more than thirty days is fulfilled. Temporary and seasonal workers are particularly vulnerable to falling into this group;

- Failure to satisfy the A8 and A2⁹ registration requirements. This can vary from technical breaches, for example, failure to register a change of employment within thirty days of starting a new job through to more fundamental breaches, such as not registering in the first place;
- Change in personal circumstances for example, family breakdown, domestic violence or other circumstances. Women are often reliant on the worker registration status of male

⁸ pp.35-47, Cemlyn, S., et al (2009) "Inequalities Experienced by Gypsy and Traveller Communities: a Review" (Manchester: Equality and Human Rights Commission)", accessible with many other relevant reports at <http://www.equalityhumanrights.com/key-projects/good-relations/gypsies-and-travellers-simple-solutions-for-living-together/gypsies-and-travellers-research-reports/>.

⁹ Please see information in File 2 on A2 and A8 migrants.

partners for access to support and a breakdown in a relationship has severe consequences often during a period when most needed;

- Others who are undocumented for example, many Roma working in Northern Ireland appear to fall into this category.”

These rules above will surely cause abuse and discrimination to the vulnerable from the Roma and Bulgarian migrants.

4. Recourse

If Roma or Bulgarian or any of the A8 migrants made homeless then they can get in touch with their local authority and they will provide them with temporary housing and if they are discriminated in relation to employment then following example can apply to the EU recession country migrants.

“A is from Poland. She arrived in July 2005, found work picking mushrooms straight away and registered her employment through the Workers Registration Scheme (WRS). Six months later the seasonal work ended and within three weeks she was employed by an employment agency and was provided with regular work. The change of employment was not registered by A. The employment agency did not advise her to do so. Her daughter aged 3 and partner arrived from Poland in March 2006. In July 2006 following domestic violence she left her accommodation and stayed with a friend before moving to Women’s Aid. She had to give up her job due to lack of childcare. She also discovered she was pregnant. Her claim for benefit was refused although as she had worked for 12 months without interruption of more than thirty days, she had not registered her change of employment. She challenged this decision unsuccessfully and Women’s Aid provided her with accommodation free of charge and social services provided some financial support. In early 2008 she found part time work and the Law Centre brokered an agreement with social services to pay for childcare support while a tax credits claim was made and the new employment registered. After almost two years in Women’s Aid she was able to obtain independent accommodation of her own.”¹⁰

It is also difficult for Romanian or Bulgarian migrants who come on a work permit and should be able to work freely, however this is not always the case as the employers refuse to provide evidence that the person worked for this individual. This shows migrants although have the right to reside yet still feel restrictions on their ability to work due to their previous employer fail to forward evidence to the next employer.

If the judiciary system¹¹ fails then there are various means of getting support from NGO’s, voluntary sector organisations across the UK. Migrants can also go to their local law centre, Women’s Aid, Simon Community and other voluntary sector housing providers, or to churches that would also provide help and support. There are social services set in every city and area where depending on the circumstances of the individual can access social funds till they get something sorted or get themselves registered with the Job Centres or the Home Office. Those without access to information or support or face language barrier to get their points across can end up sleeping on the streets. This makes even more difficult if migrants don’t have any savings and interruption of employment and family circumstances can have a devastating effect and it is better for any migrant coming to the UK to be able to search all the positives and negatives and gather information about the social security system in the UK so that they don’t fall into the poverty trap or end up sleeping in the streets.

¹⁰ <http://www.lawcentreni.org/policy/policy-briefings/201.html>.

¹¹ Please see also File 9.

FRANCE

1. The national legislative texts which apply the right to receive social assistance:

Social assistance gathers the benefits paid to people living in poverty or extreme poverty. They are aimed at addressing the basic needs of these people.

The Social Work and Family Code¹² provides all the laws and regulations about social action and family.

Every person living in France, if he/she fulfils the conditions provided for in the legislation, benefits from social assistance¹³ for child welfare, admission in accommodation and social rehabilitation centre or in reception centre for asylum seekers, state medical assistance, allowance (with the aim of domestic help) for elderly living in France since fifteen years before the age of seventy.

For the others benefits for social assistance, they have a resident permit.

2. The implementation

- Social assistance involves three public stakeholders :
 - o The department for social assistance for the elderly and the disabled people, child welfare, social development
 - o The State for accommodation and social rehabilitation centre¹⁴
 - o The township for the Social Action Community Centers¹⁵

The family allowance Fund, (CAF)¹⁶, one by department, is required to pay family and social allowances set by the State and aid having a social character set by the CAF itself according to local policies and actions

Travellers

In some departments, there are associations to help Travellers¹⁷, ADGV, as the one in Essonne¹⁸, created by different partners (Sub-prefect, county administration, town councilors, volunteers, travellers, associations...) or the ADGV which sets up social accompaniment measures with the urban community of Orléans Val de Loire (Agglo).¹⁹

-Fields concerned by social assistance

¹²Code de l'action sociale et des familles : <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006074069>

¹³ [legifrance.gouv.fr/affichCode.do;jsessionid=13F5E0C7478F2A65C006AD82D81B2F28.tpdjo11v_3?idSectionTA=LEGISCTA000006157551&cidTexte=LEGITEXT000006074069&dateTexte=20130508](http://www.legifrance.gouv.fr/affichCode.do;jsessionid=13F5E0C7478F2A65C006AD82D81B2F28.tpdjo11v_3?idSectionTA=LEGISCTA000006157551&cidTexte=LEGITEXT000006074069&dateTexte=20130508)

¹⁴ centres d'hébergement et de réinsertion sociale : CHRS

¹⁵ Centres communaux d'action sociale, CCAS

¹⁶ <http://www.CAF.fr/>

¹⁷ Association Départementale Action pour les Gens du Voyage ADAGV

¹⁸ <http://adgve.jimdo.com/gens-du-voyage/>

¹⁹ <http://www.agglo-orleans.fr/competences-partagees/cohesion-sociale/accueil-des-gens-voyage-92.html>

o Housing (see file 3) :

The joint ministerial circular of the 26 of July 21012²⁰ provides to find housing solutions when Roma are evicted from their settlements

Emergency housing is provided in the Social Work and Family Code (article L. 345-2)²¹ without conditions of nationality or legality of stay on French territory and this, as long as they get a stable housing.

To have access to emergency housing:

- Call to the emergency number, 115
- Request of housing under the integrated service of reception and orientation, (SIAO)²²
- Fax to the Prefect, with a copy to the administration responsible of social monitoring²³.

It is better to be supported by social workers, associations...

-The Law of the 5 of March establishes the right to housing "*anybody or any family with difficulties because of inadequate income or living conditions can assert their right to housing.*"

The law requires eligibility conditions: people must be French or have a right of residence or a resident permit.

Travellers

- The Law said Besson (See file 3) provides for halting sites.
 - The CAF in some department (for example Rhône et Loire, Finistère) gives grants for the restoration or the purchase of caravan. The conditions for these aids depend of each CAF

o Education (see file 4)

▪ Financial helps

•Financial help²⁴ exists to help low-income families. Back-to-school allowance (ARS)²⁵ is paid by the Family Allowance Fund (CAF)²⁶ to families who have at least one child (aged 6-18) in school. This allowance helps families to cover back-to-school expenses. It is variable, depending on age of the child and of the income of the family. The child must be registered in a public or private school, or in distance courses as the National Centre for Distance Learning (CNED).

The first time people have to declare to go the CAF their family benefits and accommodation situation and their income for the last year. It is also possible to download the form.

•There are other helps (see file 4). In any case, to know rights and opportunities, it is better to have a meeting with the social worker of the school or of the city hall's social services.

²⁰ http://circulaire.legifrance.gouv.fr/pdf/2012/08/cir_35737.pdf

²¹ <http://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000021641132&cidTexte=LEGITEXT000006074069>

²² <http://www.developpement-durable.gouv.fr/Systeme-Integre-d-Accueil-et-d.html>

²³ Aides pour ces démarches sur : http://www.jurislogement.org/index.php?option=com_content&view=frontpage&Itemid=1 ou sur <http://115juridique.org/preparer-la-procedure/>

²⁴ <http://www.education.gouv.fr/cid51/aides-financieres.html>

²⁵ <http://vosdroits.service-public.fr/F1878.xhtml>

²⁶ Caisse d'allocation familiale : family allowance fund

- A specific aid is given by the School Fund²⁷, a communal public body. The School Fund helps families in difficulty, giving vouchers for purchase of shoes and clothing, school supplies. It may pay a part of fees for canteen, after-school care, leisure centers...
The applications for aids are evaluated by the social worker and submitted to a commission who meets regularly.
- A structure of the National Education, Academic Centers for the Schooling of Newly Arrived and Travelling Children²⁸, CASNAV, does the reception, the orientation and the housing of the children coming from foreign countries, but also of the children of Travellers. According to the regions, there is a special focus on foreigners or Travellers.
 - Children from Romania or Bulgaria are often admitted into specific non French speaking²⁹ classes. They will carry out a French language training course before joining an ordinary class.
 - For Travellers : some regions, some municipalities take various initiatives : a personalized assistance in caravans by student volunteers in Orléans, in Lorraine, the assistance is organized by the CCAS, on the halting sites and an help for the registration to school and for school supplies

○ Employment (see file 5):

National employment agency (Pôle Emploi), registers jobseekers, gives an assistance with job-search and pays benefits to the unemployed.

- The agency supports and follows-up the jobseekers³⁰ :
 - ✓ Jobseekers can get a formation. In that case, they may have an aid for the necessary expenses, the Afaf³¹
 - ✓ There is the possibility to have an aid for transports and to obtain a driving license.
 - ✓ And also an assistance in setting up businesses

All these aids are under conditions.

- help for someone who has worked

Every jobseeker may registers in "Pôle emploi" with the procedural rules in force³². unemployment benefit is paid to employees deprived of employment, the benefit is paid during an unsettled period which depends of the previous activity³³. Afterwards, it is possible to get the allowance offered to people wishing to return to work (ARE)³⁴.

RSA (Active Solidarity Income)³⁵, created to combat poverty more effectively, is an income support payment that takes into account the earnings and expenses of a family.

Only French or legal migrants can get the RSA.

²⁷ Caisse des écoles

²⁸ CASNAV : Centre Académique pour la Scolarisation des enfants allophones Nouvellement Arrivés et des enfants issus de familles itinérantes et de Voyageurs

²⁹ Classe d'initiation pour non-francophones (Clin) : special class for no french speaking

³⁰ <http://vosdroits.service-public.fr/particuliers/N178.xhtml>

³¹ Afaf : aide aux frais associés à la formation

³² <http://vosdroits.service-public.fr/particuliers/F1636.xhtml#N10099>

³³ <http://vosdroits.service-public.fr/particuliers/F14860.xhtml>

³⁴ ARE : Aide au retour à l'emploi, <http://vosdroits.service-public.fr/F1447.xhtml>

³⁵ <http://vosdroits.service-public.fr/N19775.xhtml>

Without residence permit, Romanians or Bulgarians nationals are not entitled to receive any aid or any support (family benefits, housing allowances...). It is necessary to have residence card and work permit.

- Retirement ³⁶

There are differences if he/she had worked in the private or the public sector and the number of working years. Nowadays retirement age is 62 years old.

- Health care (see file 6)

People with low income have access to universal medical cover (CMU)³⁷, to the supplementary CMU-c and for undocumented migrants the "State Medical Assistance"(AME)³⁸. The permanent access to health care (PASS)³⁹ functions within the medico-social sector, which should facilitate the access of poor people not only to the hospital system but also to institutional networks or associations of home care and social support.

For people benefiting from AME, it is better to go to hospital or health centres. In Paris some hospitals have continuous access to health care⁴⁰.

It is possible to contact the Medical committee for exiles (Comede)⁴¹

Some centers are open to everybody whether or not having social welfare : mother and child centre (PMI) ⁴², Family Planning and Education Center(CPEF) ⁴³

- Vulnerable members of the community: On a social level, how can they be helped if they are mistreated?

Without residence permit, Romanians or Bulgarians nationals are not entitled to receive any aid or any support (family benefits, housing allowances...). It is necessary to have residence card and work permit. Very rarely, the adult with disabilities allowance has been obtained.

3. The common abuses/discriminations occurring and faced by the Roma:

The prejudices against Travellers and foreign Roma are important. They had increased with discriminatory, racist and xenophobic comments of media and political figures

The special provisions⁴⁴ for Romanian and Bulgarian nationals make their life difficult in France. Although the joint ministerial circular of 26th of august 2012 is providing provisions for housing Roma after a forced evictions from their places for living, these provisions are generally not applied nor are put in place the other tools required to protect their security and their rights (among them schooling or medical follow-up continuity). This is a major issue with the policy of forced evictions done by the French government during this period.

- For housing, the Samu social refuses to answer to the 115 when the call is for Roma
- For health care : some doctors refuse the CMU or the AME

³⁶ <http://vosdroits.service-public.fr/N381.xhtml>

³⁷ CMU : Couverture maladie universelle

³⁸ AME : Aide médicale d'état

³⁹ Pass : Permanence d'accès aux soins de santé : <http://www.sante.gouv.fr/les-permanences-d-acces-aux-soins-de-sante-pass.html>

⁴⁰ <http://www.aphp.fr/site/cartes/pass.htm>

⁴¹ Comede : Comité medical pour les exiles, <http://www.comede.org/>

⁴² PMI : centre de protection maternelle et infantile, <http://allopmi.fr/>

⁴³ CPEF : centre de planification familiale et d'educatio, <http://www.sante.gouv.fr/les-centres-de-planification-ou-d-education-familiale.html>

⁴⁴ See file 1

4. The possible recourses to make this right respected:

- If a doctor refuses to provide medical treatment because the patient benefits from CMU or AME, the patient can report to Medical Benefits Fund or directly to Medical Board, Council of the Order of Pharmacists...or can ask help to the CMU fund
- See also the others files (particularly file 1 and 9, and for each specific social right the corresponding file)

SPAIN

1. The legislative texts :

The social services are a set of activities and resources to promote, support and social development, aimed to the full development of all individuals and groups, with the objective of achieving greater social welfare dimension and quality of life.

The Spanish Constitution, in the Article 9.2⁴⁵, recognizes the responsibility of public authorities⁴⁶ (the State) in establishing measures to promote equality and freedom. Article 39.1⁴⁷ also states that *"the government shall ensure the social, economic and legal protection to family."* For all this, Public administrations have the responsibility to provide appropriate services and assistance to meet the basic needs of the families who need them. Finally, pursuant to Article 41, *"The public authorities shall maintain a public Social Security system for all citizens guaranteeing adequate social assistance and benefits in situations of need, especially in case of unemployment. (...) "*

The Autonomous Communities⁴⁸ are competent in the field of Social Services⁴⁹, assuming responsibility for its management in their Statutes of Autonomy of each Community⁵⁰.

Moreover, the Law 7/1985⁵¹, of April 2, reinforces the approach of Social Services to citizens. Under this law the municipalities must exercise competencies⁵² in the field of Social Services⁵³.

