

REFERENCE BOOK

ROMA PERSONS HAVE RIGHTS



INEROM

For effective exercise of fundamental rights

NA DE OPRE !



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PREFACE

The Roma are Europeans

This “reference book” 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 Europeaness 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. **Europeaness 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.

Jean-Pierre Dacheux
Philosopher

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 : BEMIS SCOTLAND Empowering Ethnic and cultural communities

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 Foreigners 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

ECtHR : European Court of 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 / coordinative 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 co-decision 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 homogeneous 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 Act1998: 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 centres 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 centre to another. The criteria for admission to these centres are not subject to the law, the direction of the centre 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.escctt>).

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 neighbours 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 enrolment 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

Romas in Europe

Their situation within Member States and within the European Union

Before approaching the legal issues affecting the Roma population in Europe, it may be necessary to first describe the situation of this European minority.

We will refer to the observation made by the European Commission itself: The Roma are the largest European transnational minority representing a population of 10 to 12 million people. According to the Commission *"Roma in Europe face prejudice, intolerance, discrimination and social exclusion in their daily lives. They are marginalised and live in very poor socio-economic conditions"*¹.

Assessment by the European Commission

Resulting of its observations, the Commission has launched an action at the European level which led to the national Roma "integration" strategies. The Commission made an analysis of the implementation progress of these strategies and released its conclusions on 26 June 2013. The findings demonstrate² that progresses are *"insufficient"* and ineffective. One of the harshest conclusions issued by the Commission was saying that *"racism towards and discrimination against Roma continue"*.

The fight against all forms of discrimination must be comprehensive and complete. It is by fighting for the full respect of these persons and for effectiveness of all their rights that we can expect progress.

We summarize below some conclusions made by the Commission regarding the national strategies: *"The present communication focuses on these structural pre-conditions as, although some steps have been taken at policy level in the Member States, in particular to better coordinate all stakeholders active on Roma integration, effective changes are still insufficient"*.

Involving regional and local authorities: *"A year later, it can be concluded that most Member States need to make further efforts and involve local authorities more closely and systematically in developing, implementing, monitoring, evaluating and reviewing policy"*

Working closely with civil society: *"Although mechanisms are in place to incorporate the views of Roma, they do not ensure a significant impact of these views on policies"*.

Allocating proportionate financial resources: *"In some Member States, the implementation of the national strategy is delayed because insufficient resources are allocated from the national budget". "The Member States' and regions' use of the new specific investment priority on the integration of marginalised communities such as Roma within the European Social Fund (proposed by the Commission for the programming period 2014-2020) will allow a better assessment of what is spent on measures to integrate Roma"*.

Monitoring and enabling policy adjustment: *"There is a great need to regularly compare data to rigorously evaluate the impact of the measures on the ground against the baseline. In particular, there is still a general lack of impact indicators"*.

Fighting firmly discrimination: *"Despite the commitments made by the Member States and anti-discrimination legislation in all Member States, racism towards and discrimination against Roma continue (...). The Member States must do more to combat stereotyping and deal with racism or otherwise stigmatising language or behaviour that may constitute incitement to discrimination against Roma"*

National Contact Points for Roma integration: *"All National Contact Points participate in the network set up in October 2012 and have real concerns regarding Roma integration. Despite clear progress in developing their commitment and coordination role, there is room for improvement with regard to their status, capacities, resources, mandate and the political support they receive"*.

The European Commission encourages Member States to intensify their efforts and to better structure them to achieve concrete results. It has made several recommendations in this direction.

Overview of the violence occurring in Member States

Roma people continue to endure State violence which encompasses violent actions from political authorities. They are often linked to the stigmatisation of foreigners and migrants, considered as scapegoats, to explain the difficulties people face in the current social and economic crisis.

There are anti-Roma speeches made by extremist political parties and often reused by traditional parties and official representatives of the State.

During a Plenary session on the situation of Roma people in the European Union, some members of the European Parliament held outrageous, stigmatising and discriminatory statements³. Unfortunately, this kind of comments does not seem to reflect only one single position but rather the opinion of many politicians in various Member States.

In France for example, we lost count of the number of racist speeches issued by politicians towards Roma people, which only contribute to increase the discrimination faced by this minority.

France is of course not the only country to count politicians holding such statements. This also happens in States such as Romania, Hungary and Norway.

There are countless violent expulsions of Roma by the police, which go together with the destruction of personal property and mistreatments by the authorities.

The Swedish police have created a database, in the form of a family tree, which list the social security numbers and addresses of Roma persons who arrived illegally in Sweden⁴. Family links between data subjects were also included. It is particularly shocking that the police of a European State can in an obvious way violate national and European principles. This database actually violates Swedish law that prohibits the registration of ethnicity and also goes against the European Convention for the Defence of Human Rights, which provides the right to respect for private and family life⁵. As noted by the Commissioner for Human Rights, Nils Muižnieks, *"The police should preserve a democratic State, not endanger it"*⁶.

Often, an obvious policy of territorial segregation is also conducted in various municipalities in Romania, such as in Baia Mare, where a wall was built. According to the mayor, it is to protect children from the road along the houses, which is far from being a convincing argument while many NGOs denounce this "wall of shame" and the creation of a ghetto, where this world is hidden from the landscape of neat and little houses⁷.

In several European countries, Roma are constantly dealing with governments or government bodies whose speeches, policies and actions can be outrageous, discriminatory and stigmatising.

We can also deplore the violence suffered by Roma people from their fellow citizens. The violence is motivated by racism and the rise of an anti-Gypsy feeling found throughout Europe and which are exacerbated by the rise of populist extremism in Europe.

European media often present the Roma minority in a negative way, which can have a significant impact on the people lives but also feeding hostile movements to Roma people.

Roma people are also very often victim of physical and verbal violence from extremist groups as well as from "ordinary" citizens in different countries of the European Union.

Roma people remain common victims of trafficking and are exploited by organized groups. According to the Eu-

ropean Women's Lobby, if we analyze the statistics regarding women who are victims of prostitution and trafficking, the Roma community is overrepresented. Indeed, the Roma represent 40% to 80% of victims of trafficking in Bulgaria, Slovakia, Romania and the Czech Republic. In the Netherlands and Switzerland, Roma women represent from 80% to 99% of Hungarian prostitutes women⁸.

Social rights of Roma people remain often violated. Thus, whether in education, health, employment and housing, the living conditions of the Roma people remain the worst in Europe.

Expelled from their houses, forced to squat in lands illegally, Roma are discriminated more than ever when it comes to access to a decent housing.

According to a note from the European Commission published in June 2013, the life expectancy of Roma is ten years lower compared to the European average⁹. The rate of infant mortality is considerably higher among Roma children. Living in unsanitary conditions (i.e. in squats, in station concourses, in the street) and various administrative barriers lead to high health risks. Evictions also have negative consequences on their health since their living conditions deteriorate, added to the fact that they also lead to a breach of medical care, their monitoring and health prevention. Among others, evictions may interrupt vaccination and screening campaigns, may lead to worsening diseases...

Regarding education systems, in several Member States a wide number of Roma children are still victim of segregation.

Beyond segregation, it must be reminded that the precarious situation faced by Roma families (e.g. evictions, difficulties to access housing...) hinder severely their access to education. Children attend school for short periods, and no stability is guaranteed to them during the school year.

In general, the discrimination faced by Roma people in education has an important impact on their access to the labour market, since young Roma are less equipped and less qualified to find a job.

In many areas, Roma people are still the victim of a systematic discrimination. It is the case in education, where the segregation of Roma children is not only violating their right to a non-discriminative education, but also, on a long-term basis, depriving them of a wide range of other Human Rights, including the rights to health, to employment and to freedom of expression. These consequences can be compared to those experienced by Roma people in the access to a decent housing. When it comes to health, these discriminations lead to huge risks which concern both children and adults.

Conclusion

To conclude, anti-gypsyism strengthens exclusion, deprivation, segregation and marginalization that Roma people are suffering from. Exclusion, contempt and acts of violence show that the majority, still, does not seem to accept the « difference » and still feels insecure when facing the Roma minority. Apprehension and extremism against Roma are greatly fed and fuelled by media. Roma people find themselves being scapegoats, allegedly responsible for all the problems and all suffering.

The specific situation of each Member State

The analysis of the various fundamental rights governing the European Treaties and Constitutions of the European Union Member States shows that it is very difficult to maintain a comprehensive approach to social rights. Indeed, Member States remain responsible for these areas and the European Treaties do not allow supranational bodies to act in these areas by providing them for example with powers or legal tools. Thus we can see that

laws and social systems established in different Member States vary in both their purpose and their application.

As usually, and especially in social fields, the devil is hidden in the details, it became virtually impossible to treat a social area at the European level by summarizing national approaches. Therefore, European texts and enforced laws are introduced as a reminder and are followed after by specific national analysis in each field, as it the case in education for example. This approach remained the one chosen for all the aspects covered in the project.

This is how, despite the fact that Roma people remain one of the most discriminated people in Europe, the fight against discrimination should be made at the national level and according to the legal rules and social rights in force in each Member State.

This is also why the approach chosen regarding the defence of the fundamental rights of the Roma people is developed and adapted according to the framework of the Member States involved in this project. This approach can be extended to other Member States by other national actors.

¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. An EU Framework for National Roma Integration Strategies up to 2020, 5 april 2011, p.2.

² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Steps forward in implementing national Roma integration strategies, Brussels, 26 June 2013, COM(2013) 454 (final), p.2 and following.

³ European Parliament Plenary Session, Debate on the Roma situation, 10 October 2013.

⁴ Swedish police confirm illegal Roma database, Euractiv, 24 september 2013.

⁵ Article 8 European Convention for the Defence of Human Rights .

⁶ Commissioner's concerns about police file on Roma in Sweden, Council of Europe, 23 september 2013.

⁷ Roumanie: Cachez ces Roms. Libération, 20 novembre 2012.

⁸ Increase of trafficking in human beings in Europe: EWL supports EU Commissioner's call for action to the Member States. European Women's Lobby, 15 april 2013.

⁹ Roma integration: Progress Report and Recommendation - Frequently Asked Questions. European Commission, 26 june 2013.

PRESENTATION OF THE PROJECT

The Inserom project has four main objectives :

1. To empower and enable Roma¹ community by widening access to civic competences and thus to employment through knowledge of Human Right Education (HRE) and active citizenship.
2. To provide life-long learning to Roma adults in order to improve their understanding of fundamental human rights and citizenship, pathways to social and professional integration.
3. To foster greater knowledge about intervention toward Roma communities through the setting up of training initiatives for trainers (volunteers, professionals, public institutions...).
4. To create greater cooperation and dialogue with Roma communities among Europe.


In order to reach these goals, the partners have developed a toolkit which consists of a reference book being the basis of the legal status concerning the Roma communities at the European level, written by AEDH, and within four European Union Member States (France, Spain, United Kingdom and Czech Republic), for each national partners being the author of the national section. As Member States committed themselves to applying some international legislation the European level sections include as well legislation from the Council of Europe and the United Nations.


This reference book is divided into nine files, each one being related to one human right subject. The nine files are the following :

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

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

 File 3 - Right to access to decent housing

 File 4 - Right to access education

 File 5 - Right to access employment

 File 6 - Right to access health care services

 File 7 - Defence of the vulnerable members of Roma community

 File 8 - Right to receive social assistance

 File 9 - How to fight anti Roma discrimination

The articles from the Charter of Fundamental Rights of the European Union are recalled at the beginning of each file.

This reference book is therefore the basis to help trainers involved with the Roma communities as well as Roma communities themselves.

It is intended to be used jointly with the training guidelines developed also within the Inserom project.

¹ The term "Roma" is used – similarly to other political documents of the European Parliament and the European Council – as an umbrella which includes groups of people who have more or less similar cultural characteristics, such as Sinti, Travellers, Kalé, Gens du voyage, etc. whether sedentary or not ; around 80 % of Roma are estimated to be sedentary (SEC(2010)400).

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 founding the Rule of Law

The Rule of Law is a principle of governance that does not have any exhaustive definition. Generally, it requires all institutions, including individuals and States, to be accountable to laws. The United Nations adds that the laws must be consistent with international human rights standards and also the principle of equality before the law. Despite the lack of any exhaustive definition the principle is explicitly included within legislative texts of the European Union (EU)¹.

The principles within the Rule of law can also be found in substantive rights afforded by the European Union as it is the case of the right to equal treatment before the law and the protection from discrimination. The European Union has further stated that all citizens will be treated equally within its « institutions, bodies, offices and agencies »². This requires that all Member States treat all EU citizens equally as since 1992 every citizen of a Member State is also a citizen of the European Union³. As a EU citizen, an individual is both under his/her national legislation and the EU legislation.

There are three types of binding EU legislation covered in the European sections of this book. In order of importance the three forms of legislation are treaties, regulations and directives. Treaties provide the guiding principles on which the EU acts. Before having legal effect Treaties must be ratified by all Member States. The Charter of Fundamental Rights is a treaty and so other laws cannot contradict it.

It is worth noting that both the United Kingdom and the Czech Republic have placed limitations upon the scope of the Charter of Fundamental Rights (See the United Kingdom and Czech Republic sections of File 1).

The Charter of Fundamental Rights, generally, applies to all individuals present within a European Union territory and not just those who are considered EU citizens.

2. How is the equality before the law ensured ?

Mechanisms exist to ensure the Rule of Law and, consequently uphold equality of treatment within the EU. This has been done on two levels: at Member State level ; and at citizen level by affording them a right to recourse (see the file 9 : "How to fight anti-Roma discrimination").

As mentioned above, Treaties of the European Union have to be accepted by all Member States before they can have legal effect. If a state wishes to join the European Union then it must also agree to these Treaties. By agreeing to the Treaty of the European Union, Member States are required to take measures to fulfil all obligations that arise out of any such Treaty⁴.

Secondly, to a certain extent, EU Institutions and bodies have the capabilities to prevent or react to the violations of Treaties by Member States :

- the European Commission is an independent, supra-national body that carries out many roles in relation to the functioning of the European Union. One such role is the monitoring of Member States in order to ensure they are complying with, and upholding, the Treaties and the principles contained within them⁵. Therefore the Commission is often referred to as the "Guardian of the Treaties". In the event of non-compliance the Commission will firstly allow the State to voluntarily conform to the requirements of the Treaty. If the Member State does not do enough then the EC can take it to the Court of Justice of the European Union (CJEU)⁶ ;
- the main mission of the CJEU is to ensure that the law is respected "in the interpretation and application of the Treaties"⁷. The CJEU has three main functions: to ensure that Member States are complying with their obligations under the Treaties; to review the legality of new European Union measures in light of the Treaties that set out their areas of competence; and, at the request of domestic courts of Member States, to interpret European Union law. This final function has led to the establishment of some of the European Union's most fundamental principles, such as the fact that citizens can apply certain European Union law in their domestic courts. This principle is called "the direct effect of Community law" ;
- The European Union Agency for Fundamental Rights (FRA)⁸ provides expertise and assistance to the EU and the Member States when they implement the laws. FRA collects and disseminates data on the fundamental rights situation in EU Member States⁹.

The European Union is currently negotiating its accession to the European Convention on Human Rights (ECHR), an international convention based on the Universal Declaration of Human Rights. While all Member States have ratified the ECHR, the European Union only officially started the negotiations in 2010¹⁰. This accession would strengthen the protection of human rights in Europe as now the European Union, when implementing new laws, would also be subject to a review. This review would be carried out by an external and independent body, the European Court of Human Rights (ECtHR) which is an organ of the Council of Europe. The Council of Europe is sepa-

rate from the European Union and promotes cooperation in the field of human rights between its 47 Member States. EU accession makes sense for several reasons: the CJEU sometimes refers to the European Court of Human Rights' decisions while taking its own decisions, Member States already take into account the ECHR while they apply the EU law; EU citizens will be protected from the EU law like they are already from their national laws.

UNITED KINGDOM

1. Introduction : Overview of the legislative text

Within the United Kingdom there is no one, single legal system since it was created by the political union of previously independent countries. The 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.

There are divergences between the legal systems on more detailed provisions, especially within the criminal law, but certain areas of law are consistent across the United Kingdom. However, the various legislative bodies across the United Kingdom have varying levels of competence in specific fields dependent on the powers given to them when they were established. The competency to act upon and legislate in the area of national issues such as immigration and asylum are reserved to the Parliament of the United Kingdom, based in Westminster, London. There are several pieces of legislation created by the United Kingdom Parliament that are relevant to the need for equality before the law.

The Human Rights Act 1998 brought the European Convention on Human Rights and Fundamental Freedoms into domestic law. This Convention was created in 1950 and contains provisions and mechanism to protect the human rights of individuals from being violated by the state in which they are citizens. Within the Convention there are specific provisions that protect individuals from discrimination on certain grounds, including race and national or social origin. However, the grounds on which discrimination under Article 14 are prohibited are potentially unlimited. All public authorities are required, by section 6, to act in a way that is compliant with the European Convention on Human Rights. In the United Kingdom, the protection for individuals from discrimination was further-

red when the Equality Act 2010 was passed. The Equality Act 2010 codified various other United Kingdom pieces of legislation that protected individual from discrimination; including the Race Relations Act 1976.

When considering the legislation above it is also necessary, due to the common law nature of the United Kingdom legal system, to also consider decisions made by domestic courts in relation to the various issues. These decisions set a 'precedent' which must be followed by all courts that are considered lower than the court issuing the decision in the hierarchy of courts. The highest court within the United Kingdom is the Supreme Court which replaced the Appellate Committee of the House of Lords in October 2009.

Within the backdrop of United Kingdom law described above this file will apply United Kingdom 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.

2. How is the Equality before the law ensured ?

Article 5 of the European Convention on Human Rights and Fundamental Freedoms : 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 fulfil 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 and the individual must, under Article 5(3), be brought before a judge ;
- detention of children by lawful order for educational supervision or in secure accommodation, care etc. ;
- 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. Accordingly, this was contrary to the protection afforded by Article 5.

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.

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. Public bodies within the United Kingdom are required to act

in accordance with the European Convention on Human Rights by virtue of the Human Rights Act 1998, section 6. 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 purpose¹¹. Public bodies are required to act in accordance with the European Convention on Human Rights as mentioned above, but the Scottish Ministers are also required to act in compliance with the Convention when acting or creating any legislation. This provision is contained within section 57(2) of the Scotland Act 1998.