⁴⁵ Article 9.2 of the Spanish Constitution: "It is up to public authorities to promote the conditions for freedom and equality of individuals and groups to which they belong are real and effective, removing the obstacles that prevent or hinder their plenitude and facilitate participation of all citizens in political, economic, cultural and social life. "

⁴⁶ In Spain there are three administrative levels: Central Government, Autonomous Regions and Local Authorities (Municipalities, Provincial ...). This competences distribution means that aid to families can be issued by different agencies in different territories or in different levels, so it may not be the same on all the autonomous regions or localities. However, the State guarantees all citizens access to basic social services.

⁴⁷ Article 39 of the Spanish Constitution. 1. The public authorities shall ensure the social, economic and legal status of the family.

⁴⁸ Go to "Social services websites (by each autonomous communities)" directory in the annex to this file.

⁴⁹ Article 148. of the Spanish Constitution: 1. The Autonomous Communities may assume competences in the following areas: 20 th. Social assistance.

⁵⁰ For example, Article 61 of the Statute of Autonomy for Andalusia says that " the exclusive competence in the field of social services corresponds to the Autonomous Community."

⁵¹ Law 7/1985, of April 2, regulating the Local System. Publishe in BOE no. 80, 3 April, 1985

⁵² under the terms of the legislation of the State and the Autonomous Communities

⁵³ Article 26.1 says: "Municipalities with population over 20,000 inhabitants must provide: civil protection, social services, fire prevention and sports facilities for public use". Furthermore, Article 36 provides that "are competences of the Provincial public service the provision of services at intermunicipal and supra-district level".

2. The implementation of the law:

The Ministry of Health, Social Services and Equality⁵⁴ is the State agency responsible for carrying out Government policies relating to the services in terms of social inclusion, family, child protection, care for dependents or disabled, equality, the fight against all kinds of discrimination and gender violence.

These public services are free⁵⁵ and depend on each autonomous community⁵⁶ and local authorities. The planning, coordination and supervision are powers of the regional administrations, while the local corporations (municipalities and Provincial Councils among others) deal with the management, implementation and development of services.

Besides the Ministry of Health, Social Services and Equality, in social aid management policy are involved all those ministries in the field or area in which the assistance is needed. For example, to apply for a scholarship, the Ministry that manages this feature is the Education, Culture and Sports Ministry.

General requirements and documentation:

The managing of Social Service Centers is responsibility of Local Authorities, which maintain collaboration agreements with the autonomous administrations for the maintenance and funding of its services, programs, and services.

To enjoy the social benefits is necessary to be registered at the local council in which they will apply for the benefit. For most applications is necessary to have a residence permit (for foreigners only). This means that national citizens have access to the same benefits that foreigners regularized.

The documentation required⁵⁷ is the certificate of registration or census, and according to the requested service, a residence, income tax declaration, etc. (documentation will be greater or less depending on the service or the need claimed).

With respect to non-regularized foreigners, they are entitled only to welfare-oriented social resources (no access to financial aid). For example, the shelters⁵⁸ are a temporary social resource that does not distinguish among its recipients.

Social Services carry out the management and processing of primary care services⁵⁹, referral to other resources and coordination with other agents.

⁵⁴ <http://www.msc.es/ssi/portada/home.htm>

⁵⁵ Funding is charged to public budgets (State Budget, Social Security, Autonomous Communities and Local Corporations).

⁵⁶ To access the autonomous community portals: <http://www.msc.es/organizacion/ccaa/directorio/home.htm>

⁵⁷ These regulations are established by the regions and local authorities, therefore is recommended to consult these agencies to receive information specific of each region.

⁵⁸ These centers are intended for homeless or transients passing through a situation of need. These provide them shelter, food, clothing and hygiene, as well as other techniques for enhancing personal skills for living for a time defined according to the needs of each person, technically valued.

⁵⁹ The mission of this first step focuses on the evaluation and diagnosis of the needs of each individual or group, identifying those resources and services that could be used to help they overcome their situation. <http://www.msc.es/ssi/familiasInfancia/inclusionSocial/serviciosSociales/home.htm>

Their attention can be complemented by other equipment such as: soup kitchens, offices or information services, day centres, residences or supervised apartments.

- Where to go? At the Social Services Center of the local council.

- Steps:

- Be registered at the City Hall.
- The Social Services Center will inform on the necessary steps to apply for those services for which the plaintiff can opt (specific documents to submit, which bodies to resort, ...).
- The deadlines are set by each procedure. The provision and proceeding of emergency aid will depend on the law applicable to each community, usually the time of resolution is between one to three months.

Non-contributory pensions:

Non-contributory pensions are those that are made available to those citizens who have never contributed, or have not reached the periods necessary to access contributory pensions. It is a guarantee of coverage for people in vulnerable situations, disability or retirement.

The request can be made through the Social Services Centres of the municipality of residence of the applicant.

Disability: The citizens eligible for non-contributory invalidity pensions must be nationals or foreigner with legal residence in Spain.

- Requirements:

- Lack of sufficient income.
- Having more than eighteen and less than sixty-five.
- Reside in Spanish territory and have done so for a period of five years.
- Disability / incapacity. In grade not lower than 65%.

Retirement: The non-contributory retirement pension guarantees all citizens in retirement and in need situation, an allowance, free medical, pharmaceutical care and complementary social services, even if they have not contributed or has not done so enough to be entitled to a contributory pension.

The management and recognition of the right to receive a non-contributory Retirement Pension is performed by the Autonomous Communities that have transferred the functions and services from the Institute of Elderly and Social Services⁶⁰ (IMSERSO).

- Requirements:

- Lack of sufficient income.
- Having sixty five or over.
- Reside in Spanish territory and have done so for a period of ten years.

Housing⁶¹:

⁶⁰ http://www.imserso.es/imserso_01/prestaciones_y_subvenciones/donde_solicitar_pnc/index.htm

⁶¹ (More information in the file 3)

The aids in the field of housing are determined by the State Housing Plan⁶² in force at any time⁶³, through this plan are set various aids provided both in the purchase, rental or rehabilitation of housing and requirements to access to these aids .

- Who can access? The requirements are related to income tax declaration and household income, therefore, according to family income is established the priority to access to these aids.

- How to access to this aid? The aid application should be directed to the appropriate body for housing of the Autonomous Community.

Temporary accommodation:

In Spain there are shelters and refuges⁶⁴ for the needy. To access to this social resource, as mentioned above, there are not exceptions related to the place of origin of the person or the situation in the country. However, it is important to note the clearly insufficient supply relative to the demand for this service throughout the country. There are no shelters in all municipalities and that staying in these accommodations is temporary, forcing the homeless to rotate between shelters.

Education⁶⁵:

Scholarships and financial aids from the Ministry of Education, Culture and Sport:

- Who can access? All national students or with a residence permit, this aids are granted on the basis of academic and financial requirements (family income) established by a regulation published annually in the Official State Gazette (BOE).

- How to access? The application will be made online by filling the application form which can be accessed through the website of the Ministry of Education, Culture and Sports in the direction: www.educacion.gob.es. This website also specifies the requirements, concepts and amounts of aids, as well as the deadline for submission of applications.

Provision of full or partial free school canteen, morning classroom and extracurricular activities: The requirements depend on each local authority. For information readers are referred to the Social Services office of the town or the school in which the student is enrolled.

Employment:

Contributive benefits granted by the State:

The unemployment protection is divided into two levels of protection: A contribution level and assistance level.

The contribution level consists mainly of unemployment benefits, which are entitled to those who lose their job and are discharged at social security . It is a financial benefit given to those

⁶² Currently is in force the State Housing Plan and Rehabilitation 2009-2012

⁶³ For more information about the State Housing Plan and Rehabilitation 2009-2012: www.fomento.gob.es, well as in autonomous administrations.

⁶⁴ For more information : <http://www.noticiaspssh.org/spip.php?rubrique137>

⁶⁵ (More information in the file 4)

workers who can and willing to work, lose their jobs or are reduced temporarily ordinary workday.

The assistance level is an extension of the contributive system that is granted, not to replace the salary, but to address the lack of economic resources. It consists of an allowance and payment to Social Security contribution for health care benefits, protection of the family and if necessary, retirement.

Financial aid for the unemployed are managed and processed by the State Public Employment Service (SEPE). It is an independent body responsible for Employment Policy. All information related to the procedures of provision can be found on the web <http://www.sepe.es/contenido/prestaciones/>.

- Who can access? The applicant must be unemployed and meet certain requirements related to professional experience and personal situation (family responsibility, contribution period ...).
- Where to go? At Employment Office in their municipality.

Health⁶⁶:

Medicines :

There are different levels for the pharmacy payment, according to three criteria: incomes, age and extent of disease. (According the recent reform on health system⁶⁷).

Access to health care:

- Who have free access to the health system? The Spanish and legalized foreigners have free access to the Spanish health system. However, foreign adults⁶⁸ unregistered as residents in Spain⁶⁹ will be cared in the Spanish health system in the following situations:
 - In case of urgency to serious illness or accident, whatever its cause, until the medical discharge.
 - For medical assistance in pregnancy, childbirth and postpartum.
- Where to go? To the Social Security office of the locality⁷⁰ or through electronic registry⁷¹ along with the application form.
- Documentation required⁷²:

⁶⁶ (More information in the file 6)

⁶⁷ In the following link you can access to a leaflet that outlines the key points of this reform:<http://www.msc.es/gabinetePrensa/reformaSanidad/docs/cuadripticoReformaSanitaria.pdf>

⁶⁸ Foreigners under eighteen receive health care under the same conditions as Spanish.

⁶⁹ For irregular immigrants the situation varies according to the autonomy in which they reside, however, they should go to a non-governmental organization in the field of immigration due to the usual incidents that happen even when regional governments are declared in default with respect to central government.

⁷⁰ To identify the appropriate location of INSS office use the following web link: http://www.seg-social.es/Internet_1/Oficinas/index.htm

⁷¹https://sede.seg-social.gob.es/Sede_1/OficinadeRegistro/oficinaderegistro/index.htm?ssUserText=231629

⁷² Original document accompanied by a copy for its certifying or certified photocopy , except for identity documents, which will be enough just to show the original.

- Spanish Citizens: National Identity Document (DNI), for over 14 years.
- Foreigners Citizens: Certificate of registration in the Central Register of Foreigners along with passport or identity and family book.

Social care for dependant persons⁷³:

The System for Autonomy and Care for Dependency (SAAD) offers a number of services and economic benefits on specific protection for dependants persons, including benefits for non-professional care in the home environment, including, where appropriate, the social security contribution of nonprofessional caregiver.

Who is entitled to this benefit? People of Spanish nationality and foreigners⁷⁴ regularized in dependent situation who meet the legal⁷⁵ requirements for this benefit.

Application procedure⁷⁶: They may go to Community Social Services closest to the place of residence⁷⁷. They will have to submit an application on the official form concerned and an assessment of the applicant's dependency needs will be made . Depending on their situation will be determined the services or benefits that correspond ⁷⁸ to the dependent person.

NGOs that provide some form of social assistance:

There are several non-governmental organizations that provide assistance to people in need. The actions that develop are diverse; soup kitchens, shelters, food distribution, promotion of employment programs, etc..

Some of the most important entities in Spain and present throughout the national territory:

- Cáritas⁷⁹: Cáritas develops social work supporting diverse social groups in precarious situations and / or social exclusion. Cáritas carry out basic food assistance programs, employment programs, housing, etc ...
- Red Cross⁸⁰: Develop various programs in different scopes such as employment, immigration, prisoners, etc. ..
- Red Acoge⁸¹: Its objective is to promote the rights of immigrants in Spain. Currently, the Network is a federation of 17 organizations spread throughout the state.

⁷³ (More information in the file 7)

⁷⁴ To foreign persons shall apply the provisions of the Organic Law 4/2000, of 11 January on the rights and freedoms of foreigners in Spain and their social integration, as well as international treaties and agreements established with the country origin. To this end, the Law provides in Article 14 that foreigners with legal residence in Spain have the right to services and social benefits, both general and basic as the specific, in the same conditions as the people of Spanish nationality.

⁷⁵ Law 39/2006, of December 14 of Promotion of personal autonomy and care for people in a situation of dependency. Published in BOE no. 299, 15 december, 2006.

⁷⁶ http://www.dependencia.imserso.es/dependencia_01/tramitacion/solicitud_tramitacion/index.htm

⁷⁷ http://www.dependencia.imserso.es/dependencia_01/tramitacion/ccaa_dt_imserso/index.htm

⁷⁸ http://www.dependencia.imserso.es/dependencia_01/normativa/texto_ley/titulo_uno/prestaciones_saad/index.htm

⁷⁹ More information on : <http://www.caritas.es/qhacemos.aspx>

⁸⁰ <http://www.cruzroja.es/isocial/home>

⁸¹ <http://www.redacoge.org/>

- Fundación Secretariado Gitano (FSJ)⁸²: The objective is to promote the access of Roma to rights, services, goods and social resources on equal footing with other citizens. They carry out various actions, including the "Programa Acceder"⁸³, made to promote labor market integration of Roma in the labor market.
- Romani Union⁸⁴: This organization is dedicated to the defense of the Roma community. Develop activities and programs in various fields such as housing, legal assistance, health, etc ...

3. Discriminations made to the Roma and violations of the law:

In the field of social protection and assistance from the Spanish State to Roma people, we must emphasize that the social assistance system provides a number of programs and institutions focused specifically⁸⁵ on the needs of the Roma.

The implementation Roma Development Programme⁸⁶, in effect since 1989, and the creation of the State Council of the Romany Population⁸⁷, in 2005, are decisive instruments, on financial and technical aspects, to combat the shortcomings and needs of the Roma through the cooperation of the State, both with autonomous communities as with Roma organizations.

These initiatives have facilitated the access of Roma families to social service resources available as well as the creation of specific resources for this population such as the Action Plan to promote development among the Roma population 2010-2012⁸⁸ and the Strategy for Social Inclusion of Roma people 2012-2020⁸⁹ approved on March 2, 2011.

Therefore, we must note that the Spanish State develops several policies considered as good practices⁹⁰ in combating discrimination against Roma.

Today, however, persist in the population discriminatory concepts based on prejudice related precisely with the social resource hoarding and overuse of them.

4. Possible recourses to be taken:

The general procedure for denounce discriminations or violation of rights caused by administrations, individuals or private companies to roma people, will be accessible to the general legal resources relating to racial discrimination referred to in the file 9.

⁸² <http://www.gitanos.org/>

⁸³ http://www.gitanos.org/que-hacemos/areas/empleo_y_formacion_profesional/acceder.html

⁸⁴ http://www.unionromani.org/index_es.htm

⁸⁵ More information on : <http://www.msc.es/ssi/familiasInfancia/inclusionSocial/poblacionGitana/home.htm>

⁸⁶ <http://www.msc.es/ssi/familiasInfancia/inclusionSocial/poblacionGitana/programaDesarrolloGitano/home.htm>

⁸⁷ More information on : <http://www.msc.es/ssi/familiasInfancia/inclusionSocial/poblacionGitana/consejoEstGitano.htm>

⁸⁸ More information on : <http://www.msc.es/ssi/familiasInfancia/inclusionSocial/poblacionGitana/planAccionGitano.htm>

⁸⁹ <http://www.msc.es/ssi/familiasInfancia/inclusionSocial/poblacionGitana/estrategiaNacional.htm>

⁹⁰ According to the report « Policies for social inclusion and Roma population in Spain. The Spanish model of social inclusion of Roma population. Fundación Secretariado Gitano. 2012. Madrid ».