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 the UK is still required to adopt laws in order to comply with EU Directives. There are various practices by the United Kingdom that in fact may not comply with the Directive relating to free movement of EU citizens, however, these shall be considered in the relevant files (healthcare services and employment).

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 interfered with the right to liberty, but sought to justify this. The House of Lords held that the measure did in fact violate the right to liberty 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 violation 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. The House of Lords made a declaration of incompatibility under section 4 of the Human Rights Act 1998, 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 misrepresent their identity due to the same colour and similar ethnicity which can go unnoticed from other European Member States.

However, there are other violations of the law when it comes to migrants entering the UK. For instance, there is a requirement that an EU citizen has health insurance under the Free Movement Directive if they move to another EU State but do not work there. The UK does not, however, consider that entitlement to treatment by the public healthcare provider (The National Health Service) as sufficient. This has resulted in requests from the EU Commission to change procedures. Romanian and Bulgarian workers 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 States¹².

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 do not apply with the directive the Commission threatens to take them to the Court of Justice of the EU, as was the case with the United Kingdom in relation to the issues highlighted above in 2012.

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 Scotland¹³.

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."

FRANCE

1. The legislative texts founding the Rule of Law¹⁴

The founding text is the Declaration of the Rights of Man and of the Citizen, 1789. It was prior to the adoption of France's constitution but was an important document during the French Revolution. Within Article 1 the principle of equality of all individuals is codified, the provision states that "*Men are born and remain free and equal in rights*". This principle of equality was reinforced in the Preamble to France's Constitution that was adopted after the Second World War in 1946. In the most recent version of the French Constitution from 1958 the principle of equality is once more emphasised. Within Article 1 the prohibition of discrimination on the basis of origin, race or religion is established.

Generally, due to the indivisibility of the country and universalism, France does not attribute a legal status to minorities. Instead, 'minorities' are considered equal to all French citizens. Certain terms such as "Gens du voyage", or "travellers", is only used in an administrative context to refer to individuals without a fixed abode and who carry out an itinerant trade.

2. How is the equality before the law ensured ?

Within France the court system and judiciary is established by the Constitution. The judiciary uphold the freedom of the individual and are required to ensure that

no individual is arbitrarily obtained as required by Article 66 of the Constitution.

The European Convention on Human Rights¹⁵, ratified in 1974 completed the Constitution in particular with Article 6¹⁶, 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 provided¹⁷. 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 live in France on a continuous and legal basis.

You can download a form on a website¹⁸ to take up a case of legal aid. It is better to be helped by a lawyer. You can seek advice from specialized associations¹⁹.

The recourse to the Human rights defender²⁰ is another possibility. Children rights, fighting against discriminations, and promoting equality are among his tasks²¹.

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 rights²². These provisions were brought before the constitutional Court and some of them have been repealed²³ Travellers need no more to wait three-years 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." ;

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

Penal Code²⁴ In which there are stated divers criminal offences related to discrimination on grounds of racial and ethnic origin²⁵.

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. Their **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.

> 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"²⁶.

Peace Court. In **municipalities** where there are not Courts of First Instance.

Irrespective 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 restrictive²⁷.

3. Violations of the legal system the 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 necessary to acknowledge this right in the Constitution as opposed to doing so in laws susceptible of being further modified²⁸.

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 23²⁹, 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 appearance³⁰. This sentence particularly affects Roma individuals coming from Central and East Europe living in Spain.

CZECH REPUBLIC

1. The legislative texts founding the Rule of Law

The rule of law in the Czech Republic is shaped by a hierarchy of legal provisions, the Charter of Fundamental Rights and Freedoms³¹ occupies a superior position to ordinary laws. The Constitution of the Czech Republic³² 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 laws³³. 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.

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 status³⁴.

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 irrevocable."*³⁵

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.³⁶ 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 policies³⁷. 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 issues do not represent a big agenda in the work of ombudsman"*³⁸. 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 unpredictability of the result³⁹. 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 Roma⁴⁰.

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 compensation⁴¹.

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 decisions⁴².

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 discrimination⁴³.

Apart from the above mentioned 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"*⁴⁴.

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 Roma⁴⁵.

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 remedy⁴⁶.

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 reinforced⁴⁷.

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 party⁴⁸.

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 resources⁴⁹.

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 profiling⁵⁰, 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 months⁵¹.

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 inadequate⁵². 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.

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)⁵³.

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.

1 The Rule of Law is considered as a founding value of the European Union along with fundamental rights as it is expressed in 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 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"*.

3 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"*

4 Treaty on the European Union, Article 4, Paragraph 3 : *"(...)The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union"*

5 Treaty of the Functioning of the European Union, Article 258 : *"If the Commission considers that a Member State has failed to fulfil an obligation under the Treaties, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations. If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice of the European Union."*

6 For more information : http://ec.europa.eu/eu_law/infringements/infringements_en.htm

7 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."*

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

9 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.

10 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"*

11 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.

12 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.

13 (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).

14 www.legifrance.gouv.fr/Droit-francais/Constitution

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

16 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. (...)"*

17 vosdroits.service-public.fr/F18074.xhtml#N1007C

18 vosdroits.service-public.fr/R1444.xhtml

19 See the « *mallesette Roms* » of the LDH. Website to come.

20 Défenseur des Droits (DDD)

21 See file 9

22 www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006068336&dateTexte=20120910

23 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

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

25 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'.

26 '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.

27 According to the annual report of discrimination of 2011.

28 Fourth Report of ECRI on Spain.

29 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.

30 STC 13/2001, of 29 January, 2001

31 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

32 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

33 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

34 *Ibid.*, p. 4

35 « 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

36 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

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

38 Složitost antidiskriminačního práva a 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

39 *Ibid.*

40 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

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

42 *Ibid.*, p. 78

43 *Ibid.*, p. 78-79

44 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

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

46 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

47 Složitost antidiskriminačního práva a 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

48 Inter-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

49 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

50 “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

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

52 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.

53 *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

EU legislation enacts the ban of collective expulsions as well as the rights to move and to reside.

• 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 requested⁵ ;
- 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 to live⁶. Nevertheless, Member States cannot decide which amount is sufficient and instead they must focus on the personal situation of the person. However, if they refer to a certain amount it should not be higher than the threshold for nationals of that Member State to qualify for social assistance⁷. This part of the directive is quite ambiguous and unclear⁸ ;
- **after five years living continuously⁹ in the territory of a Member States**, EU citizens have the right to obtain 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 has been 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 into account only 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 solely rely upon previous criminal convictions of the person¹⁹.

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

- 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 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 differs 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 (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 stay³¹	
Albania	<p>Visa liberalisation agreement</p> <ul style="list-style-type: none"> • For citizens with a biometric passport: no visa is required³² • 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 fees³³ • 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 ³⁴	<p>Visa facilitation agreement</p> <ul style="list-style-type: none"> • A Schengen visa³⁵ • An official document justifying the reason of the stay • Fees for administrative process
Moldavia ³⁶	<p>Visa facilitation agreement</p> <ul style="list-style-type: none"> • A Schengen visa³⁷ • An official document justifying the reason of the stay • Fees for administrative process
Russia ³⁸	<p>Visa facilitation agreement</p> <ul style="list-style-type: none"> • A Schengen visa³⁹ • An official document justifying the reason of the stay • Fees for administrative process
Turkey	<p>The case of Turkey is complicated. Some agreements imply the entry without visa of Turkish citizens, but they are still required to hold a Schengen Visa⁴⁰ in practise. Turkey is supposed to sign an agreement to facilitate the issuing of visa, but for unknown reasons, this agreement has not been discussed yet within EU Institutions⁴¹.</p>
Kosovo	<p>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 policies⁴².</p>
Family members of EU citizens with a citizenship from one of these countries	<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 procedure⁴³) - To reside within the EU they only need a valid passport and no administrative procedure are required (as it is for EU citizens)⁴⁴ - To circulate within the EU they need a valid passport⁴⁵ <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 legislation⁴⁶.</p>

For more than 3 months stay	
All countries mentioned previously	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...). 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 ⁴⁷ .
Family members of a EU citizen with a citizenship from one of these countries	<p>If the EU citizen matches all the requirements to reside more than three months in another Member States (see the information regarding EU citizens before), 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 responsibilities⁴⁸. 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 EU⁴⁹. - 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 renewed⁵⁰. - Some documents are required for the application⁵¹.

Visa waiver suspension : Reimposing visas in migration emergencies

After an influx of asylum applications from Western Balkan's nationals, the European Parliament voted that in emergency situation the EU could reimpose temporarily (for 6 months) visas on third country nationals for which the EU had a visa liberalisation agreement. Used only as a last resort, this suspension aims at halting substantial and sudden increases in irregular migrant numbers or unfounded asylum requests. We are currently waiting for the vote at the Council of the European Union which should be in favour since they initiated this law.

Asylum status

The particular rules relating to asylum applications are generally dealt with at Member State level. However, the EU has set out minimum requirements that must form part of each Member State system. One of the require-

ments is that the country of origin of the citizen should be regarded as unsafe. For that, Member States assess the safety of the country of origin with reference to information provided by international organisations, for example the United Nations. Another requirement is that the applicant is currently being persecuted or facing persecution, in his/her country of origin. The individual applicant has to provide evidence to show this persecution or likelihood of such persecution. However, citizens of EU countries cannot apply for asylum status as EU countries are regarded as safe. For neighbouring countries mentioned in this file the decision whether to regard it as safe or not lies with each individual Member State. The EU intends to develop a minimum list of countries regarded as safe, but this list is still in draft form.

However, it is a generally held belief that individuals from the Roma Community from these countries do not fulfil the requirements required to be granted asylum status⁵².

UNITED KINGDOM

1. Legislation relating to the right to move, the rights to reside, the ban of collective expulsions, and the right to enter the UK

Directive 2004/38/EC of the European Parliament and of the Council was adopted on 29 April 2004. It relates to the right of EU citizens, and their family members, to move and reside freely within the territory of Member States of the EU. The Directive applies to all EU citizens, those who are citizens within the European Economic Area (EEA), and citizens within 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 instead has a separate bilateral agreement on free movement within the EU.

Generally, this Directive codifies previously existing Directives and Regulations, however, 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. Citizens from these countries had the legal right to work and move freely throughout Europe and the UK, as recognised by the Directive. However, it was not until May 2011, after the standard seven year transitional period that applies to Directives expired, that the UK recognised this and implemented the right of movement for the A8 migrant. In January 2007, Romania and Bulgaria (A2 citizens) joined the European Union. Romanian and Bulgarian (including Romanian Roma and Bulgarian Roma) migrants, as EU citizens, 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 crite-

ria to gain a work permit under existing work permit arrangements. These arrangements also apply to all individuals from non-EEA states and are structured as a 'tier system' :

- **Tier 1 :** This category is for entrepreneurs, investors, and graduate students, and those very few top people who meet the requirements of the exceptional talent visa category. The UK also recently introduced a Post Study Entrepreneur Visa for foreign graduates.
- **Tier 2 :** This category is for skilled workers who have a job offer. This includes general workers, ministers of religion, sports players, and intra-company transfers.
- **Tier 3 :** This category was originally designed for low-skilled workers filling specific temporary labour shortages. No visas have been provided under this tier.
- **Tier 4 :** This category is for foreign students wishing to study in the UK.
- **Tier 5 :** This category is for youth mobility and temporary workers, such as those who come under Working Holiday agreements with other countries

Since 1 January 2014, once the seven year transitional period ends, UK labour markets has been open to Romanian and Bulgarian nationals (A2 citizens) establishing 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 the UK. The lifting of the work restriction may increase the numbers resulting in further causing political concern due to 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. This may potentially increase wages within the farming sector to attract employees in order to fill vacancies. 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 being able to gain long-term residency within the UK and access services such as housing, education, policing, health, and employment.

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 her/his own (this requirement is based on the principle of the non-applicability of EU law to purely internal 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] The European Court of Justice in *Singh* decided that upon return from working in another Member State, the conditions that he faced in his home nation had to be equivalent to those in the other Member State. If this were not the case then the individual would be less likely to initially leave to work in the alternative Member State. 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 were established 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 in order to not have to rely on public funds, holds comprehensive health insurance, and exercises one or more treaty rights then the individual has a right to free movement. 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. Under the Scotland Act 1998, the Scottish Parliament can competently legislate in areas of education, housing and health. Therefore, the Scottish Parliament could act to ensure an inclusive system within these matters.

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

Currently, the right to entry and reside is restricted to A2 Nationals under UK immigration legislation, however, this rule will be eradicated in January 2014. The restrictions placed have serious implications on the Roma Community as they can only reside within the UK for three months. This results in a denial of equal access to various services and opportunities such as, employment, health, legal aid, education and participation in economic and public life, including electoral representative (Council of Europe 2010⁵³). This places the Roma at a social and economic disadvantage and reduces their quality of experience when residing within the UK.

The case of *Raducan & Another v. MJELR & Orc*, from the Irish High Court, 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 that this practice was in violation of the Directive.

The position of an individual who is in the process of divorcing their spouse is of difficulty. While the Directive says that the family member is covered until the decree absolute is issued, the rights can be difficult to enforce if the EEA citizen is non-compliant. 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.

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. This practice appears to violate the Directive.^{[18][19][20]} 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 2008/310^[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 2011/146 allowing visa free entrance with a residence card issued by another EEA Member State.^[23]

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 conflicting categories 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 UK citizens who have exercised their free movement rights in another Member State and then 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 residence 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. Regulation 11 states that 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 cases where the UKBA refuses 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 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 Rules⁵⁴.

FRANCE

1. National legislative texts

The *Ceseda*⁵⁵ stipulates the main rules and regulations for foreigners in France, including :

- conditions for entry and refusal of entry into the territory, waiting zones and appeals ;
- various residence permits with conditions of residence and the mention of measures for the integration in French society ;
- assisted voluntary return ;
- family reunification ;
- removal orders, administrative detention, deportation order and expulsion ;
- asylum rules.

The Directive 2004/38/EC of 29 April 2004 was adopted to encourage EU citizens to exercise their right to move and reside freely within Member States⁵⁶.

The 16 June 2011⁵⁷ an Act and a Decree⁵⁸ relating to immigration and French nationality are passed in order to transpose several EU directives into domestic law. These cover :

- common standards and procedures for Member States, whereby illegally staying third-country nationals⁵⁹ 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 safeguards⁶⁰ ;
- 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 States⁶¹ ;
- 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 national⁶².

This law goes beyond the transposition of the Directives by containing provisions on, for example, administrative decision of house arrest. Some rights for foreigners are limited :

- Duration of administrative detention is longer ;
- Restriction for legal aid before the National Asylum Court ;
- Creation of the Obligation to Leave French Territory, OQTF⁶³ without delay for return. The previous 30-day delay for appeal is reduced to 48 hours ;
- 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 grounds⁶⁴.

Travellers

The identity booklet or "carnet de circulation"⁶⁵ had to be stamped every three months. This was considered a disproportionate violation of the freedom of circulation. However the Court upheld the use of the « livret de circulation »⁶⁶ 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

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 passport⁶⁷. 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 space⁶⁸. 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 residence⁶⁹. After five years of legal residence, they can obtain a permanent residence permit from the Prefecture of their place of residence⁷⁰.

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 2010⁷¹, 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 (which ends at the start of 2014), 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 2.2⁷², 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 be required to leave the French territory (OQTF), due to an administrative measure that is used to affect foreigners from the EU or non-EU countries.

The inter-ministerial circular letter of 26 August 2012⁷³ on organising 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 emphasised. Any solutions for the camp's inhabitants should be lo-

ked 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 Freedoms⁷⁴.

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. The action is in the form of a revocation request to ask the judge to assess the legality of the decision. This request must submit all the arguments demonstrating that the prefecture 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 detention⁷⁵.

Travellers : see file 1

1. Legislation relating to the right to move, the right to reside, and the ban of collective expulsions

According to the Spanish Constitution, in Article 19⁷⁶ :

"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 individuals of the Roma communities from other European states this legislation raises certain restrictions in regard to their freedom of travel and residence :

The Royal Decree 240/2007, of 16 February 2007 transposes 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.

This decree provides the authorities with the ability to develop policies that limit entry into Spain. Further, competence to create measures relating to refusal to register in the Central Register of Foreigners and to issue or renew a residence card is placed upon authorities. The Decree also allows an order of expulsion of Spanish state on grounds of public health or safety to be given.

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 stay longer than three months for EU citizens are restricted. This has a direct effect on the residence status of Romanians and Bulgarians. In line with this order, in effect since September 1 2012, citizens that fulfil the following conditions shall be entitled to reside in Spain for longer than three months :

- 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 citizen applying for residence who 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 minimum period is six months.

The majority of individuals from the Romanian and Bulgarian communities do not meet these requirements. This is due to their arrival occurring after September 1 2012 or, if before, a failure to complete the Certificate of Registration prior to that date. This, in effect, prevents these individuals from residing within Spain for periods that exceed three months.

In addition, workers from Romania are affected by the moratorium on access to employment, proposed by Spain and endorsed by the European Commission⁷⁷, that exists until the end of 2012.

Thus, only those Romanian nationals, who were registered as unemployed or with a contract dated before 22 July 2011 can reside and undertake any type of work activity. Those who were neither working nor registered as unemployed on this date, irrespective of their right to reside 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 :

For stays of less than three months the individual only requires to have a valid passport or identification card.

For stays that extend beyond three month there is a specific process to register in the Central Register of Foreigners for European citizens. It is required to personally visit the office of the province⁷⁸ that the individual wishes to settle, or the corresponding police station, within the first three months in the country. 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 2012. The following documents are required by the Order :

- a copy of employment contract, employment certificate, or proof of Social Security registration in Spain; Work contract registered in social security for employees ;
- a copy of registration with Spain's Commercial Registry or proof of Social Security registration if self-employed ;

- students 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 statements⁷⁹, property deeds, investment income, etc. In addition, they must provide proof that they have health insurance with coverage in Spain.

For foreigner citizens there is 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 :

Authorisation to work is granted together with a residence permit. The applicants must not be residing illegally in Spain, be subject to a prohibition of entry into the country or fall within the period of a non-returning commitment programme. The applicant is required to not have committed a criminal offences in Spain or any act in another country which would be considered criminal according to the criminal law of Spain.