In any case, those affected by discrimination on their rights could go to non-governmental organizations (FSG⁹¹, Romani Union⁹², etc ...) to get support and guidance on the denounce process.

CZECH REPUBLIC

1. The legislations applying the right to receive social assistance

On the territory of the Czech Republic, the right to receive social services is guaranteed by the Constitution of the Czech Republic⁹³, the Charter of Fundamental Rights and Freedoms⁹⁴, the legal order of the state and the obligations resulting from international conventions ratified by the Czech Republic (e.g. the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights or the European Social Charter).

On the constitutional level, the right to access health care services is regulated in the Charter of Fundamental Rights and namely in the Article 30. The provisions of the Article 30 regarding the right to access health care services are as follows:

- (1) Citizens have the right to adequate material security in old age and during periods of work incapacity, as well as in the case of the loss of their provider.*
- (2) Everyone who suffers from material need has the right to such assistance as is necessary to ensure her a basic living standard.*
- (3) Detailed provisions shall be set by law.*

This right can be claimed only within the confines of the laws implementing these provisions.

The right receive social services is furthermore regulated by, inter alia, the following:

- Act No. 108/2006 Coll., on social services, as amended,
- Act No. 149/1988 Coll., on social security, as amended,
- Act No. 114/1988 Coll., on the competence of Czech authorities concerning the social security,
- Act No. 177/1995 Coll., on state social support, as amended,
- Act No. 111/2006 Coll., on material need, as amended,
- Act No. 110/2006 Coll., on subsistence levels, as amended,
- Act No. 155/1995 Coll., Pension Insurance Act, as amended.⁹⁵

The legal regulation of the social assistance is quite complicated. The services provided in order to secure adequate material security in old age and during periods of work incapacity and assistance as is necessary to ensure a basic living standard are regulated by many acts and decrees. The legislation covers various means of providing the social assistance, from provision

⁹¹ http://www.gitanos.org/que-hacemos/areas/vivienda/nuestro_trabajo.html

⁹² http://www.unionromani.org/union_es.htm

⁹³ The Constitution of the Czech Republic, The Constitutional Court of the Czech Republic, available at http://www.concourt.cz/clanek/czech_constitution, accessed on March 10, 2013

⁹⁴ The Charter of Fundamental Rights and Freedoms, The Constitutional Court of the Czech Republic, available at http://www.concourt.cz/clanek/czech_charter, accessed on March 10, 2013

⁹⁵ Basic information about social assistance in Czech Republic can be found e.g. via following link: <http://www.cssz.cz/en/information>, accessed on April 9, 2013.

of necessary resources to prevent material poverty to provision of services helping the individual to secure the basic living standard on his/her own.

2. The implementation of the law

Housing

In the Czech Republic the issues of housing concerning the vulnerable members of the society is addressed by the various types of social benefits and social services. These issues fall within the scope of the Ministry of labour and social affairs and is realized by the social workers. The housing benefit is included in the system of state social assistance. A person can demand this benefit in his/her place of permanent residence if 30 % (35 % in Prague) incomes of the family cannot cover housing expenditures and at the same time this 30 % (respectively 35 %) is lower than normative expenditures determined by the law. Benefit can be provided for 84 months in the period of last 10 years.⁹⁶

The system of assistance in material need includes two other kinds of benefits – livelihood benefit (a person has right to demand this benefit if after deducting reasonable expenses the income of the person/family is lower than the sum for livelihood) and housing supplementary payment (this allowance deals with the situation when a person/family does not possess enough resources to pay for the housing included the housing benefit).⁹⁷ Approval process of these benefits is started after submitting of the application that is available at the regional branches of the Labour office of the Czech Republic or on the internet of the Ministry of labour and social affairs.

In the case when there is a need of provisional housing, a person can utilize following social services determined by the Social Services Act No 108/2066 Coll.: asylum houses or hostels (homeless shelters). These services are provided by the non-state non-profit organizations.

Education

The sphere of education of the children from socio-culturally excluded background is included among competences of the Ministry of Education, youth and sports (MEYS). Pedagogues, special pedagogues, social pedagogues, assistants of pedagogues and psychologists work there. From 2009 the national project aimed at supporting the inclusive education that creates centres of pro-inclusive strategies and measures directly supporting schools in their work with disadvantaged children. At present, in the Czech Republic following programs are taking place: Scholarship program for Roma university students (e.g. expenses for textbooks or examination fees).⁹⁸

Grant programs of MEYS: „Support of socially disadvantaged Roma students of secondary schools and colleges“, „Support of integration of Roma community“, „Support of the schools realizing the inclusive education and education of pupils with disadvantage“, „Support of financing the assistants of pedagogues for children, pupils and students with disadvantage“.⁹⁹

⁹⁶ This limitation is not applicable on people older than 70 years and handicapped persons. Ministry of Labour and Social Affairs, available at <http://www.mpsv.cz/cs/2>, accessed on May 2, 2013

⁹⁷ Ministry of Labour and Social Affairs, available at <http://www.mpsv.cz/cs/5>, accessed on May 2, 2013

⁹⁸ Ministry of Education, Youth and sports, available at <http://www.msmt.cz/socialni-programy/stipendijni-program-ref-pro-romske-vysokoskolske-studenty>, accessed on May 4, 2013

⁹⁹ Information about grant programs for Roma students available at links: <http://www.msmt.cz/socialni-programy/roma-ss>, <http://www.msmt.cz/socialni-programy/integrace-romske-komunity>, <http://www.msmt.cz/socialni-programy/podpora-inkluzie>, <http://www.msmt.cz/socialni-programy/asistent-pedagoga>

Further, the organization “IQ Roma servis” also deals with the issues of Roma education and provides several opportunities for education of children, teenagers, and adults.¹⁰⁰ Association Romea likewise works on improvement of Roma education with different workshops, exhibitions or methodological support of pedagogues.¹⁰¹

Employment

The issues of employment fall within the competences of the Labour office of the Czech Republic. The Labour office is directed by the Ministry of labour and social affairs (MLSA). The social workers are responsible for employment issues and retirement income issues. MLSA provides on its website detailed information on how insert on the job market, also about various kinds of realized programs of requalification and the way how to apply for such courses.¹⁰² The labour office provides for the job seeker information concerning the job opportunities, working conditions or further education.¹⁰³ The unemployment benefit is a social benefit that can be paid in the case of losing the employment. A person can demand this benefit if he/she has permanent residence in the Czech Republic and in the last 2 years acquired at least 12 months of retirement income insurance. Amount of the benefit depends on average monthly salary from the last employment and the duration of receiving the benefit depends on the age of the applicant.¹⁰⁴

The Czech Social Security Administration determines the retirement income insurance according to the law and discerns old-age pension, disability pension, widow’s and widower’s pension, orphan’s pension. The pension applications are prepared by the locally relevant branch of Social Security Administration.¹⁰⁵ All the applications are afterwards forwarded to the Czech Social Security Administration that is responsible for taking the final decision. Duration of the whole process is about 3 months. The possibilities of old-age pension are dependent on the age of the applicant and years of the social insurance payment.

Health care

The Czech healthcare system lies within the Ministry of Health authority and the care is provided by doctors, nurses and other paramedical staff. The system relies on a health insurance – the insured is entitled to free basic health care.

In the Czech Republic, people receiving social benefits are free of the regulation fees at the medical office, however they have to show the decision, notification or affirmation issued by the appropriate administration body.

Medical services are also provided by NGO’s, which are focused on certain groups, i.e. socially-disadvantaged people. For example the Naděje group in the Czech Republic delivers free services of medical practitioners and psychological counselling,

Mistreatment

¹⁰⁰ IQ Roma Servis, available at <http://www.iqrs.cz/search.php?rsvelikost=sab&rstext=all-phpRS-all&rstema=164>, accessed on May 2, 2013

¹⁰¹ ROMEA (2013), available at http://www.romea.cz/sdruzeniromea/index.php?option=com_content&view=article&id=75&Itemid=97&lang=cs, accessed on May 2, 2013

¹⁰² Information concerning programs on requalification: <http://portal.mpsv.cz/sz/obcane/navod>, <http://portal.mpsv.cz/sz/obcane/rekvalifikace>

¹⁰³ Ministry of Labour and Social Affairs, available at http://portal.mpsv.cz/sz/obecne/cinnosti_up, accessed on May 2, 2013

¹⁰⁴ Ministry of Labour and Social Affairs, available at <http://socialnireforma.mpsv.cz/cs/5>, accessed on May 4, 2013

¹⁰⁵ The Czech Social Security Administration, available at <http://www.cssz.cz/cz/duchodove-pojisteni/davky/>, accessed on May 4, 2013

Citizens of the Czech Republic have in the case of mistreatment right to address themselves to the social services assistance. According to the Social Services Act, we distinguish basic social counselling that should be provided by each social service and specialized social counselling. People in unfavourable social situation can address to public advisory centres where the services are provided free of charge, independently and discreetly. In certain cases, a victim of mistreatment can turn for help to the Public Defender of Rights as well.

3. The common abuses/discriminations

Abuses or discriminations faced by the Roma in access to social assistance can be discerned on more levels and in various ways of expression. In the recent period of time the term “nepřizpůsobivý” (inadaptable) is becoming part of official narrative and agenda, for instance when the municipality speaks about its “inadaptable citizens” or when the offices have separate and specially appointed staff to work with those “inadaptables”. This general level of discrimination is afterwards transferred on the level of the concrete person trying to access the social assistance as it is often accepted by the staff as a standard conduct.

Roma people express their dissatisfaction with the manner that the social workers deal with them or rather with their evident reluctance to help them. Roma are as well frustrated because of the power of social worker to decide according to their own consideration when assigning the social benefits.¹⁰⁶ Likewise, the social workers sometimes are not enough professionally qualified and thus do not know how to appropriately deal with them. The “cultural sensitivity” is missing on side of the social services' staff. Even more negative from their side is the obvious differentiation in approach toward the Roma people, expressed e.g. in decreased level of politeness in treatment. The office staff also misuses their functional illiteracy or low levels of social and legal awareness and do not treat them according to the set rules of conduct with a client.

In the sphere of housing, there can be discerned as problematic the general accessibility of housing to low-income families and related social services. As a characteristic aspect of the real estate market is the discriminatory approach of landlords toward Roma. A secondary aspect is the reluctance of neighbours to live with this minority. The landlords thus sometimes directly refuse to rent a flat to Roma. This complex situation impels the Roma to the private housing segment of lower quality but at the same time of inappropriately high rental.¹⁰⁷

As an example of abuse, there can be presented a situation when the Roma person is not accepted as a potential tenant of municipal flat because the unemployed person is usually beforehand assessed as a rental non-payer and that further worsens his/her position.¹⁰⁸ Issue of housing has in addition concrete impact on accessibility of other social services as in the Czech Republic the social rights are derived from the permanent residence status. Concerning the health care, the territorial and local segregation of Roma makes it even more difficult to access. Furthermore, the regulatory fees that a person is supposed to pay for healthcare services often pose a barrier for Roma to access the care as they are not able to provide such amount of money. Though, this barrier is the same for non-Roma vulnerable persons. On the other hand, the Roma have considerably worsened access to get the health

¹⁰⁶ Social Inclusion through the Social service, p. 26-27, 2007, European Roma Rights Centre; Númena, available at http://www.numena.org.pt/ficheiros/Socialni%20zaclenovani%20prostrednictvim%20socialnich%20sluzeb_CZ.pdf, accessed on May 10, 2013

¹⁰⁷ Report on the Roma Minority Situation in 2011, p. 88-89, 2012, The Council of the Government of the Czech Republic for Roma Community Affairs

¹⁰⁸ Social Inclusion through the Social service, p. 28-29, European Roma Rights Centre; Númena

care as the doctors (especially dentists) often refuse to provide the care even when they are obliged to.

Regarding the retirement system, there is a risk that part of the Roma population will not have right to claim the retirement pension and will be dependent on social benefits, as a consequence of the requirement of 25 years of insurance to claim the retirement pension. In this context, the Roma women are especially endangered as their traditional role is in the household.¹⁰⁹

4. Possible recourses to be taken

The Social Services Act (108/2006 Coll.) does not mention explicitly discrimination is prohibited, however there is no doubt that equality and non-discrimination principles are included in standards of this kind of services. In case of any discriminatory treatment it is possible to lodge a complaint to the regional authorities which control social services provision. If the provider is run or established by the regional authority, it is the Ministry of Labour and Social Affairs which makes inspection. An inspector may require remedial action and in case of facility's non-compliance with requirements the authority revokes facility's licence.

If, for instance, a man applies for acceptance to an eldercare facility and his application is rejected by reason the facility is not designated for Roma, however the law enumerates circumstances under which the applicant can be rejected. Concretely, the Social Services Act specifies that a social services provider may refuse to conclude a contract on social services provision only if a provider does not provide a social service required by a person; a provider has insufficient capacity for providing a social service required by a person; or the health condition of a person requiring provision of a stay-in social service excludes provision of such social service.¹¹⁰

Naturally discrimination on the basis of nationality, race or ethnicity is forbidden that is why the case is an example of discrimination. On the other hand a rejection of Roma man's application by reason a facility's capacity is full is not discriminatory.

Complaints on quality or manner of provided social assistance can be lodged according to the criteria that the provider has to prepare.¹¹¹ The criteria have to be understandable to the clients of the concrete social assistance or service. The provider inform clients about the possibility of lodging the complaint, about the relevant body to which the person can refer to, who is responsible for settling the issue. The provider has to deal with such motion in appropriate time period. The provider shall also inform the client about the possibility of referring to the superior body or to the organization monitoring human rights in case the client is not satisfied with the complaint proceedings made by the provider. These bodies can afterwards examine the concrete proceeding.¹¹²

¹⁰⁹Ibid., p. 30-32

¹¹⁰ Social Services Act No. 108/2006 Coll., Division 3, § 91

¹¹¹ Defining of the criteria falls within the competence of the provider, it is not specified by the law. The inspection can assess if the criteria are suitable and appropriate.

¹¹² Quality standards of social services, Ministry of labour and social affairs, available at <http://www.mpsv.cz/cs/5963>, accessed on May 15, 2013

File 9 - How to fight anti Roma discrimination

Article 21

Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited

Article 22

The European Union shall respect cultural, religious and linguistic diversity

Article 41

*the right of every person to be heard, before any individual measure which would affect him or her adversely is taken; (...)
the obligation of the administration to give reasons for its decisions.*

THE EUROPEAN LEVEL

1. The rules at European and international level

1.1. European Union's rules

The EU only provides legal remedies against its Institutions¹ and not against Member States, neither their agencies nor private organisations (e.g. companies, NGOs). Therefore, **Roma persons must have recourses at the national level**. However, the EU made some rules to ensure that victims of discrimination are properly defended in the Member States.