In order to take up employment in Spain a permit is required. This permit is administered by the country of origin following the offer of a job within Spain. Only certain job offers will result in such a permit being granted. The offer must fall within a category of occupations that are currently experiencing shortages, these categories are published quarterly by the Public Employment Service⁸⁰. The applicant can also hold a certificate issued by the Public Employment Service, at the request of the Spanish employer, certifying that there are no qualified applicants within the activity in which he/she intends to work. However, if an applicant falls within specific circumstances referred to in art.40 of the immigration law⁸¹ then there is no need for a certificate or an offer falling in to the specific categories.

The employer must apply for authorisation; this requires them to provide the signed employment contract. 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 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 nationals⁸² :

- application form in duplicate and 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 permit⁸³ :

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 identified). The required the resolution of a judge or of a work inspection to confirm that he/she has been working a year without the permit

Family roots : first-degree relatives of Spanish nationality.

Certificate of permanent residence⁸⁴ :

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, have a right to permanently reside within Spain if they have already resided there for a continuous period of five years.

This right to permanently reside can exist prior to the completion of a five year period in certain circumstances⁸⁵. These circumstances generally relate to whether the individual would be able to retire under Spanish law, has suffered from a work accident resulting in a disability or the applicant is married to a Spanish citizen.

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 within Spain. However, the number of displacements of settlements 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

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, have access to the general legal resources relating to racial discrimination referred to in the file 9.

It is recommended to seek support from NGOs which offer legal advisory service. Such organisations include : Union Romani, FSG and Human Rights Association of Andalusia.

CZECH REPUBLIC

1. The legislation relating to the right to move, the right to reside, and the ban on collective expulsions

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

On the constitutional level, the freedom of circulation and installation is regulated in the Charter of Fundamental Rights and Freedoms⁸⁶, 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, Article 8 of the Charter contains the general provision, relating to the freedom of circulation and installation, that *"Personal liberty is guaranteed"*.

This freedom is directly effective 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 anywhere within the territory of the Czech Republic, and a permission to freely choose the place of residence inside the Czech Republic.

The freedom of circulation and installation is regulated by the Act on residence of foreign nationals⁸⁷. This law re-

mains the key legal instrument stipulating the conditions for the entry and stay of foreigners in the Czech Republic⁸⁸.

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. Further, 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 were fully transposed into Czech national law in 2007⁸⁹.

As for the transitional measures that a state can impose on foreign citizens after the creation of Directive, 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 in future situations⁹⁰.

The ban of collective expulsions is included in the Act on Residence of Foreign nationals in the Czech Republic, specifically 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 entry in to and free movement within the Czech Republic for EU Citizens and travellers

EU citizens are a considered special category of foreigners in the Czech Republic as established by the Act No. 326/1999 Coll. on the Residents of Foreign Nationals. EU citizens and their family members have a much more favourable position than foreigners from third countries, because their rights are related with freedoms of the EU, one of which being the freedom of movement within the territory of the EU. The Act, in section 1 and 2, defines the foreigner as *"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 a EU citizen contained in the Treaty on European Union, Article 9. Institute of EU citizenship is then further developed in Treaty on European Union, Articles 20-25.

Due to this right to free movement, EU citizens can, together with the closest family members, travel freely throughout the European Union. They require to only have a valid passport or identity card. This right is valid regardless of the location or purpose of the travel (private or business, as an employee, self-employed or tou-

rist). 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 whether they are travelling with an EU citizen or separately.

Differences between treatment of Nationals and EU Citizens in establishing continued presence

► In general, Czech and EU citizens are equally treated, however, one main difference does occur. Czech citizens are not obligated to report about the change of their temporary stay, whereas EU citizens are. For Czech citizens, the place of permanent residence is information that must be on the citizen's ID card. If changed then this permanent place of stay must be updated on the ID card also.

► One of the obligations placed upon citizens of the EU, Iceland, Norway, Liechtenstein, and Switzerland is the "reporting requirement". In the event that the intended length of stay in the Czech Republic exceeds 30 days the individual is required to report his/her presence to the appropriate Foreign Police Department that holds jurisdiction over 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 EU citizen. 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. The requirement also does not apply to foreign nationals whose accommodation is secured through the Ministry of the Interior (MOI). EU citizens are also bound to report any change in surname, marital status, or any 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. If a residence permit/certificate was issued, changes are reported to the MOI.

► The Act No.74/1958 on permanent settlement of travellers was annulled in 1998, despite this fact we do not have travellers in the Czech Republic.

Processes to become a resident

If an individual intends to stay in the Czech Republic for longer than 3 months, they can request a certificate of temporary or permanent residence 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. Each applicant is required to provide the following :

- 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 satisfied :

- 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 notarised 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 proving the applicant's 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 documents required 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.

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 has not been recorded. 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 installation⁹¹. Roma in the Czech Republic do not fall within the group of 'travellers', as this term 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 Travelers, this right to movement 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 Migration⁹² or Counseling Centre for Citizenship, Civil and Human Rights⁹³.

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.

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*".

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=o&content=1&restrictions=o&step=o&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.
- 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)".
- 31 Non-EU citizens can stay up to 3 months (90 days) within a period of 6 months (180 days) in the EU, that-is-to-say they can come and go of the EU without visa but their last travel should not be made more than 6 months after their first trip in the EU. In addition, they cannot stay in total more than 90 days (3 months).
- 32 Albania, Bosnia Herzegovina, Macedonia, Montenegro and Serbia signed a visa liberalisation agreement with the EU. The regulation 539/2001, which has been several time modified mentions which citizens of which countries do not need a visa to enter the EU for a 3 months stay maximum.
- 33 Each of these countries signed a visa facilitation agreement with the EU to speed up and ease the delivery of Schengen visas. In all of the individual agreements: Article 4 mentions the type of document each group of travellers needs to show, Article 5 lists the groups of travellers allowed to ask for a multiple entry visa, Article 6 indicates the amount of the fees to be paid and Article 7 tackles the maximum delay the administration in charge has to give its answer so to deliver or not the visa.
- 34 Ukraine signed a visa facilitation agreement with the EU to speed up and ease the delivery of Schengen visas. This agreement does not apply to Denmark, Ireland and United Kingdom. Article 4 of the agreement mentions the type of document each group of travellers needs to show, Article 5 lists the groups of travellers allowed to ask for a multiple entry visa, Article 6 indicates the amount of the fees to be paid and Article 7 tackles the maximum delay the administration in charge has to give its answer so to deliver or not the visa.
- 35 The most common conditions to get a visa are mentioned in the Council regulation 810/2009. Therefore you need to submit an application at least three month before the day of arrival (Art. 9), to request an appointment (Art. 9) and appear in person (Art. 10), submit an application form (Art. 11), present a travel document (Art. 12), provide a photo following some norms (Art. 13), allow the collection of fingerprints (Art. 13), provide supporting documents (Art. 14), provide proof of a travel insurance (Art. 15), pay the visa fee (Art. 16). Article 10 summarizes the procedure. For precise details you need to approach the Embassy of the EU country you wish to enter in.
- 36 Moldova signed a visa facilitation agreement with the EU to speed up and ease the delivery of Schengen visas. This agreement does not apply to Denmark, Ireland and United Kingdom. Article 4 of the agreement mentions the type of document each group of travellers needs to show, Article 5 lists the groups of travellers allowed to ask for a multiple entry visa, Article 6 indicates the amount of the fees to be paid and Article 7 tackles the maximum delay the administration in charge has to give its answer so to deliver or not the visa.
- 37 See footnote 35 on the procedure to obtain the Schengen Visa.
- 38 Russia signed a visa facilitation agreement with the EU to speed up and ease the delivery of Schengen visas. This agreement does not apply to Denmark, Ireland and United Kingdom. Article 4 of the agreement mentions the type of document each group of travellers needs to show, Article 5 lists the groups of travellers allowed to ask for a multiple entry visa, Article 6 indicates the amount of the fees to be paid and Article 7 tackles the maximum delay the administration in charge has to give its answer so to deliver or not the visa.
- 39 See footnote 35 on the procedure to obtain the Schengen Visa.
- 40 See footnote 35 on the procedure to obtain the Schengen Visa.
- 41 To monitor the negotiations, see : [http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2012/0122\(NLE\)&l=fr](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2012/0122(NLE)&l=fr)
- 42 See footnote 35 on the procedure to obtain the Schengen Visa
- 43 *Ibid.*, Article 5, Paragraph 2 : "(...) Member States shall grant such persons every facility to obtain the necessary visas. Such visas shall be issued free of charge as soon as possible and on the basis of an accelerated procedure."
- 44 *Ibid.*, Article 6 : "1. 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. 2. The provisions of paragraph 1 shall also apply to family members in possession of a valid passport who are not nationals of a Member State, accompanying or joining the Union citizen"
- 45 *Ibid.*, Article 4, "1. Without prejudice to the provisions on travel documents applicable to national border controls, all Union citizens with a valid identity card or passport and their family members who are not nationals of a Member State and who hold a valid passport shall have the right to leave the territory of a Member State to travel to another Member State. 2. No exit visa or equivalent formality may be imposed on the persons to

whom paragraph 1 applies.”