For that the EU defined the concept of discrimination. Thus, discrimination occurs when, due to his/her racial or ethnic origin, someone is treated less favourably in comparison to someone else (direct discrimination) or when an apparent neutral criterion/practise disadvantages a person (indirect discrimination). Harassment is also a way of discriminating and consists of behaving *"with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment"*².

Consequently, to defend victims of discrimination, Member States shall allow remedies and make them accessible by everyone³. NGOs or any other legal entities should be able to bring and drive a legal action on behalf of Roma persons who want it⁴. Victims must be informed of all relevant information concerning the complaint, the procedure and the protection and assistance which he/she may be granted⁵. The information should be made in a language "commonly"⁶ understood by the victims⁷. Besides, non-EU citizens victims are entitled to special protection, in particular related to the right to be informed in her/his language. This includes the right to

¹ Council, Commission, European Central Bank, European Parliament, European Council, offices and agencies of the Union

² Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Article 2 "1. For the purposes of this Directive, the principle of equal treatment shall mean that there shall be no direct or indirect discrimination based on racial or ethnic origin. 2. For the purposes of paragraph 1: (a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin; (b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. 3. Harassment shall be deemed to be discrimination within the meaning of paragraph 1, when an unwanted conduct related to racial or ethnic origin takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States. 4. An instruction to discriminate against persons on grounds of racial or ethnic origin shall be deemed to be discrimination within the meaning of paragraph 1."

³ [Charter of Fundamental rights of The European Union](#) Article 47- Right to an effective remedy and to a fair trial

⁴ [Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, article 7.](#)

⁵ Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings. Article 4 "1. Each Member State shall ensure that victims in particular have access, as from their first contact with law enforcement agencies, by any means it deems appropriate and as far as possible in languages commonly understood, to information of relevance for the protection of their interests. Such information shall be at least as follows: (a) the type of services or organisations to which they can turn for support; (b) the type of support which they can obtain; (c) where and how they can report an offence; (d) procedures following such a report and their role in connection with such procedures; (e) how and under what conditions they can obtain protection; (f) to what extent and on what terms they have access to: (i) legal advice or (ii) legal aid, or (iii) any other sort of advice, if, in the cases envisaged in point (i) and (ii), they are entitled to receive it; (g) requirements for them to be entitled to compensation; (h) if they are resident in another State, any special arrangements available to them in order to protect their interests"

⁶ There is not much precision about the meaning of "languages commonly understood"

⁷ Ibid.

interpretation, the right to translation of essential document and the payment by the Member state of these expenses⁸. In addition to all this, Member States should apply the principle of "Burden of proof" in their Court. The person who is sued must prove he/she did not discriminate the victim who brought facts about it⁹.

Finally, according to the European Union (EU) case law **the EU law prevails over Member States' laws**¹⁰. If a right exists in the European legislation, but not in national legislation, a citizen can anyway reuse it, before a national jurisdiction¹¹. If there is any doubt about the interpretation to have, or the validity of an EU law, the national judge should requests the interpretation of the Court of Justice¹². Moreover, EU citizens possess a right for compensation against a Member State which violated their rights.

1.2 Council of Europe's rules

Unlike the EU, the Council of Europe (CoE) allows anyone (person, non-governmental organisations -NGOs or groups of individuals) to sue Member States before its Court, the European Court of Human Rights (ECHR). Thus, as written in the CoE Convention on Human Rights, anyone is allowed to make an appeal whenever a States which ratified the Convention violated one of its rights (including the ones within the Protocol)¹³. However, the appeal should occur only after all the remedies at national level have been used. The decisions taken by the ECHR cannot be appealed and are binding. At national level, the rights mentioned in this Convention can also be reused before a national jurisdiction. Member States should also guarantee that a victim can make remedies in their countries¹⁴. As anyone can make an appeal to the ECHR, NGOs can also represent individual at the Court.

1.3 International organisations' rules: UN and UNESCO

Concerning international binding texts made under the UN or UNESCO, and mentioned in this toolkit, they can be reused before a national jurisdiction to defend the rights they contain¹⁵. All the States which ratified them must ensure that their competent authorities enforce the decisions resulting of the remedies¹⁶. Besides, the States which ratified them should have incorporated

⁸ [Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings.](#)

⁹ Council Directive 2000/43/EC, Article 8 "1. Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment. 2. Paragraph 1 shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs. 3. Paragraph 1 shall not apply to criminal procedures. 4. Paragraphs 1, 2 and 3 shall also apply to any proceedings brought in accordance with Article 7(2). 5. Member States need not apply paragraph 1 to proceedings in which it is for the court or competent body to investigate the facts of the case"

¹⁰ CJCE, Costa c/ Enel, 1964

¹¹ CJCE, Van Gend en Loos, 1963

¹² The reference for a preliminary ruling, [Treaty on the Functioning of the European Union, Consolidated Version, article 267](#)

¹³ [Convention for the Protection of Human Rights and Fundamental Freedoms, article 34](#) "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right"

¹⁴ [Convention for the Protection of Human Rights and Fundamental Freedoms, article 13.](#)

¹⁵ The States which ratified them are in charge of implementing remedies to make them respected.

¹⁶ [International Covenant on Civil and Political Rights](#), 1966, article 2.3.

these rights into the national (and in cases regional) law. Under strict conditions it is also possible to sue a State before an international jurisdiction. However, it is a complicated and less effective procedure (see section 2.2 The possible recourses to be taken).

2. The possible recourses to be taken

2.1 At the European level: to sue a Member States before the ECHR

As seen previously in the toolkit, the States can be the first responsible of the discrimination faced by Roma persons. Therefore the only legal recourses that Roma persons can use to defend their rights is with the ECHR, the Council of Europe's Court of Justice. Several stages are to be taken into account whenever someone wants to have recourse before the ECHR:

- **Selection procedure:** Fill up the application form in one of the Member States' languages, explaining clearly your case and send it, with the documents requested, to the Registrar¹⁷. From the application form, the ECHR will decide whether or not your case can go to the second stage.
- **Friendly settlement:** If your application is rejected, the decision is unchangeable and the procedure stops here. If it has been accepted the ECHR will try, first, to solve the problem by reaching a friendly settlement between you and the concerned State.
- **Judiciary procedure:** If the amicable procedure did not work out, the ECHR examines deeper your case and decide whether or not a violation to the Convention occurred. From that stage starts the judiciary procedure.

To reach the second stage your application must **match the ECHR's conditions to have recourse**. Therefore:

- The recourse should tackle one of the rights of the Convention.
- The violation should have happened after the ratification by the State of the Convention.
- You must be personally and directly victim of the act or the omission.
- The complaint must be addressed to a public body.
- Having recourse with the ECHR must be used as a last resort. You can have recourse only after using all the remedies in the State violating your rights and have already received the final decision of the highest jurisdiction of the country.
- You must make your application within 6 months from the moment this final decision has been pronounced.

As the ECHR receives several applications, you need to make sure that you match the criteria and that you showed it properly in the application form. As you cannot present your case a second time after the ECHR has already rejected it once, this stage is a very important one. According to the ECHR 90% of the applications do not reach the second stage as they do not match the admissibility criteria¹⁸.

You must be very patient since it can take a year before the ECHR examines your application. The earliest you apply, the better it is. If a danger is imminent your case can be examined

¹⁷ You can find the application form at: <http://www.echr.coe.int/ECHR/EN/Header/Applicants/Apply+to+the+Court/Application+pack/>. You must print it out and send it at: The Registrar, European Court of Human Rights, Council of Europe, F-67075 Strasbourg cedex. For more information about the information requested and the documents to be sent see: <http://www.echr.coe.int/ECHR/EN/Header/Applicants/Apply+to+the+Court/Lodging+an+application/>

¹⁸ For more information about the application, see the check-list simulation: <http://www.echr.coe.int/ECHR/EN/Header/Applicants/Apply+to+the+Court/Checklist/>. For a quick introduction on the admissibility criteria see the video summarizing the conditions: <http://www.youtube.com/watch?v=mcBDDhs5ZVA&feature=plcp&context=C30efc93UDOEgsToPDskipNWkEYyZOOvXrNxqMNLee>. Have also a look at the Question and Answer file of the ECHR on the whole procedure: <http://www.echr.coe.int/ECHR/EN/Header/Applicants/Information+for+applicants/Frequently+asked+questions/>. See as well the case processing flow charts: <http://www.echr.coe.int/ECHR/EN/Header/The+Court/How+the+Court+works/Case+processing/>

quicker. Nevertheless, the ECHR does not have power on the national level. Thus, it cannot suppress a decision taken by a Court or a law neither to execute its own decision. However, it can offer compensation for the prejudices occurred and demand to the condemned State to refund the expenses that you have incurred¹⁹. But the most interesting with the ECHR is that the European Union Court of Justice reuses several of the case law they have produced to interpret the EU legislation. When the EU will ratify the CoE Convention on Human Rights, the ECHR decision should be more constraining.

2.2 Recourses with international legislation from UN and UNESCO

The UN and UNESCO binding texts which are mentioned in this toolkit also have Committees of experts²⁰ in charge of monitoring their good implementation by the bound States. Some of these Committees accept individual complains or petitions made by citizens who had their rights violated²¹. For each of these Committees (so for each of these texts) the conditions to complain are different and like the ECHR you needed to have used all the remedies at national level before. You can refer to them, but one of the major problems with the international system is that 'recourse' is only achieved with the state's cooperation, and this rarely happens. Besides, the decisions taken by one these committees can be influencing but are not binding.

UNITED KINGDOM

1. National Legislative Texts

1. There are two key pieces of legislation available to, inter alia, Gypsy / Traveller communities, for protection against unlawful acts of the UK State including its devolved institutions, such as The Scottish Government and The Scottish Parliament. The first is the Equality Act 2010, which has been considered in other submissions, so the focus here is on the Human Rights Act 1998²² (the HRA). The HRA is probably the most powerful and quasi-constitutional statute in the UK, in that it incorporates the bulk of the European Convention on Human Rights (the Convention Rights) into UK law and, more practically, this incorporation enables legal challenges against the UK State (and its devolved bodies) through courts in England and Wales, Northern Ireland, and Scotland. The Convention Rights, inter alia, comprise a group of absolute and qualified rights some of which are highly relevant to Gypsy / Traveller groups.

2. The HRA also requires public authorities not to act in a manner that is incompatible with the incorporated rights unless primary legislation meant they either (a) could not have acted differently or (b) that they had to give effect to a relevant provision and this could not have been done in a manner compatible with the incorporated right²³. Moreover, the HRA requires primary

¹⁹ If the Court finds that there has been no violation, you will not have to pay any additional costs (such as those incurred by the respondent State).

²⁰ They are called at the UN The human rights treaty bodies. For more information about them, see: <http://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx> or <http://www2.ohchr.org/english/bodies/>

²¹ For an overview on the complaints mechanism: <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx> and more details on the procedures themselves: <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#proceduregenerale>

²² See: <http://www.legislation.gov.uk/ukpga/1998/42/introduction>.

²³ Section 6 Human Rights Act 1998: footnote one.

legislation and subordinate legislation, so far as is possible to do, to be read and given effect in a way which is compatible with the incorporated rights²⁴. The HRA is integral to public policy development, legislation and legislative review, as well as the judicial consideration of human rights in courts throughout the UK.

2. Recourses

3. The HRA is often the basis for public law challenges in courts in the UK. The key mechanism for challenging a decision or action, or a failure to take a decision or action, by a public authority as defined by the HRA²⁵, is Judicial Review. In such proceedings the court considers if (a) the decision was wrong in law, (b) whether the person making the decision had the power to do so and (c) whether the correct process was followed. The Court will not consider the merits, or substance, of a decision or substitute it with an alternative decision. It may, however, overturn the decision and order the public body to consider making a new decision. Judicial Review is the principal transverse legal mechanism by which an individual may challenge, in all countries of the UK, the action(s) or omission(s) of public authorities for the purpose of the HRA, or indeed under other relevant public law e.g. planning legislation.

4. It is important to clarify the main judicial courts in the UK. The Supreme Court of the United Kingdom (the Supreme Court) is the highest domestic court of appeal for civil and criminal law matters in the UK²⁶. The one exception is that Scotland's High Court of Justiciary (the HCJ) retains the power ultimately to resolve Scottish criminal law appeals once the Supreme Court has determined the legal question at issue, thereby ensuring the HCJ remains the final court of appeal in Scottish criminal law appeals²⁷. The jurisdiction of the Supreme Court includes hearing civil and criminal law appeals of which human rights matters under the ECHR are part, and the European Court of Human Rights (the ECtHR) will only consider appeals from the UK that have been considered by the Supreme Court; with the exception of those Scots criminal law appeals that include violations of ECHR rights, and where permission to appeal a decision of the HCJ has been refused by the Supreme Court. In these circumstances an individual may have the right to seek appeal from the ECtHR.

5. Accordingly, the Supreme Court will only consider appeals from the following courts from different countries in the UK, namely: (a) in England and Wales, from (i) the Court of Appeal (Civil Division), (ii) the Court of Appeal (Criminal Division), and occasionally, from (iii) the High Court; (b) in Northern Ireland, from the Court of Appeal and, in some limited cases, the High Court; and (c) in Scotland, from the Court of Session and, in strictly limited matters - from the HCJ specifically and only in so far as a criminal law appeal raises either a "devolution" or a "compatibility" issue under the relevant provisions of, respectively, the Scotland Act 1998²⁸ and the Scotland Act 2012²⁹.

²⁴ Section 3 Human Rights Act 1998: footnote one.

²⁵ Section 6(3) Human Rights Act 1998: footnote one.

²⁶ Please see concise information on the Supreme Court and the UK Judicial system at: <http://www.supremecourt.gov.uk/about/uk-judicial-system.html>.

²⁷ Please follow hyperlink to excellent paper on the complex relationship between the Supreme Court and Scotland's legal arrangements, especially jurisdiction matters relating to Scottish criminal law, procedure, and appeals: <http://www.supremecourt.gov.uk/docs/jurisdiction-of-the-supreme-court-in-scottish-appeals.pdf>.

²⁸ Schedule 6 Scotland Act 1998: <http://www.legislation.gov.uk/ukpga/1998/46/schedule/6>.

²⁹ Sections 36(6) and 34(3) Scotland Act 2012: <http://www.legislation.gov.uk/ukpga/2012/11/contents>.

6. The HRA has been used by Gypsy / Traveller communities since taking effect in 2000. Article 8 of the Convention Rights provides for the right to respect for private and family life, home, and correspondence, and this has provided significant legal status to Gypsy / Traveller communities in vital circumstances, such as in seeking planning permission for use of land as a caravan site. The leading case law here is *Chapman v United Kingdom* [2001] which placed the following positive human rights duty on "Contracting States" to the Convention Rights:

"The vulnerable position of Gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory planning framework and in arriving at the decisions in particular cases ... To this extent there is thus a positive obligation imposed on the Contracting States by virtue of Article 8 to facilitate the Gypsy way of life."