46 Member states should also facilitate entry and residence of another members of the family not mentioned in the previous reference, in the Directive 2004/38/EC article 3 paragraph 2 : “Without prejudice to any right to free movement and residence the persons concerned may have in their own right, the host Member State shall, in accordance with its national legislation, facilitate entry and residence for the following persons : (a) any other family members, irrespective of their nationality, not falling under the definition in point 2 of Article 2 who, in the country from which they have come, are dependants or members of the household of the Union citizen having the primary right of residence, or where serious health grounds strictly require the personal care of the family member by the Union citizen ; (b) the partner with whom the Union citizen has a durable relationship, duly attested. The host Member State shall undertake an extensive examination of the personal circumstances and shall justify any denial of entry or residence to these people.”

47 These countries are not part of the Schengen area. Bulgaria and Romania should join the Schengen area from January 2014.

48 *Ibid.*, Article 7, Paragraph 4 : “By way of derogation from paragraphs 1(d) and 2 above, only the spouse, the registered partner provided for in Article 2(2)(b) and dependent children shall have the right of residence as family members of a Union citizen meeting the conditions under 1(c) above. Article 3(2) shall apply to his/her dependent direct relatives in the ascending lines and those of his/her spouse or registered partner.”

49 *Ibid.*, Article 9 : “1. Member States shall issue a residence card to family members of a Union citizen who are not nationals of a Member State, where the planned period of residence is for more than three months. 2. The deadline for submitting the residence card application may not be less than three months from the date of arrival. 3. Failure to comply with the requirement to apply for a residence card may make the person concerned liable to proportionate and non-discriminatory sanctions.” And Article 11, paragraph 1 : “The residence card provided for by Article 10(1) shall be valid for five years from the date of issue or for the envisaged period of residence of the Union citizen, if this period is less than five years.”

50 *Ibid.*, Article 20 : “1. Member States shall issue family members who are not nationals of a Member State entitled to permanent residence with a permanent residence card within six months of the submission of the application. The permanent residence card shall be renewable automatically every ten years. 2. The application for a permanent residence card shall be submitted before the residence card expires. Failure to comply with the requirement to apply for a permanent residence card may render the person concerned liable to proportionate and non-discriminatory sanctions. 3. Interruption in residence not exceeding two consecutive years shall not affect the validity of the permanent residence card.”

51 *Ibid.*, Article 10 : “2. For the residence card to be issued, Member States shall require presentation of the following documents: (a) a valid passport ; (b) a document attesting to the existence of a family relationship or of a registered partnership ; (c) the registration certificate or, in the absence of a registration system, any other proof of residence in the host Member State of the Union citizen whom they are accompanying or joining ; (d) in cases falling under points (c) and (d) of Article 2(2), documentary evidence that the conditions laid down therein are met ; (e) in cases falling under Article 3(2)(a), a document issued by the relevant authority in the country of origin or country from which they are arriving certifying that they are dependants or members of the household of the Union citizen, or proof of the existence of serious health grounds which strictly require the personal care of the family member by the Union citizen ; (f) in cases falling under Article 3(2)(b), proof of the existence of a durable relationship with the Union citizen.”

52 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.

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

54 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.

55 Cesda, 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=LEGITEXT000006070158&dateTexte=20130306

56 Directive 2004/38/EC of 29 April 2004 http://europa.eu/legislation_summaries/internal_market/living_and_working_in_the_internal_market/l33152_en.htm

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

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

59 **A country that is not a member of the European Union.**

60 Directive 2008/115/EC 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

61 Directive 2009/50/EC of 25 May 2009 http://europa.eu/legislation_summaries/internal_market/living_and_working_in_the_internal_market/l14573_en.htm

62 Directive 2009/52/EC of 18 June 2009 :

http://europa.eu/legislation_summaries/internal_market/living_and_working_in_the_internal_market/l14566_en.htm

63 OQTF : Obligation de Quitter le Territoire Français

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

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

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

67 Article L121-4-1 from Cesda

68 article 121-1

69 Article 122-2

70 vosdroits.service-public.fr/N110.xhtml

71 www.immigration.gouv.fr/IMG/pdf/IMIM1000116C.pdf

72 www.interieur.gouv.fr/Media/Immigration/Files/Circulaire-LOCK1016329J-du-24-juin-2010-relative-a-la-lutte-contre-les-campements-illicites

73 circulaire.legifrance.gouv.fr/pdf/2012/08/cir_35737.pdf

74 conventions.coe.int/treaty/fr/treaties/html/o46.htm

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

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

77 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

78 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

79 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.

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

81 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.

82 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

83 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.

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

85 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.

86 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

87 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

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

89 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

90 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

91 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.

92 Association for Integration and Migration, available at www.migrace.com/en

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

FILE 3

RIGHT TO ACCESS DECENT HOUSING

Article 7

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

THE EUROPEAN LEVEL

Legislative texts applying the rights to housing and to decent housing

Housing is not a common EU policy ; there is no EU law on the topic and thus Member States are free to choose how to deal with it. Nevertheless, two broad EU legislative articles refer to housing. It is mentioned in the Charter of Fundamental Rights, that Member States can provide the "*right to social and housing assistance*"¹, however, this does not impose an obligation upon Member States to do so. Furthermore, public and private housing providers must not discriminate against anyone when it comes to access housing².

In parallel, in order to fight exclusion and poverty, some Member States have collaborated to promote an effective access to housing through the Council of Europe (CoE)^{3,4}. They also recognize that there is a right to housing⁵. However, all EU Member States did not embrace this initiative by the CoE⁶. This initiative was purely voluntary.

Some discussions are held at EU level with the aim of improving housings in terms of social inclusion and the 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. If this had occurred then individual citizens may have had a more effective and enforceable right to decent housing. For now, Member States are only encouraged to improve and invest in housing.

However, at an international level, Member States agreed that for everyone to reach an adequate standard of living, adequate housing is important⁷. Moreover, to reach a high level of physical and mental health, recognised as a right by Member States, the hygiene of the environment people live in should be improved⁸.

UNITED KINGDOM

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

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. This has led to an increase in legislation that aims to break up such

encampments, for example : The Public Order Act 1986⁹ which imposes conditions on public assemblies and the Criminal Justice and Public Order Act 1994 ('the 1994 Act') which specifically addresses the Gypsy/Travellers' situation. The 1994 act empowers both the police and local councils to evict Travellers who live on unauthorized sites. When prosecuting unauthorised encampments in Scotland, the Trespass Act 1865, the Roads Act 1984, and The Anti-Social Behaviour Act 2004 are all very salient.

Scottish Legislation : In terms of housing, the Housing (Scotland) Bill 2010 (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 2001¹⁰ placed 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.

All Bulgarians and Romanians can apply directly to housing associations for accommodation this 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.

Self-employed individuals, 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 individuals, 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.

When applying for housing or homelessness help within Wales eligibility is dependent upon the applicant being habitually resident in the UK, the Channel Islands, the Isle of Man or the Republic of Ireland, or if the applicant is working while authorised or exempt from working. 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. An individual only becomes eligible again if new authorisation is provided and they 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 if 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 rent as EEA workers. Individuals are not required to seek authorisation to work if they :

- 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 is not subject to any condition restricting employment ;
- meet the criteria for the UKBA highly skilled migrant programme and hold a registration certificate giving 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 residence²¹ ;
- 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 2010 does not 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 are not legally binding in Scotland, because the Scottish court system is separate, but Scottish sheriffs are likely to find the reasoning from English judges convincing. 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 2010.

2. The implementation of the law

For settled population :

Within England the housing stock is very poor and not many new developments are occurring. The housing stock in other countries like Wales, Ireland and Scotland is poor, especially when attempting to access it via local government or housing associations. Since new benefit reforms the introduction of the bedroom tax, which states that you cannot gain full benefit if you have empty bedrooms, has been particularly challenging as current private and housing stock with reduced number of bedrooms is very low.

For travelling population :

Due to the difficulties in members of the Roma community 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.

Scotland, using its devolved powers, has adopted a more supportive approach. However, this does not provide overarching protection and the community may find that they are still evicted from their pitches. The Council have the power to evict individuals from an official site, although this requires four weeks' notice under common law rights subject to a reduction 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. However, in the event of an eviction from an unprotected site without planning permission or a site licence, the community has no rights.

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. There are four considerations made by the local authority before deciding to assist or not, these include : 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 will offer a place to live in the form of temporary housing. The Local Authority should consider individual needs as 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 of 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 that 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 ad-

dition, 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 the racial and ethnic discrimination observed highlighted the discrimination facing Travellers and noted the Dale Farm Traveller Settlement case and a corollary 5 per cent increase in racially motivated incidents¹³.

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 but have now refused to determine their application, choosing instead to evict the families onto the road side. The local 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 of the First Protocol: Protection of Property, Article 6. – The Right to a fair hearing, Article 8. – Right to respect for private and family life, Article 14 – Prohibition of discrimination. Five UN agencies having 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. A Police report confirmed 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 euros. Since the eviction many of the original residents have become ill¹⁴ and the site has fallen into disrepair. The 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 are not licensed, do not have planning permission and are not 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, but these are still considered as unauthorised sites¹⁵.

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.

On 1 April 2013, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (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.