7. Whereas this positive duty applies only to how the regulatory planning framework and decisions within it deal with the needs of Gypsy / Travellers, it is likely to be relevant, albeit not admissible, in cases taken by Gypsy / Travellers in terms of other of the Convention Rights. Indeed, the ECtHR explicitly referred to this positive obligation in *Codona v United Kingdom* [2006], stating in the context of homelessness of Gypsies:

"Following *Chapman* the Court does not rule out that, in principle, Article 8 could impose a positive obligation on the authorities to provide accommodation for a homeless gypsy which is such that it facilitates their 'gypsy way of life'. However, it considers that this obligation could only arise where the authorities had such accommodation at their disposal and were making a choice between offering such accommodation or accommodation which was not 'suitable' for the cultural needs of a gypsy."

8. Previous submissions have outlined sources of legal advice and representation for Gypsy / Travellers across the UK, so it was deemed best not to duplicate here, with the only suggested addition to those sources being Garden Court Chambers and, specifically, its highly specialist Romani Gypsy and Traveller Rights Practice Team, see: http://www.gardencourtchambers.co.uk/practice_areas/gypsy_and_traveller_rights.cfm.

FRANCE

1. The national legislative texts

- stating that **there are recourses possible** in case of violation of someone's rights by discriminating him/her and the general violation of the Rule of Law:
 - Transposition of EU directives and international treaties if applicable
 - Own national laws (and regional ones if applicable)
- Texts **targeting more specifically the State** and the right to summon it to appear before the Court

1-Current laws about discrimination are based (see in the appendix)

- on the penal code
 - article 225-1³⁰ gives the various grounds for discrimination prohibited by the law. As regards Roma, the more relevant grounds are geographical origin, membership or non-membership, real or supposed, of a group of people defined as « ethnic » or as « race »,

³⁰ Is prohibited unequal treatment based on geographical origin, membership or non-membership, real or supposed, of a group of people defined as « ethnic » or as « race », genetic characteristics, handicap, health, Religion, political or trade union activities, sex or sexual identity, age, pregnancy or maternity, Sexual orientation, Manners, Marital status, name, Physical appearance.
<http://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000006417831&cidTexte=LEGITEX000006070719>

- article 225-2³¹ provides penalties for discrimination in the fields of employment, housing, education and access to goods and services.
- article 432-7³² provides penalties when the discrimination is committed on duty by a person who holds public authority or who has a public service remit
- Labour code :
 - articles L. 122-45³³ provides the forbidden grounds and the fields in the labour matters. As regards Roma : (...) "his/her membership or non-membership whether true or presumed of an ethnic group, a country, a race"(...)

2-The laws against racist offence³⁴ can be useful. Many section of the law can be used for provocation relating to discrimination, racial hatred or and defamationviolence. See table in appendix.

2. The possible recourses

- **Independent authority** : the Human rights defender³⁵ :
Children rights, fight against discriminations, and promoting equality are among his tasks. He receives complaints from individuals claiming to be victims of discrimination. You can contact for a free consultation a delegate in each department. There are 450 voluntary delegates from around the country.³⁶
After reviewing the facts, the Human rights defender may seek resolution of the legal dispute through:
 - **a mediation** : chosen by the Human rights defender, the mediator hears the people involved and confronts the views. Mediation may not exceed 3 months and is renewable once;
 - a settlement : the Human rights defender suggests the offender one or more sanctions (payment of a fine, damage compensation to the victim, disclosure of facts). If accepted, the settlement must be approved by the public prosecutor ;
 - **a legal action** : if the Human rights defender has knowledge of facts that may constitute a criminal offence or if the person refuses the settlement, the Human rights defender seizes the public prosecutor.

However, while referring a case the Human rights defender does not suspend nor interrupt the limits of the proceedings (in the context of civil, criminal or administrative appeals and litigation).

- **The judicial authorities**
In those cases, it is safer to ask help of an association or a lawyer.
 - **Criminal court**

³¹ <http://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000026268210&cidTexte=LEGITEXT000006070719>

³² <http://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006070719&idArticle=LEGIARTI000006418508&dateTexte=20091207>

³³ <http://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006072050&idArticle=LEGIARTI000006646204&dateTexte=20101107>

³⁴ In Penal Code : <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070719>

³⁵ Défenseur des Droits (DDD) <http://www.defenseurdesdroits.fr/>

³⁶ <http://www.defenseurdesdroits.fr/contacter-votre-delegue>

The victim of discrimination may file a complaint³⁷. This action serves to inform the judicial authorities of the commission of the offence and have its author probably sentenced to a criminal sanction.

To obtain compensation damages, the victim may:

- File a complaint to the police, transmitted to the public prosecutor,
- Write a letter to the public prosecutor who will answer within 3 months and decide on prosecution or closure. If following this three-month period no response is given, it is considered as an implicit rejection,
- Constitute oneself as a civil plaintiff if the prosecutor did not follow up on the case or did not respond within 3 months,
- Pursue private prosecution. This procedure helps apply directly to the penal court without prior instruction as the offender is identified and notified by a court officer.

- **Civil court**

The victim may have to include a request for damages :

- seize the Labour Court if the offence was work related and committed within that framework.,
- enter the high court,
- enter the district court.

- **Administrative court**

The victim can call upon the administrative judge if the offender acts as official.

The burden of proof is a real problem. It is often difficult to prove discrimination. The applicant has to furnish proof, and evidence is often difficult to present when there is discrimination. But since 16 of July 2001, the law ³⁸ allows the reversal of the burden of proof.

The applicant must present evidence suggesting the existence of discrimination the defendant must prove that his/ her practice is not in fact discriminatory. In the light of this possibility, according to circumstances, it is better to bring action before the civil court and not before criminal court.

SPAIN

1. The legislative texts:

The principle of equality is enshrined in Article 14 of the Spanish Constitution. The precept lists two statements, "equality before the law" and the prohibition of discrimination "by virtue of birth, race, sex, religion, opinion or any other condition or personal or social circumstance".

Equality is considered in the Spanish legal system a fundamental right susceptible to being protected. The appeal for legal protection is a specific procedure established for the protection of fundamental rights. It is a preferential and a summary proceeding established in article 53.2³⁹ of the Constitution and regulated in the different procedural laws. This procedure allows access to

³⁷ <http://vosdroits.service-public.fr/F1435.xhtml>

³⁸ http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=F4503FEB5BA850AE8ADFD3EBCE0D2A8.tpdjo11v_3?cidTexte=JORFTEXT00000588617&categorieLien=id

³⁹ Article 53.2 of the Spanish Constitution. Any citizen may request the protection of the freedoms and rights recognized in Article 14 and the first section of Chapter II before the ordinary courts of preferential and summary, where appropriate, through the application for amparo before the Constitutional Court.

the courts against those acts considered as violating the fundamental rights, among them that of equality.

However, there are rights that are not recognised to foreigners, as it is the case in those mentioned in Article 23 of the Constitution⁴⁰ concerning political participation and voting rights. Those two rights are limited in accordance with Article 13.2 of the Constitution which solely grants Spanish citizens the right to vote in the General and Regional Elections⁴¹.

Discrimination is reflected in the Spanish Penal Code, considering it a crime⁴² which will be punished when incurred orally within a hate speech, or by the denial of services or access to the rights recognized in the Constitution.

The Workers' Statute⁴³ highlights as "basic employment right" the right within the Spanish State "to not be discriminated either before or once employed, on grounds of sex, marital status, age within the limits set by the law, race, social , religious or political beliefs, membership of a union or not, language ".

⁴⁰ Article 23 of the Spanish Constitution : "Citizens have the right to participate in public affairs, directly or through representatives freely elected in periodic elections by universal suffrage."

⁴¹ There are two exceptions to this rule that applies in this processes:

-In the European Parliament elections may also vote the European Union citizens resident in Spain who express their desire to exercise the right to vote in our country.

-In the municipal elections, may vote, under the above conditions, the European Union citizens resident in Spain, as well as the citizens from the countries that give Spanish citizens the right to stand in their municipal elections and have signed a treaty reciprocity. In addition to Norway, Netherlands, Denmark and Sweden, Argentina, Colombia, Peru, Republic of Trinidad and Tobago, Chile, Ecuador, Cape Verde, Paraguay, Iceland, New Zealand, Bolivia and Uruguay.

⁴² Penal Code. Passed through the Organic law 10/1995 of 23 Noviembre. Published in BOE no. 281 on 24 Novembre, 1995:

- **Article 510.** 1. Those who provokes discrimination, hatred or violence against groups or associations with racist, anti-Semitic or other related to ideology, religion or beliefs, family status, membership of members of an ethnic group or race, national origin , sex, sexual orientation, illness or disability, shall be punished with imprisonment of one to three years and a fine of six to twelve months. 2. Will be punished with the same penalty who, with knowledge of their falsity or reckless disregard for the truth, disseminates libelous information about groups or associations in relation to their ideology, religion or beliefs, membership of members of an ethnic group or race, national origin, sex, sexual orientation, illness or disability.

- **Article 511.** 1. Shall incur the penalty of imprisonment of six months to two years and a fine of twelve to twenty four months and disqualification from public office for between one to three years including a public service manager, denying a person a benefit because of their ideology, religion or beliefs, ethnicity or race, national origin, sex, sexual orientation, family situation, illness or disability. 2. The same penalties will be apply where the offense is committed against an association, foundation, partnership or corporation or its members because of their ideology, religion or beliefs, membership of its members or any of them to an ethnicity or race, national origin, sex, sexual orientation, family situation, illness or disability. 3. Public officials who commit any of the acts described in this article, shall incur the same penalties and the special disqualification from public office for between two to four years.

- **Article 512.** Those who in the exercise of their professional or business activities denied to a person a benefit to which he is entitled by reason of his ideology, religion or beliefs, their ethnicity, race or nationality, sex, sexual orientation, family status , illness or disability, will incur the penalty of disqualification for the exercise of profession, trade, industry or business, for a period of one to four years.

- **Article 314.** "Those who incur on serious discrimination in employment, public or private, against any person because of his ideology, religion or beliefs, their ethnicity, race or nationality, sex, orientation sex, family situation, illness or disability, representation of workers, by kinship with other employees of the company or by the use of any of the official languages within the Spanish state, and do not restore the state of equality before the law by injunction or administrative penalty, repairing the economic damage arisen, shall be punished with imprisonment from six months to two years or a fine of 12-24 months. "

⁴³ Royal Legislative Decree 1/1995, of 24 March, approving the revised text of the Statute of Workers. Published in BOE no. 75 March 29, 1995:

- Article 4.2 c) To not to be discriminated against directly or indirectly for employment, and once employed, on grounds of sex, marital status, age within the limits set by the law, racial or ethnic origin, social status, religion or beliefs, political beliefs, sexual orientation, membership or not join a union, and because of language within the Spanish State. No person shall be discriminated against on grounds of disability, provided that they are in a position to fitness to perform the work or job in question. "

The Immigration law⁴⁴ also reflects actions subject to be considered discriminatory when affecting a foreigner on the basis of ethnicity, religion, ancestry, etc., in addition it contains any action that might hinder their equal access to the exercise of the rights set out by the law.

The Spanish Observatory for Racism and Xenophobia⁴⁵, has been set up under the provisions of the Law on the Rights and Freedoms of Foreigners in Spain and their Social Integration. This law assigns this Observatory the functions of study and analysis as well as the capacity to make proposals for action aiming at fighting racism and xenophobia⁴⁶.

In addition, through specific legislation⁴⁷, are set up measures to ensure the principle of equal treatment and non-discrimination on grounds of racial or ethnic origin. The aim is to promote the real and effective equality in education, health, benefits and social services, housing and in general, the access to goods and services. Among the most important measures developed in the Law are the creation of the "Council for the promotion of equal treatment and non-discrimination against Persons Based on Racial or Ethnic Origin⁴⁸" and "Reversal of the Burden

⁴⁴According to Art. 23 of Según lo previsto en el artículo 23 de la Organic Law 14/2003, of 20 November, Reform Law 4/2000, of 11 January on the rights and freedoms of foreigners in Spain and their social integration. Published in BOE no. 279. November 21, 2003.:

1. For the purposes of this law, discrimination is any action that directly or indirectly involves any distinction, exclusion, restriction or preference against a foreigner based on race, color, descent or national or ethnic origin, beliefs and practices religious, and which has the purpose or effect of nullifying or impairing the recognition or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social or cultural.

2. In any case, constitute acts of discrimination:

- a. Those made by the public official or responsible staff for a public service, which in the exercise of his functions, by act or omission, perform any act of discrimination prohibited by the law, against a foreign citizen only because of their status or belonging to a particular race, religion, ethnicity or nationality.
- b. All those who impose more stringent conditions than to the Spanish citizens or resistance to facilitate to a foreigner goods or services offered to the public, only for his status or belonging to a particular race, religion, ethnicity or nationality.
- c. Everyone who unlawfully impose more stringent conditions than to the Spanish citizens, or restrict or limit access to work, housing, education, social services and Social welfare, as well as any other rights recognized in the present law, to a foreigner in lawfully situation in Spain, only for his status or belonging to a particular race, religion, ethnicity or nationality.
- d. All those prevent, through action or omission, the exercise of an economic activity undertaken by a foreigner residing legally in Spain, only for his status or belonging to a particular race, religion, ethnicity or nationality.
- e. Constitutes indirect discrimination any treatment that harm workers by their foreign status or membership in a particular race, religion, ethnicity or nationality.

⁴⁵ Organic Law 14/2003, of 20 November, Reform Law 4/2000, of 11 January on the rights and freedoms of foreigners in Spain and their social integration. Published in BOE no. 279. November 21, 2003. Article 71. Spanish Observatory on Racism and Xenophobia. It will be set up the Spanish Observatory on Racism and Xenophobia with study and analysis functions, and the ability to make proposals for action, in the fight against racism and xenophobia.

⁴⁶ <http://www.oberaxe.es/quienes/>

⁴⁷ Law 62/2003, of 30 December, on fiscal, administrative and social order. Published in BOE no. 313 December 31, 2003. Title II. Chapter 3:

Article 30. Measures of positive action in relation to the racial or ethnic origin. To ensure in practice full equality on grounds of racial or ethnic origin, the principle of equal treatment shall not prevent the maintenance or adoption of specific measures in favor of certain groups to prevent or compensate for disadvantages that affect them because of racial or ethnic origin.

Article 31. Legitimation of legal persons in relation to the racial or ethnic origin. Legal persons who are legally entitled to defend the collective rights and interests, may act in legal proceedings on behalf of the plaintiff (who give them authorization) for the purpose of implementing the principle of equal treatment of people because of their racial or ethnic.

Article 32. Burden of proof in relation to racial or ethnic origin. In the processes of civil courts and contentious administrative, in which from the allegations of the plaintiff is deducted strong evidence of the existence of discrimination on grounds of racial or ethnic origin of the people, will correspond to the respondent the provision of a objective and reasonable justification, sufficiently proved, of the measures adopted and their proportionality.