Many local authorities and/or Police agencies now have Gypsy/Traveller liaison officer allowing 'remote reporting' of racist incidents. Agencies, such as the Citizens Advice Bureau, may assist the Roma if they feel that they have an issue with a Local Authority, Health or Police Service. Authorities 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. The need to take into account such considerations stem from the obligation placed on local authorities to comply with rights contained within the European Convention of Human Rights due to section 6 of the Human Rights Act 1998. Across Scotland many Local Authorities provide sites for Gypsies/Travellers to stay in, either temporarily or permanently.

In 2004 the Scottish Government published Guidelines for managing unauthorised camping by Gypsies/Travellers in Scotland. The aim of these guidelines is 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 areas where it is a problem.

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 Union right to free movement. 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 scrutinised 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.

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

The right of housing

In its decision of 19 January 1995¹⁶, **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 1993¹⁷, the Constitutional Council asserted that *"Foreigners who enjoy the rights of social protection when they live in a stable environment under regular conditions in France, must benefit from re-courses 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 housing¹⁸. The circular letter of 26 October 2012¹⁹ 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'²⁰ on reception and housing of Travellers, reinforces the obligations for elaboration and implementation of a departmental arrangement for the reception of travellers. The law stipulates that municipalities of more than 5 000 inhabitants must provide travellers with temporary or permanent²¹ resting sites, under departmental plans.

A circular of 17 December of 2003 permits the possibility of family sites. When bought by the Travellers, they can receive caravans for a permanent residence. 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 decent housing²³.

It defines all the characteristics required for physical security and health of people living there. Decent housing must contain proper heating, drinking water 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 house a cooking appliance and include a kitchen sink connected to hot and cold wa-

ter and with 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 1986²⁴ indicates that the right to housing is a fundamental right and defines the obligations between lessors and tenants.

2. Housing market for settled population

Rents and their evolution are supervised²⁶. 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 long²⁷.

Private and public actors able to provide housing

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

For the social sector, local authorities or State propose the attribution of social housing, the Public Housing Office (OPH)²⁸ administer them. There are three categories of social housing : PLAI²⁹ for low income household, PLU³⁰ for middle income and PLS³¹ for higher income household. The latter pays a higher rent if their income exceeds the upper limit fixed by the administration of 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 required³². To have access to social housing³³, an application must be submitted to the social services at the local City Hall.

It is necessary to prove people have an income, (including financial assistance and social allowance), an identification document, and to mention the reasons for the request. It

can be because the housing is too small for the family, inadequate for disabled or elderly 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 sub-standard or unsecure housing as shown in the report of the Fondation Abbé Pierre³⁴ on poor housing.

People in vulnerable situations are accommodated in temporary shelters such as barracks and gymnasiums 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"³⁵, a specific system of temporary housing for families living in slums or 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 5 000 inhabitants must establish living and transit sites for travellers. Arrangements for granting the aid are provided³⁶ by the State. The region, the department, and the family allowance fund can also help. If municipalities fail to comply with the law, the Prefect can carry out the departmental arrangement for the reception of Travellers at the expense of the municipality³⁷. The Ministry of Ecology, Energy, Sustainable development and the Sea published in 2009 a guide for the housing of Travellers³⁸. Technical standards have been defined³⁹.

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 making regular collections.

The inter-ministerial circular letter of 26 August 2012 (see file 2)⁴⁰ provides solutions⁴¹ for housing but it is not adequately applied.

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 2003⁴² on crime prevention⁴³.

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 foreigners⁴⁴.

If no solution is offered within legislated time limits, the person can appeal to the administrative court. With the DALCOM procedure⁴⁵, if one is found to have no priority by the DALO committee or if this committee does not reply within the time period laid down, he/she can file an internal administrative appeal or contest the decision to the administrative court.

SPAIN

1. Legal texts 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 Constitution⁴⁶ 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.

For housing to be considered 'adequate and decent'⁴⁷ it must comply with the following requirements :

- it has fixed and habitable construction ;
- it is accessible, especially to 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 Regions⁴⁸. 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 conclude that free camping for travellers is not allowed within Spain (with a few exceptions depending of the specific municipalities).

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 sites⁴⁹.

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 payment⁵⁰.

Obligations of the lessor and the lessee of a dwelling

The regulation of the lease agreement in Spain is carried out in accordance to the Law 29/1994, of 24 November, 1994 on urban leases⁵¹. This law regulates the conditions in which agreements must be formalised.

Moreover, it must take into account the Spanish Civil code, specifically the second section on rights and obligations of the dwelling lessor and lessee⁵² :

- the lessee 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 en-

sure the lessor's peaceful enjoyment of the dwelling during the agreed period ;

- the lessor , 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 compensatory damages.

2. The application of the law

Even though, in the Spanish legal system it is made explicit that a right to housing, exists housing policies have not been able to satisfy the constitutional mandate and the international commitment on the subject.

It is the housing market that dominates, regulates and assigns the urban and habitable resources. The current result is the product of a habitational policy historically insufficient and situational, that is very dependent on the private sector. This results in an economical context that has turned the housing sector into an operational field intended to generate large short-term benefits.

The rise of housing prices, shortage of land, the complex system for its assignment, and the lack of promotion of social housing prevent many families from accessing decent housing.

The housing policies aims to meet the housing needs, however this does not mean free housing will be provided to people who request it, but the policies only aim to promote access to it.

The State Housing Plan 2013-2016, developed by the central government, pays particular attention to low-income families by promoting the rental, housing rehabilitation, urban regeneration and renovation. This plan provides a subsidy system for users with a particular profile. Those family units who have incomes not exceeding 3 the IPREM (Public Income Indicator of Multiple Effects⁵⁵) for access to rental housing.

The procedure is carried out by the autonomous regions, normally they pass on this role to the management of the municipalities.

In order to access this assistance the applicant must⁵⁶ :

- have Spanish Nationality or that of one of the other Member States of the European Union ;
- be enrolled in a public register of housing applicants managed by the autonomous regions ;
- have a minimum family income that is set by each region ;

- have a household income that does not exceed the maximum set out in the preceding paragraph ;
- not have 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 to satisfy the demand of the population.

Housing Market in Spain :

The housing market in Spain has experienced 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 favour house purchases over the lease of houses. This is 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 in enforcing payment of the rent or evicting tenants that are in arrears⁵⁷.

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

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 tenders in the press or in specialized newsletters to access both accommodation rented or owned. But individuals will have difficulties in affording the high costs of housing in the open market.

Costs of buying and renting :

According to the National Institute of Statistics⁵⁸, in 2012 the average price per square meter in Spain was €1,531.2 for the free housing and the price for protected housing for the same period was €1129.3.

The prices of rent housing are different depending on the geographical location and the condition of the housing. The national average⁵⁹ stands at 677 € per month, with prices ranging from 400 to 1100 € per month.

Public rental housing :

To access rent housing, pursuant to Act 29/1994, of 24 November, of Urban Leases⁶⁰, there is an obligation to deliver a month's rent as a deposit. Although, the aforementioned legislation does not make explicit the list of documents 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 2007⁶¹ 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 FSG⁶², 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 a tenant 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.

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 denouncing discriminations or violation of rights caused by administrations, individuals or private companies to Roma people, will be those 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 (FSG⁶³, Romani Union⁶⁴, etc.) which help provide a process of mediation with homeowners, neighbours, or municipal governments. This is a more accessible and financially viable option compared with resorting to the courts.

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 upon the Czech Republic. This provision shall be applied irrespective of race, religion, sex, political or other attitudes, national or social background, or other characteristics. 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 Article 30 of the Charter of Fundamental Rights and Freedoms⁶⁵: *"Everyone who suffers from material need has the right to such assistance as is necessary to ensure her a basic living standard."* Then, Article 32 which states that *"Parents who are raising children have the right to assistance from the state"*, is also relevant in relation to a right to 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 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 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.

Other national legislative texts dealing with the issues connected to the right to housing are mainly the Civil Code⁶⁶ (regulating the rights and duties of an owner and a tenant), the Act on Assistance in Material Need, the Act on Living and Subsistence Minimum, the Act on Municipalities, the Act on State Social Support, and the 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-style system which consists of different sectors and regional sub-markets that function, to a 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 complex⁶⁷.

Concerning the general prices (and also quality), there exists 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 a 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 a 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 to three month's rent. The lease contract cannot be made or are not concluded 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 the municipality is based upon certain criteria. It is within these criteria that covertly discriminatory practices most commonly occur. The main interest and consideration generally appears to be maximizing profit of the municipality as a legal entity, while only a general interest in the social housing of the municipality as a public corporation exists. The behavior of municipalities in this area can be identified also as usual 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 were previously contrary to the laws or constitutional order of the Czech Republic. In particular, frequent clashes occur between the Charter of Fundamental Rights and Freedoms, the Civil Code and the Law on Personal Data Protection.

In general, 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 even such a requirement can be : *"blameless applicants, living a decent life."* The municipality decides after considering the reputation of the applicant and his/her family. Contradictions also appear regularly 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 responsible 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 flats⁶⁸.

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 centers, in the suburbs, where transportation is bad or non-existent⁶⁹.

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

The Roma minority is facing increasing segregation in marginalised communities; the challenges and risks posed by this territorial segregation are 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 building⁷⁰.

Thus, the Roma minority is one of the most vulnerable groups on the housing market as the Roma often face structural barriers and discrimination. Accessibility to 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 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 services⁷¹.