Article 33 Establishment of the Council for the promotion of equal treatment and non-discrimination against Persons Based on Racial or Ethnic Origin. This council is established for the promotion of equal treatment and non-discrimination of people by race or ethnic origin in education, health, benefits and social services, housing and in general, supply and access to any goods and services as well as access to employment, self-employment and to occupation, membership and participation in trade unions and employers, working conditions, career development and occupational and long life training.

⁴⁸Regulated as provided on Royal Decree 1262/2007, of September 21, which regulates the composition, competences and functioning of the Council for the promotion of equal treatment and non-discrimination against Persons Based on Racial or Ethnic Origin. Published in BOE no. 237. October 03, 2007.

of Proof⁴⁹ on complaints of discrimination (is not enough the mere "presumption" to invoke the reversal of the burden of proof, it is necessary to show that there is, at least, unequal treatment, and that this could have, apparently a discriminatory motivation⁵⁰).

Despite existing legislation in Spain, the regulation is insufficient, especially because of the difficulties of proving discrimination disguised, and to invoke this right⁵¹.

2. The possible recourses to be taken:

Any person who has suffered any discrimination or violation of their rights can report through the **Criminal Proceeding**.

In case the action that causes the discrimination was not included as a criminal offense punishable under the Criminal Code, can be reported by the **Civil Proceeding** in order to obtain a compensation.

If discriminatory attitudes occur with the administration, or in the context of an employment relationship will be determined by the Court for contentious Administrative Proceedings and Labour respectively, subject to being able to use the Criminal Proceeding whenever the conduct can be a crime included in the Penal Code.

1.A. Procedure for reporting crimes of discrimination in the Criminal proceeding⁵²:

- Who can report?:
 - The victim or collectives.
 - Any person who may have witnessed first-hand or have knowledge of the facts.
- Where to report:
 - Bodies and security forces (Local Police Station).
 - Before the duty court of the town.
 - Before the prosecutor⁵³ of the town⁵⁴.

⁴⁹ According to Arts. 32 and 40.1 of the Law 62/2003, of 30 December, on fiscal, administrative and social order. Published in BOE no. 313 December 31, 2003..

⁵⁰ Discrimination and the Roma Community. Annual report FSG 2007. In Depth: Study of 9 cases of discrimination. FSG. 2007. Madrid.

⁵¹ The principle of equality and non-discrimination in the workplace. Raúl Hernandez Cuevas. 2007. <http://noticias.juridicas.com/articulos/40-Derecho%20Laboral/200702-989785263254556.html> (Consulted on 05/05/2013)

⁵² The Penal Code punish the following offenses:

1. - Threats to a group with an evil that constitutes an offense (art. 170.1) in those cases that are intended to frighten an ethnic, cultural or religious or certain social groups.
2. - Torture (art. 174) when committed for any reason based on discrimination of any kind.
3. - Discrimination in the workplace (art.314).
4. - Incitement to discrimination, hatred or violence against groups or associations (art.510.1)
5. - Dissemination of injurious information about groups or associations (art.510.2)
6. - Denial of individual benefits by a responsible of public service or public official (art.511)
7. - Denial professional or business benefits (art.512)
8. - Conspiracy to promote discrimination, hatred or violence against persons, groups or associations (art.515.5 and 518)
9. - Crimes against freedom of conscience and religious feelings (Art. 522-525)
10. - Genocide (art.607) and crimes against humanity (art. 607 bis)
11. - Any conduct which constitutes a crime or offense, the commission of which obey racist, anti-Semitic or other kind of discrimination referred to ideology, religion or belief of the victim, ethnicity, race or nation that belongs, gender or sexual orientation, disability or illness of suffering .. (Art. 22.4)

⁵³ http://www.fiscal.es/EI-ciudadano.html?cid=1240559967605&pagename=PFiscal%2FFPage%2FFGE_sinContenido

⁵⁴ To find the address and telephone number of the nearest prosecution: http://www.mjusticia.gob.es/BUSCADIR/ServletControlador?apartado=buscadorGeneral&tipo=FIS&lang=es_es

- Before the prosecutor on hate crimes and discrimination.

Information needed to report:

- Is needed to collect as much data as possible of the aggressors (age, physical features, clothing, vehicles, etc..) and of the place of the facts.
- To request the collaboration of any person who witnessed the facts and can testify. It is important to request personal data (name, address or phone number) so they can appear in the proceedings as witnesses.
- To request whenever there is injury, the reports related to the emergency healthcare. (When exists an injury report and it notes that it has been caused by third parties, the emergency healthcare services has the obligation of to send the report to the Police Court in order to start with a ex-officio proceeding.)

Process after the filing of the complaint:

The proceedings start by the Court of Instruction to perform the steps it deems necessary and relevant as taking statements from witnesses, victim, accused, etc..

The victim does not need a lawyer because the accusatory representation is developed by the Prosecutor. In addition of the Prosecutor, it can be make a private prosecution: this is presented by the victim with the assistance of a lawyer, in addition to the prosecutor. Collectives or associations can make a popular accusation, for this they will have to deposit an amount (bail) and show that there is interest in the cause (determined by the judge).

Committing a crime with racist or discriminatory reasons is an aggravating and implies that the subject is punished with a greater penalty. Thus, discrimination is, in itself, a crime, and under certain circumstances an aggravating factor in the commission of any offense. When discrimination is, in itself, a crime, the penalties range goes from imprisonment to disqualification from public office or a fine. In these cases, also are resolve responsibilities requiring compensation.

The procedure is usually slow (Justice in Spain is usually slow) and depends largely on the locality and the court, but in principle, the judgment can be resolved between one and two years of time.

These procedures are exempt from payment of court fees⁵⁵.

1.B. Procedure when the discrimination or violation of fundamental rights is not included in the Penal Code. Civil Proceeding.

When the act of discrimination is not an offense included in the Penal Code and the responsible of the discrimination is a private individual, the discriminated can go to the civil courts to claim compensation.

This procedure requires lawyer and procurator. It can be developed through a preferential and summary (with priority and speed in its resolution) proceeding. It is presented before the court of 1st Instance.

1.C. Procedure for reporting discrimination made by a public administration:

If discrimination is considered a crime included in the Penal Code will be developed, necessarily, on a criminal proceeding (follow the previous section). That is, if the administrative court understands that exists a crime of discrimination, it will be passed to the Instruction Court.

If the discrimination is not an crime included in the Penal Code:

It will be conducted through a preferential and summary procedure⁵⁶ to be solved in a short period of time (around a month).

⁵⁵ Law 10/2012 on legal fees. Published in BOE no. 280, november 21, 2012.

⁵⁶ Law 62/1978, of December 26, Judicial Protection of Fundamental Rights of the Persons.. Published in BOE no. 3 january 03, 1979.

These procedures are exempt from payment of court fees⁵⁷.

When the citizens sues the administration (ie, a municipality or autonomous region, a ministry, etc.), they must do it before the Dispute Tribunal, and through an administrative appeal.

Who can report:

- The natural or legal persons.
 - Corporations, associations, unions, groups and entities when they are authorized by law to do so.
 - Any citizen in the exercise of popular action, where provided by law.
 - The prosecution when so determined by law
- The parties must participate in the mandatory administrative proceedings assisted by a lawyer.

How is lodged the appeal:

The administrative appeal is initiated by a simple writing and shall contain:

- Identification of the person who lodges the appeal, and the body to which it is addressed.
- The provision, the act, inactivity or administrative action that is denounced.
- Signature of the lawyer.

What people affected may ask with this appeal is the nullity of the administrative act or a compensation.

The Ombudsman:

Any citizen, Spanish or foreign, regardless of age or legal status in Spain can go to the Ombudsman free of charge.

The Ombudsman can not override or amend the acts or decisions of public authorities, in the event that the Ombudsman concludes that fundamental rights have been violated, its mission is to convince the Administration to adopt measures to correct the situation. The government usually accept more than 75% of the decisions of the Ombudsman.

When the Ombudsman receives complaints regarding the functioning of the administration of justice, they are directed to the Public Prosecutor in order to investigate the reality of the facts and take appropriate legal action.

Complaints may be submitted individually or collectively, in cases where citizens consider that the actions of an administration (central, regional or local) or of a public service company have incurred a rights violation.

• How to Report:

- **By the Internet: using this link :** form
- **By email: registro@defensordelpueblo.es**
- **By phone: +34 91 432 79 00**
- **In person: in the citizen service office in our headquarters on Zurbano street nº 42 of Madrid.**
- **By fax: Sending a signed writing on +34 91 308 November 58**
- **By ordinary mail: Sending a signed writing to: Office of the Ombudsman C / Zurbano, 42 -28010 Madrid.**

For urgent complaints there is a 24 hour guard service (+34 91 432 7900) and a toll free information line (900 101 025).

It is also possible to turn to Ombudsmen specific of Autonomous Communities: <http://www.defensordelpueblo.es/es/Enlaces/index.html>

Entities where to get support:

⁵⁷ Law 10/2012 on legal fees. Published in BOE no. 280, november 21, 2012.

- **Council for the promotion of equal treatment and non-discrimination against Persons on the Basis of Racial or Ethnic Origin.** Functions:
 - Advisor to victims of discrimination in pursuing their claims.
 - Network support centres for victims of discrimination: <http://www.igualdadynodiscriminacion.org/redOficinas/portada/home.htm>
- **Service of hate and discrimination offences in several prosecutors (Barcelona, Madrid, Malaga, Seville).** These prosecutors are part of a specialized section to address the performance and the momentum that must have the detection and prosecution of these criminal acts relating to hate and discrimination. Prosecutors assigned to that service have attributed the function of the pre-trial proceedings and researches referring to behaviours that could be regarded as hate crimes or discrimination.
- **Non-governmental organizations:** there are different non-profit organisations working in the counselling and support of victims of discrimination. Those that work specifically with Roma communities are: Fundación Secretariado Gitano⁵⁸ (FSJ) or Romani Union⁵⁹ among others. Besides, there are other organizations that work with immigrants as CEAIN⁶⁰, Cardjin Association⁶¹, or human rights organisations as APDHA⁶², SOS Racism⁶³, etc.

CZECH REPUBLIC

1. The legislative texts

A general anti-discrimination clause can be found in the Charter of Fundamental Rights and Freedoms, where the Chapter 1 General Provisions establishes the equality of rights, the principle of non-discrimination which applies to all fundamental rights and freedoms and the principle of the rule of law. Anti-discrimination clauses can be found also in various ordinary laws, governing e. g. employment, labour relations or education.

The most important act regarding the equality principle is the Anti-discrimination Law No. 198/2009 Coll. and that came into effect from 1st September 2009. This law established the Public Defender of Rights as the Czech Republic's Equality body, and provides for definitions of discrimination on seven grounds: racial/ethnic origin, sex, disability, sexual orientation, age, religion or belief and nationality. At the same time, the law defines the prohibition of discrimination in following areas: labour, employment and business, healthcare, goods and services, housing, education, public administration and other areas.

⁵⁸ <http://www.gitanos.org/>

⁵⁹ http://www.unionromani.org/asos_es.htm

⁶⁰ <http://www.ceain.acoge.org/?lang=es>

⁶¹ <http://www.asociacioncardijn.org/>

⁶² <http://www.apdha.org/index.php>

⁶³ <http://www.sosracismo.es/>

Concerning the legislative texts dealing with the legal means of protection against discrimination, it is the Anti-discrimination law that states in Section 10 the following:

"In the event of a violation of the rights and obligations following from the right to equal treatment or of discrimination, the person affected by such act shall have the right to claim before the courts, in particular, that the discrimination be refrained from, that consequences of the discriminatory act be remedied and that (s)he be provided with appropriate compensation."⁶⁴

The Anti-discrimination law further specifies that in the when the abovementioned remedy does not appear sufficient (particularly due to the fact that a person's reputation or dignity or respect in society has been harmed) the person shall also have the right to monetary compensation for non-material damage. The amount of the compensation shall be assessed by the court taking into account the seriousness of the damage and the circumstances under which the right was violated.

In matters of protection against discrimination, the law determines the Public defender of Rights as a body that may provide information on the possibilities of legal assistance and cooperation in the drafting or supplementing of proposals and applications to persons claiming protection against discrimination. The Defender shall be also entitled to submit to administrative authorities monitoring compliance with legal regulations, including the right to equal treatment, instigation of inspection and, if applicable, instigation of commencement of administrative proceedings.

The law determines also other legal persons whose objects of activities specified in the statutes or rules consist in protection against discrimination (or the aforementioned fact follows from its activities or is stipulated in a law). A person can address to such organizations or institutions in order to get assistance, counselling or advocating.

Concerning the eventuality of summoning the state to appear before the Court, this legal action is not possible in the frame of the judiciary system of the Czech Republic. On the national jurisdiction levels (district/regional courts, regional/high courts, supreme courts, the Constitutional Court of the Czech Republic), the victim can summon only the state's responsible institutional body to appear before the Court, not the State itself. The state can be sued only in the international legal system, as for instance in the "D. H. and others v. the Czech Republic" that was a case decided by the European Court of Human Rights concerning discrimination of Romani children in the education system of the Czech Republic.

2. The possible recourses to be taken

Constitution of the Czech Republic guarantees protection of fundamental rights and freedoms and ensures them by the judicial power. The judicial power shall protect not only the basic rights and freedoms but also other rights stipulated by the law. This protection is provided and ensured through the system of courts that is hierarchically structured. The system is composed of district courts, regional courts, high courts, 2 supreme courts (one for ordinary and one for administrative matters). The Constitutional court is a special judiciary body for protection of constitutionality and the rights guaranteed by the constitution. The Constitutional court is not included in the system of courts, it stands independently beyond the system.

The Chapter Five of the Charter of fundamental rights and freedoms deals with one of the most important constitutionally guaranteed rights relating to lawsuit procedures - the right to judicial and other legal protection. The crucial provision lies in the Article 36 of the Charter that states:

⁶⁴ Full text of the Anti-discrimination Act is available e.g. on the website of the Public Defender of Rights: http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Antidiscrimination_Act.pdf

“Everyone may assert, through the prescribed procedure, her rights before an independent and impartial court or, in specified cases, before another body.”⁶⁵

This article shall guarantee the right unambiguously for every person irrespective of the citizenship. Every person can defend his/her rights before the courts or other bodies and by doing this to exercise his/her rights concerning the lawsuit rights.

In the Czech Republic, there exist 3 kinds of judicial proceedings: civil, criminal and administrative.

Civil proceedings are judged by the ordinary courts and can deal for instance with employment, business or family relations (that do not fall within the jurisdiction of other bodies according to the law). For the civil proceeding it is crucial that the onus of proof is completely on the side of complainant⁶⁶ that means that the complainant has to prove all the facts and propose all necessary proofs in order to evidence his/her claim.

In the civil proceedings the complainant brings an action against the defendant, e.g. for payment of purchase price. Afterwards, both sides of the case can appeal against the decision of the first instance court within 15 days from the decision delivery. Against the decision of the second instance court, it is possible to file extraordinary appeal, in certain cases within 2 months from the decision delivery and in such case it is the Supreme Court that shall decide. If the person has a suspicion that fundamental right or freedom was violated during the proceeding, he/she can turn to the Constitutional Court with the constitutional complaint, generally within 2 months from the delivery of the decision concerning the last available remedial measure.

Criminal courts make decisions about the guilt and punishment. In this kind of proceedings, the onus of proof falls within the competence of the bodies of criminal justice. The criminal proceeding includes 3 main parts. The first one is informing the suspected person about the accusation, this resolution has to be delivered to the suspected. It is possible to file a complaint against this resolution within 3 days. If the complaint is not acquitted, the criminal proceeding continues and the state public prosecutor can bring an indictment against the suspected. The court shall decide on the indictment and it is possible to appeal against its decision (within 3 days complaint against resolution, within 8 days appeal against judgement). Against the decision on remedial measure it is possible to lodge only extraordinary remedial measures (specified by the Criminal Code).

Administrative courts deal with claims of natural and legal persons, who seek protection from illegal decisions or action of public authorities. While in many respects similar to civil procedure, the administrative court procedure is different in that the defendant here is not an entity of private law, but a public body (for instance providing the social benefit or old-age pension). The complainant can bring an action within 2 months from the delivery of administrative body decision. The administrative court can decide as well on the action for the failure to act⁶⁷, and on the action against unlawful interference.⁶⁸ Regional courts make decisions in administrative

⁶⁵ The Charter of Fundamental Rights and Freedoms, The Constitutional Court of the Czech Republic, available at http://www.concourt.cz/clanek/czech_charter, accessed on March 10, 2013

⁶⁶ In certain anti-discrimination civil proceedings the onus of proof is shared.

⁶⁷ This type of action is open to any person who, despite having exhausted all the existing remedies before an administrative authority, was not able to obtain a decision or an attestation that the competent authority was issue to issue.

⁶⁸ The law provides that anyone who claims that he or she has been directly prejudiced in their rights by an unlawful interference, instruction or coercion, exercised by an administrative authority, which is not a decision and which is aimed directly against the person, may seek protection before an administrative court.

proceedings, against the decision it is possible to file a cassation complaint to the Supreme Administrative Court (within 2 weeks after the delivery of regional court decision).

In the case when the person is not sufficiently aware of his/her rights and duties, he/she can address to different NGO's providing free assistance, and legal counselling, e. g. the Czech Helsinki Committee, civil advisory centres that operate regionally (usually associated in the Association of Civil Advisory Centres), or the Czech Bar Association provides free counselling as well. Lawyers usually provide their service in return for payment.

APPENDIX

Appendix European level

Appendix 1: How the European Union does make laws?

Appendix United Kingdom

Appendix 2: Additional to the file 1 of United Kingdom

Appendix 3: Additional to the file 5 of United Kingdom

Appendix France

Appendix 4: Example of letter to appeal to the Mayor or the Prefect of the department

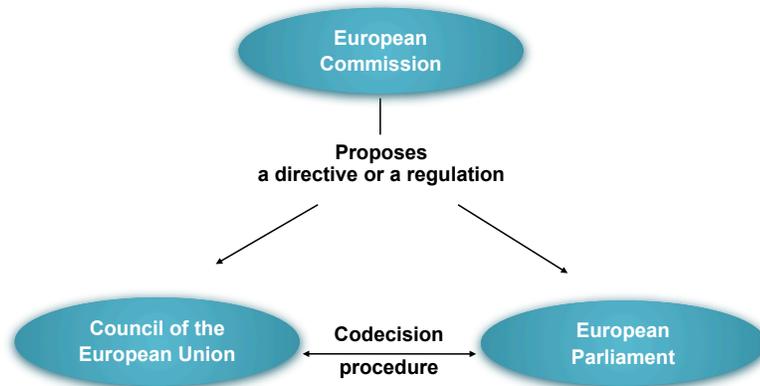
Appendix 5: Legislation about racist offense

Appendix 6: Discriminations in labour competent jurisdictions

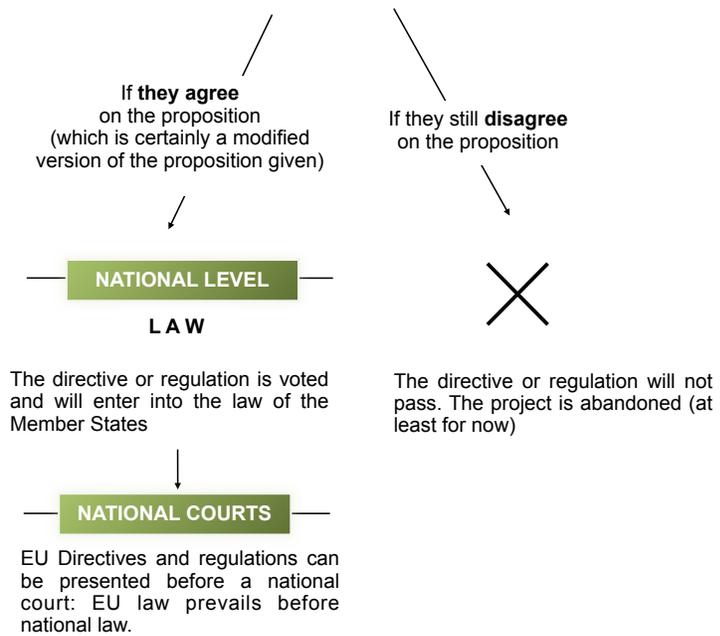
Appendix Spain

Appendix 6: social services websites (by each autonomous community)

Appendix 1: How the European Union does make laws?



Three stages of exchanges between each other to reach an agreement



Nota bene: This presentation has been voluntary simplified for the purposes of the project

Appendix 1: Additional to the file 1 of United Kingdom

Violation of the Law: Individuals who have entered via this route are often picked up by the police; some are released the next day due to not having enough evidence of their identity, language barriers and courts refusal to address without due evidence of crime, however, many are often deported back to their country of origin. However, it is documented that often deported individuals often find other means to re-enter the UK and often their only source of income is within the underground economy, this illegal economy is often highlighted by UK press which raises disharmony among wider communities increasing conflict, prejudice and hostility to the Roma community.

It is difficult to measure the level of Roma discrimination as lack of statistical data is available due to the cultural practice of not registering themselves with public services. This practice makes it difficult for the local authorities to capture and interpret any useful trends often resulting in the Roma community being omitted from the policy area of law.

In addition, often cases of discrimination fail to be reported or represented. In the Case Law "Connors VS the UK", of 1989: Romani and Roma across UK established Gypsies as recognised ethnic group after this case judgement which passed to the EU court of Human Rights on Travellers as the UK court refused to hear the complainant. E.g. The Connor family resided in Leeds upon the Cottingly site and suffered eviction by force after 14 years of residence by the Local Authority. The case was taken to the EU court of Human Rights which ruled in the favour of the Connors. The UK were ordered to provide better protection and make significant changes to all legislations referring to Travellers ensuring their needs are met within the regulatory framework both with the government and the judiciary.

However, there are other violations of the law when it comes to migrants entering the UK, for instance, the health insurance under the Free Movement Directive are expected to have sickness insurance yet UK has free NHS and really doesn't require EU migrants to have that insurance, which breaches the EU law. The Romanian and Bulgarian are subject to further discrimination as UK doesn't issue workers within the first 12 months with the same residency documents as they would offer other EU workers from other member states.¹

The violation of the law harming the Roma under the Free Movement Directive (2004/38/EC) aims to ensure that EU citizens can fully enjoy their rights to freely travel, live and work anywhere in the European Union. If countries does not apply with the directive the Commission threatens to take them to the court of Justice of the EU as all member states were signatory to these directives.

There are other violations of the law by the UK government when it comes to human rights of individual workers in the UK regardless whether they are migrants or not. The disclosure checks on people working with vulnerable people and children had to be disclosure checked as this will also affect many migrants from EU member states who work with children or in the care sector and in different sectors for that matter; policies around the disclosure of individuals applying for a job could harm a number of people for petty crimes committed at an young age and this does not only harm the new arrivals from Romania and Bulgaria and other member states but will also violates individual rights under the charter of fundamental rights and the violation of the law harming not just the Roma but indigenous and other ethnic minority communities through the disclosure checks. The law required individuals to disclose information under the three different legislative acts that required certain job applicants to disclose their minor crimes including those

¹ Finally, the United Kingdom does not issue workers from Romania and Bulgaria during the first 12 months with the same residence documents as workers from other EU Member States. While EU law allows the United Kingdom to temporarily keep in place a work-permit scheme for workers from Bulgaria and Romania, those who have a work permit have the same right to reside as other EU workers and must be issued the corresponding residence documents.

committed at a very early age which is in breach of article 8 of the European convention on human rights²; and also human rights act and equality act, Race Relations Act 1976. All Victims of unlawful detention with loss of liberty are entitled to compensation under provision Article 5(5) which states that victims of unlawful arrest or detention have an enforceable right to compensation.

Case study

The Anti-Terrorism Crime and Security Act 2001 was passed within weeks of the Twin Towers atrocity. Part 4 of the Act provided that any foreign national who was suspected of being a terrorist (but not convicted or even charged) could be indefinitely detained without charge or trial if he or she could not be deported.

The Government acknowledged this measure breached the right to liberty, but sought to derogate from its obligations under the Convention. The House of Lords held that the derogation was invalid as the Government could not show that the measure was strictly required, particularly as it only applied to foreign nationals and not UK suspects.

The House of Lords held that this measure was a clear breach of the right to liberty and was also discriminatory. The Law Lords upheld the fundamental nature of the right to liberty. The Asylum and Immigration Tribunal (AIT) was a tribunal constituted in the United Kingdom with jurisdiction to hear appeals from many immigration and asylum decisions. It was created on 4 April 2005, replacing the former Immigration Appellate Authority (IAA), and fell under the administration of the Tribunals Service.

February 2010, saw the Tribunal abolished and its functions transferred to the new Asylum and Immigration Chamber of the First-tier Tribunal created by the Tribunals, Courts and Enforcement Act 2007.[1]

The Special Immigration Appeals Commission (SIAC) has been set up to hear appeals against removal of potential deportees in high security cases. The information given to appellants and their representatives is limited as compared to other removal hearings.

The system of appeals to adjudicators (who were appointed by the Secretary of State) with the right of subsequent appeal to the Immigration Appeal Tribunal (IAT) (whose members were appointed by the Lord Chancellor) was first created by the Immigration Appeals Act 1969 (1969 c.21).

The IAA the predecessor of the AIT, the Immigration Appellate Authority (IAA), was an independent judicial body in the United Kingdom constituted under the Immigration Act 1971. It consisted of two tiers: Immigration Adjudicators and the Immigration Appeal Tribunal (IAT).

Immigration Adjudicators considered appeals against decisions made by Immigration Officers, entry clearance officers and the Home Secretary, with permanent centres in Islington in inner London, Hatton Cross, Birmingham, Leeds, Manchester and Glasgow.

² **UK appeals court rules criminal records disclosure law violates human rights:** The [UK Court of Appeal](#) [official website] ruled [judgment, PDF] Tuesday that a [Criminal Records Bureau](#) [official website] law requiring individuals to divulge all previous convictions to certain groups of employers is a breach of human rights. The court held that the disclosure provisions of three legislative acts that required certain job applicants to disclose all minor crimes, including those committed as a juvenile, were incompatible with [Article 8](#) of the [European Convention on Human Rights](#) [text]. The case was brought to the appeals court by the UK rights group [Liberty](#) [advocacy website], which intervened on behalf of a 21-year-old man who was forced to disclose in applications that he received a warning from police when he was 11 years old in connection with two stolen bicycles. The requirement was also heavily criticized by other civil rights groups, including the [Equality and Human Rights Commission](#) (EHRC) [advocacy website], another intervener in the case.

The IAT dealt with applications for leave to appeal and appeals against decisions made by the Immigration Adjudicators, the main hearing centre was in Breams Buildings, just off Chancery Lane, in Central London.

The creation of the AIT, the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 abolished the two tier structure and created a single tier tribunal. All former adjudicators and members of the IAA became members of the new AIT. At this point, the Home Office Adjudicators became known as Immigration Judges, although many of these are not officially qualified as judges, the former regional adjudicators became Senior Immigration Judges, who are mostly involved in reconsideration applications for previously dismissed appeals.

Asylum seekers and would-be immigrants are usually, but not invariably, represented by legal representatives including barristers, advocates, solicitors, and those registered with the Office of the Immigration Service Commissioner. The UK government is usually represented by Home Office Presenting Officers ("HOPOs"); specially trained Civil Servants. For some significant cases, the Home Office instructs a barrister from TSol to conduct the case.

Procedure is governed by the Asylum and Immigration Tribunal (Procedure) Rules 2005 (SI 2005/230). Further Appeals Ordinarily, there is no right to appeal a decision of the AIT. The AIT makes most initial decisions through a single immigration judge. Such decisions can be "reconsidered".

An order for reconsideration is sought by making a written request to the High Court in England and Wales or the Court of Session (Outer House) in Scotland. For an indefinite period requests for reconsideration orders will be considered initially by Immigration judges of the AIT ("the filter"); should the request be refused a party can "opt-in" to the High Court or Court of Session.

Either of the parties (the Home Secretary or the Appellant) can apply for reconsideration, within strict time limits (for example, 5 days from receipt of the decision if the Appellant is in the UK). Such an application must be made in writing. A Senior Immigration Judge considers whether or not the grounds for reconsideration are "arguable". The only matters which can be considered are errors of law. A party cannot say that he seeks a re-hearing of the facts or that the factual conclusions reached by the Immigration Judge are wrong. He can only seek reconsideration if the Immigration Judge has misdirected himself in law, failed to consider relevant material, considered irrelevant material, or erred in his fact-finding to the extent that the findings are irrational and therefore amount to an error of law.

If permission is refused on the papers, the party may renew his application for an order for reconsideration to the High Court or Court of Session. Again, the time limits are short. If the High Court or Court of Sessions agrees that the AIT has made a mistake in not considering the application for reconsideration, he may order the AIT to reconsider.

A successful application comes before the AIT for reconsideration. Most of these cases are heard at the old IAT, at Field House, Breams Buildings, just off Chancery Lane in central London. Some are heard elsewhere. The initial hearing is a first-stage reconsideration, usually called an "error of law hearing" by lawyers and Immigration Judges. The panel of Immigration Judges (usually one legally-qualified Senior Immigration Judge and one or two lay members) determine whether a material error of law was made in the determination (judgment). If they conclude that no error was made, that is the end of the matter in front of the AIT. If they conclude that there was a material error of law, they may either reconsider the case in full or in part themselves, or (more usually) order that it be re-heard at a later date. They may set out that all the case be reconsidered, or only part of it, depending on the exact circumstances. The second-stage reconsideration may be heard by three Immigration Judges, or by a single Immigration Judge.

A result of the sanction to not allowed paid employment is a need for many new entrants to become vulnerable to 'human trafficking'. In 2011, 946 potential victims of human trafficking were referred to the National Referral Mechanism (NRM). Of these, 634 were females and 312 were males, 712 were adults and 234 were children. The majority of potential child victims were reported to be in the 16–17 year old age category.

The most prevalent source countries for potential victims who were referred into the NRM were Nigeria, China, Vietnam, Romania and Slovakia. The most prevalent exploitation type recorded through the NRM, for adults, was sexual exploitation however it is recognised that the incidence of labour exploitation and criminal exploitation is increasing. The most prevalent type of exploitation reported for children was labour exploitation. The recently published UK Human Trafficking Centre (UKHTC) Baseline Assessment suggests that there could be over 2,000 potential victims of human trafficking in the UK, based on information collected from a variety of other sources³.

Other violations of the law by the UK government of individual workers in the UK is the necessity for disclosure checks on people working with vulnerable people and children this affects many migrants from EU member states who work with children or in the care sector; policies around the disclosure of individuals applying for a job could harm a number of people who committed petty crimes at a young age. The law required individuals to disclose information under the three different legislative acts that required certain job applicants to disclose their minor crimes including those committed at a very early age which is in breach of article 8 of the European convention on human rights⁴; and also human rights act and equality act, Race Relations Act 1976; noting that indefinite detention without trial wholly negates the right to liberty for an indefinite period.

³ First annual report of the Inter-Departmental Ministerial Group on Human Trafficking

⁴ **UK appeals court rules criminal records disclosure law violates human rights:** The [UK Court of Appeal](#) [official website] ruled [judgment, PDF] Tuesday that a [Criminal Records Bureau](#) [official website] law requiring individuals to divulge all previous convictions to certain groups of employers is a breach of human rights. The court held that the disclosure provisions of three legislative acts that required certain job applicants to disclose all minor crimes, including those committed as a juvenile, were incompatible with [Article 8](#) of the [European Convention on Human Rights](#) [text]. The case was brought to the appeals court by the UK rights group [Liberty](#) [advocacy website], which intervened on behalf of a 21-year-old man who was forced to disclose in applications that he received a warning from police when he was 11 years old in connection with two stolen bicycles. The requirement was also heavily criticized by other civil rights groups, including the [Equality and Human Rights Commission](#) (EHRC) [advocacy website], another intervener in the case. In

Appendix 3: The UK Borders Act 2007

The UK Borders Act 2007 is now law, although some of its provisions are yet to be brought into effect. This Act provides enhanced powers for immigration staff, and is designed to strengthen immigration control and investigation and prosecution of breaches.

Of particular relevance to employers are sections 27 and 28 (employment: arrest and search for personnel records), which were brought into force on 29 February 2008 (see the practical implications section above). These include search and arrest powers in relation to business premises and personnel records and represent a significant extension of Immigration Officers' powers in workplace situations.

Detailed comment is beyond the scope of this factsheet, but employers should be aware of the existence of the effect of these changes and the enhanced powers which they confer, and of the likely increased level of enforcement activity.

This can be achieved through a series of work based interventions, engaging with employers and partners and applying the jurisdictions that needed for earlier interventions in relation to legal recourses. (I really don't understand the English of this sentence at all)

An example of relevant primary legislation would be the Equality Act 2010 that sets out nine "protected characteristics" - including race⁵ which encompasses most Gypsy / Travellers groups under its sub-category of ethnicity - so protections against unlawful conduct in the employment setting as defined in this Act are, accordingly, open for Gypsy / Travellers to utilise. An illustration of relevant secondary legislation would be the Race Relations Order (Amendment) Regulations (Northern Ireland) 2003, showing the slightly different approach to employment law in Northern Ireland,

1. Employment Tribunals (ET) have jurisdiction over a range of employment law matters. These are set out in its (who is the "it" in this case?) "Jurisdiction List"⁶ that essentially are those specific claims of unlawful conduct that may be made by an employee or worker towards those employing them. There are over sixty legislative provisions that ET can take, consider, and decide on. They range from claims of breach of contract; trade union recognition; health and safety; minimum wage rights; and alleged unlawful discrimination, harassment, or other forms of unlawful conduct at work covered by the Equality Act 2010 including victimisation or equal pay rights.

2. The legislative provisions under the jurisdiction of ETs and concerning unlawful conduct at work are set out in both primary and secondary legislation on or relating to employment. It is important to note that employment law is an issue reserved to the legislative competence of the UK Parliament at Westminster, but also that this competence applies to "Great Britain" e.g. the UK, as it is the Northern Ireland Assembly (the NLA) that possesses legislative competence on nearly all employment matters. So, for example, the NLA recently passed the Employment Act (Northern Ireland) 2011. (WRONG – IT IS THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, THUS EMPLOYMENT TRIBUNAL LEGISLATION IS UK OR NORTHERN IRELAND, AS THE TWO ARE CONSTITUTIONALLY DIVORCED FOR SUCH LEGISLATION) with this secondary legislation providing explicit protection for unlawful discrimination against Irish Travellers under the category of race⁷.

⁵ Section 9 Equality Act 2010

⁶ Department of Justice (2013) "Jurisdiction List Guidance for Employment Tribunal" (London: Department of Justice)

⁷ Article 6 Race Relations Order (Amendment) Regulations (Northern Ireland) Order 2003

AEDH-2 19/06/2013 14:15

I have seen this comment, as I did not know if the change has been done, I kept it and notified to you.

3. ETs are governed by Rules of Procedure (the Rules). The Employment Tribunals (Constitution and Rules of Procedure) 2004 apply across England, Scotland, and Wales e.g. "Great Britain". (SEE PREVIOUS NOTE) An Employment Tribunal President in any of the three countries may supplement the Rules through providing Directions (in England and Wales) and Practice Directions (in Scotland). The Rules govern the processes of a claim in the ET, from its inception, through to case management, onto potential conciliation, review, decision and appeal, if applicable. Directions and Practice Directions tend to focus on specific issues in the ET process, such as making customised arrangements for specific categories of claim e.g. equal pay, or provisions for making or seeking to make counter claims.

Appendix 4: Example of letter to appeal to the Mayor or the Prefect of the department

Monsieur le Préfet de...(ville)...

...(ville)..., le...

Lettre recommandée avec AR n° ... FR

Concerne : inscription scolaire de l'enfant...(prénom/nom)...

Monsieur le Préfet,

Nous avons été alertés par Monsieur et Madame ...(nom)... sur le problème rencontré par leur enfant mineur ...(prénom)..., né le ... à ... de nationalité ... domicilié chez ses parents à ... (adresse)...

En effet, Monsieur le Maire de ... refuse l'inscription de l'enfant en classe de ... dans l'établissement ...

En application de l'article L 2122-34 du Code général des collectivités territoriales, nous vous prions de procéder, après en avoir requis Monsieur le Maire, à l'inscription scolaire de cet enfant.

Si la situation de l'enfant n'était pas réglée dans les quarante-huit heures à compter de la réception de la présente lettre, nous nous verrions contraints de saisir les juridictions compétentes.

Nous vous prions de croire, Monsieur le Préfet, à l'assurance de notre considération distinguée.

Signature de l'association

Signatures des parents

Appendix 5: Legislation about racist offense

| OFFENSE | CATEGORY | LEGISLATION | PENALTIES | LIMITATION OF PROSECUTION |
|---|-----------------------------------|--|--|--|
| Public provocation of discrimination, racial hatred or violence | Offence | Articles 23 and 24, paragraphs 8 and 9 of the modified law of July 29, 1881 | 1 - year imprisonment and A € 45 000 fine | 1 year for religious or racist provocation 3 months for provocation relating to sexual orientation |
| Public defamation | Offence | Articles 23, 29, paragraphs 1, 32, and 3 of the modified law of July 29, 1881 | 1 - year imprisonment and A € 45 000 fine | 1 year for racist libel 3 months for the defamation based on sexual orientation |
| Public insult | Offence | Articles 23, 29 paragraph 2 and 33 paragraphs 3 and 4 of the modified law of July 29, 1881 | 6 - month imprisonment and A € 22 500 fine | 1 year for racist public insult 3 months for public insult based on sexual orientation |
| Non-public provocation to discrimination, racist hatred or violence | Contravention of the fifth class | Article R. 625-7, paragraphs 1 and 2 of the penal code | A € 1500 fine | 1 year for racist or religious provocation 3 months for provocation based on sexual orientation |
| Non-public defamation | Contravention of the fourth class | Article R. 624-3 paragraphs 1 and 2 of the penal code Article 29 paragraph 1 of the modified law of July 29th 1881 | A € 750 fine | 1 year for racist libel 3 months for defamation based on sexual orientation |
| Non-public insult | Contravention of the fourth class | Article R. 624-4 paragraphs 1 and 2 of the penal code Article 29 paragraph 2 of the modified law of July 29th 1881 | A € 750 fine | 1 year for racist insult 3 months for the insult based on sexual orientation |

Appendix 6: Discriminations in labour competent jurisdictions

| | | Civil courts | Criminal court | Administrative court |
|-------------------|--|---|--|--|
| Competence | | <p>« Conseil des prud'hommes » Labour court :</p> <p>Discrimination in labour relations (for example: anti-union, sex discrimination) :</p> <p>Distict Court :</p> <p>Outside contractual relationship</p> <p>Discriminations hors relations contractuelles (demandes supérieures à 10 000 €)</p> | <p>Criminal court</p> <p>Offence of discrimination, moral or sexual harassment, infringing to the principle of equality between women and men</p> <p>Competence : private and public sphere</p> | <p>Tribunal administratif : discriminations dans le domaine des fonctions publiques en vue d'une action en réparation et en annulation</p> <p>Administrative court : in the field of public service in order to obtain an action for damage and cancellation</p> |
| Request | Applicants | Individuals, trade unions, associations (under conditions) | Individuals, public prosecutor, trade unions, associations under conditions) | Individuals, trade unions |
| | Deadline to take legal action (prescription) | 30 years (for reparation of injury) 5 years for salary payment for example | 3 years | 2 months of the date of the notification of the discriminatory decision 4 years for compensation |

| | | | | |
|---------------|--|---|--|--|
| Proofs | Burden of the proof | Sharing between applicant and defendant | Applicant has the burden of proof with the public prosecutor and the investigating judge | Sharing between applicant and defendant |
| | Mode of proof | Free : testimonies, writings, minutes, comparison of situation (with expert panels) | By any means : confession, writings, testing | Free |
| | Role of the judge for taking evidence | Contradictory procedure : The judge may order production of informations as it deems necessary | Inquisitorial approach Procédure inquisitoire | Inquisitorial approach Procédure inquisitoire |

Appendix 7: Social services websites (by each autonomous community)

ANDALUCIA

<http://www.juntadeandalucia.es/igualdadybienestarsocial/opencms/system/modules/com.opencms.presentation.CIBS/paginas/portada.jsp>
<http://www.juntadeandalucia.es/temas/familias-igualdad.html>

ARAGON

<http://iass.aragon.es/>
http://iass.aragon.es/servicios_sociales/servicios_sociales_ssb_a.htm

ASTURIAS

<http://www.asturias.es/portal/site/webasturias/menuitem.f6d8fb00dc819a6bd9db8433f2300030/?vgnextoid=ab8344faf08ad210VgnVCM1000002f030003RCRD&vgnnextchannel=dad56fc85c97d210VgnVCM1000002f030003RCRD&i18n.http.lang=es>

CANARIAS

http://www.gobcan.es/es/temas/bienestar_social/

CANTABRIA

<http://www.serviciosocialescantabria.org/>

CASTILLA LA MANCHA

<http://pagina.jccm.es/social/prog.htm>

CASTILLA Y LEON

http://www.jcyl.es/web/jcyl/Familia/es/Plantilla66y33/1246988963464/_/_/

CATALUÑA

<http://www.gencat.cat/temes/cas/serveis.htm>

CEUTA

<http://www.ceuta.es/servlet/ContentServer?c=Page&pagename=CeutaIns%2FConsejeria%2FConsejeriaDetalle&cid=1173859687173&idP=1111409919130>

EXTREMADURA

<http://ie.juntaex.es/?mod=ssb&enl=infcui>
<http://ie.juntaex.es/>

GALICIA

<http://traballoebenestar.xunta.es/portada>

ISLAS BALEARES

<http://www.caib.es/sacmicrofront/contenido.do?idsite=567&cont=21357&lang=es&campa=yes>
<http://portalsocial.uib.es/home.php?lang=ca&lang=es>

LA RIOJA

<http://www.larioja.org/npRioja/default/defaultpage.jsp?idtab=445592>

COMUNIDAD DE MADRID

<http://www.madrid.es/portales/munimadrid/es/Inicio/Ayuntamiento/Servicios-Sociales>
[vgnnextfmt=default&vgnnextchannel=fe8a171c30036010VgnVCM100000dc0ca8c0RCRD](http://www.madrid.es/portales/munimadrid/es/Inicio/Ayuntamiento/Servicios-Sociales/vgnnextfmt=default&vgnnextchannel=fe8a171c30036010VgnVCM100000dc0ca8c0RCRD) ?

[http://www.madrid.org/cs/Satellite?
c=Page&cid=1273687122273&idTema=1142598549936&langua
ge=es&pagename=ComunidadMadrid%2FEstructura&pid=1273078188154](http://www.madrid.org/cs/Satellite?c=Page&cid=1273687122273&idTema=1142598549936&language=es&pagename=ComunidadMadrid%2FEstructura&pid=1273078188154)
[http://www.madrid.org/cs/Satellite?
c=Page&cid=1109265463086&language=es&pagename=Comun
idadMadrid%2FEstructura](http://www.madrid.org/cs/Satellite?c=Page&cid=1109265463086&language=es&pagename=ComunidadMadrid%2FEstructura)

MELILLA

[http://www.melilla.es/melillaPortal/p_37_menu_nivel_3a.jsp?codMenu=145&l
anguage=es&codMenuPN=2](http://www.melilla.es/melillaPortal/p_37_menu_nivel_3a.jsp?codMenu=145&language=es&codMenuPN=2)

NAVARRA

<http://www.cfnavarra.es/INBS/>
http://www.navarra.es/home_es/Servicios/subtemas/24/Servicios-Sociales

PAIS VASCO

<http://www.gizartelan.ejgv.euskadi.net/r45-home/es/>
<http://www.gizartelan.ejgv.euskadi.net/r45-servsoci/es/>

COMUNIDAD VALENCIANA

<http://www.bsocial.gva.es/portal/portal?id=S>

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Treaty on the Functioning of the European Union, consolidated version, 2012/C 326/01, OJEU 26 October 2012
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:326:FULL:EN:PDF>

Charter of Fundamental Rights of the European Union, 2012/C 326/02, OJEU 26 October 2012
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:326:FULL:EN:PDF>

Treaty of adhesion of Bulgaria and Romania, OJEU 21 June 2005
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:157:FULL:EN:PDF>

Treaty of adhesion of Croatia, OJEU 24 April 2012
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:112:FULL:EN:PDF>

Directives and regulations

Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin
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