The territorial segregation of Roma people in certain parts of cities is a result of various factors. On the one side, it can be result of natural and spontaneous moving of wider Roma families together so 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 is a problem for low-income Roma households as they face higher levels discrimination by the real estate agencies and landlords. Another barrier to access to housing is that the Roma usually do not have any savings to pay the advance refundable deposit to the landlord⁷².

In the Czech housing market a special segment compensating for the low accessibility of public housing has developed. The landlords in this segment are, contrary to general practice, 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 with 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 decent housing for the same price⁷³.

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 mentioned⁷⁴.

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. Another concern is related to the 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 housing⁷⁵.

4. Possible recourses to be taken

The most important shortage when speaking about the insufficient housing policy in the Czech Republic is the lack of law relating to Social Housing. The law is at present under preparation by the Ministry of Labour and Social Affairs and Ministry of Regional Development. The professionals working with the housing issues and especially with people in need of social housing, emphasise the 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 behalf of municipalities⁷⁶.

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 states whether discrimination occurred according to his legal observations and makes suggestions on a possible further course of action⁷⁷. However, the Defender cannot make a binding decision, nor impose a sanction for such discrimination. Possible recourse in this context could be broadening the 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 *actiopopularis* – 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 centre⁷⁸ 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 law⁷⁹. 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 alongside 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 establish 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 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 fully understands 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 for assistance⁸⁰.

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 reference book, 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 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."*

8 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."*

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

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

11 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.

12 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.

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

14 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.

15 Secretary of State for the Environment, Food & Rural Affairs v Meier [2009] UKSC 11

Lord Rodger, Lord Walker, Lady Hale, Lord Neuberger, Lord Collins

16 decision 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>

17 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>

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

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

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

21 Loi Besson, article 1

22 Circulaire 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

23 www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000005632175&dateTexte=20110729.

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

25 vosdroits.service-public.fr/N292.xhtml

26 www.developpement-durable.gouv.fr/Plafonds-de-loyers-et-de-prix-en.html

27 www.inegalites.fr/spip.php?article508&id_mot=95

28 OPH : Office public de l'habitat which are public or private bodies

29 Prêt locatif aidé d'intégration : assisted rental program

- 30 Plan local d'Urbanisme : Local Town planning
- 31 Prêt locatif social : social rental loan
- 32 <http://vosdroits.service-public.fr/particuliers/F1169.xhtml>
- 33 <http://vosdroits.service-public.fr/N19424.xhtml>
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FILE 4

RIGHT TO ACCESS EDUCATION

Article 14

Everyone has the right to education.

THE EUROPEAN LEVEL

> Legislation applying this right

Member States are solely responsible for their national education and training systems, which is part of their administrative systems. The EU supports and complements them in their policies and actions as well as coordinating joint work¹ in order to reach common objectives². As a result, the EU does not have the power to impose laws or a system upon Member States³ but only to promote changes.

However, the EU has a few and general rights related to the access to education. Generally, everyone has the right to education and access to training⁴. In addition to that, public sector bodies must treat everyone equally in matters of education⁵ and access to vocational guidance⁶. 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 possible⁷.

Furthermore, to ease the circulation of EU workers within the Union and facilitate their integration, a directive has been made for their children. Children must attend school, to receive free teaching about the host Member State countries and teaching of the national language(s)⁸. In addition, Member States are encouraged (but are not required to) promote education in the mother tongue and about the culture of the country of origin of the children. However the education relating to the child's country of origin must be done fitted around their normal education⁹.

> International level

Regarding the international law, 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 all¹⁰. 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 signatory States¹¹. Beyond that, the UNESCO made an exhaustive Convention¹² against discrimination in relation to education and a broad definition of it¹³. According to the text, discrimination includes¹⁴ :

- denying a person or a group of person's access to education ;
- providing an inferior standard of education ;
- creating or maintaining separate educational systems for groups of persons ;

- putting a person or a group in a situation where it affects their dignity.

Consequently, to avoid discrimination, states who joined this Convention must¹⁵ :

- repeal any administrative practises which would involve any discrimination ;
- 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 to vocational training. States which sign the relevant conventions must provide or promote trainings for everyone as well as special measures for the professional reintegration of long-term unemployed persons¹⁶. Amongst the countries presented in this reference book only France 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 unified 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 2000¹⁷ ;
- Education (Additional Support for Learning) (Scotland) Act 2004.

"Further and Higher Education (Scotland) Act 2005 ; An Act of the Scottish Parliament to make provisions establishing the Scottish Further and Higher Education Funding Council and provision as to its functions ; to make provisions as to support for further and higher education ; to make provisions relating to bodies which provide further and higher education ; and for connected purposes¹⁸.

- Education (Additional Support for Learning) (Scotland) Act 2009.

England :

- Schools Standards and Framework Act 1998¹⁹ ; raises standards of school education, this sets a limit in how many infants per class there to be. It also puts duty on the local authority to promote education standards that apply to all children regardless of their religion, faith or ethnicity. The Act also ensures local authorities responsible for schooling can intervene if sufficient concerns exist ;
- The Education Act 2002²⁰ ensures functions of supervisory bodies, 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 is 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 enrol 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 years²¹. 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 3 years by requiring them to attend a form of pre-school or nursery. This is funded by the State even if the institution is private as there is a lack of public 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 elsewhere or in any other country need to bring their latest report card and, if a student receives

special education services, they should bring a copy of the child's 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 meet the needs of disadvantaged communities and provide 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. 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 piece of legislation governing education in Scotland. The Lifelong Learning sector covers five key constituency groups²² :

- 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 (Further and Higher Education (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) - 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 2007²⁴.

3. Discrimination made to the Roma and Violations of the Law in the UK

Roma and Gypsy traveller, like other ethnic minority communities, appear to be disproportionately affected by hate crime, which has received less attention and intervention than 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 a 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 and they enjoy equal treatment and support from teachers and their peer groups. This equality of treatment is further strengthened by the Equal Opportunities Act 2000 and the Race Relations Act 1976 and. The Equality Act 2010 forms a framework for anti-discrimination law in the UK.

4. The Possible Recourses

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 has not been a specific act or piece of legislation relating to education for the 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 obligation²⁵. This preamble is integrated into the Constitution of the 5th Republic²⁶.

► Education Code : *"Schooling is mandatory for children of both sexes, French and foreign, aged between 6 and 16 years."*²⁷

► 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."*²⁸

Travellers

For Travellers and non-sedentary families the circular letter n° 2002-101 du 25-4-2002²⁹ confirms that children have equal rights to schooling and says that in each department teachers with specific skills can assist the regular school teachers.

2. The implementation of this right (see also file 9)

► For minors

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 speaking³⁰ 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 class³¹ where a special course is offered before joining the mainstream class.

► For adults

The fight against illiteracy often concerns Travellers of all ages. In many departments, tailored measures are implemented by social workers³² who take into account specific needs relevant to the traveller's way of life. It is also the role of the Agency against illiteracy (ANLCI)³³.

Whether a foreign Roma child or native French child, traveller or non-traveller, 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 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 :

These 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.

Financial help³⁴ exists to help low-income families with children in Primary school. Back-to-school allowance is paid by the Family Allowance Fund (Caf³⁵). Some departments give a school attendance grant³⁶. For secondary school students there are different aids³⁷ : 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 school³⁸ for both foreign Roma or Traveller children³⁹. Some Elected representatives create 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 2002⁴⁰ : *"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 defender⁴¹ (See file 1, 2.3).

► Administrative appeals : one asks the administration to review its decision.

- 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.

- 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 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 options⁴² are possible

- Outing
- Media coverage, at local or national levels
- Intervention with the elected representatives
- Contact with the associations for the defense of Human Rights⁴³

SPAIN

1. The legislation applying this right

The Right to Education in Spain is enshrined in Article 27 of the 1978 Constitution⁴⁴. As provided in the Constitution, education is a right for all (including EU citizens and non EU citizens). It is compulsory and free, both in public schools (state-funded) and concertada schools (concertada : schools funded by the state).

The Autonomous Communities have been transferred competency by the State in relation to the management of education⁴⁵. Many of the organisational aspects, mainly those related to enrolment and curriculum processes, come from different rules emanating from Autonomic Laws. The school year begins in September and ends in June. Each Autonomous Community fixes 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, i.e., 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 only the competency of the State.

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

2.1. 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 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.

Training Cycles⁴⁶ : Organized in modules from two different levels : Middle and Upper. With classroom-based and distance mode for some grades. It consists of 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 recognises the right of autonomy of the universities to the extent provided by law⁴⁷. Among the specific competencies of the university, are the 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 enrol their children in schools⁴⁸.

2.2. Enrolment processes.

A. In Early Childhood Education and primary school stages

The enrolment 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 (there may be variations depending on the autonomous communities) within the calendar year in which they start the course for which they request. The centres 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 enrolment 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 centres where that are taught⁴⁹. For semi-distance or distance cycles the application will be submitted electronically.

► Request a place during the admission process.

► Wait for the award stage to be assigned a place and complete the registration or reservation, as appropriate.

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 different ways to complete their training, including going back to school, in order to acquire new professional skills or for those who already have professional skills but cannot prove it by a official qualification. It seeks to improve their job opportunities and social integration⁵⁰.

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 non-profit, impart formal and non-formal lessons for adults.

For enrolment in adult education centres should formalise the advance registration in any of the modalities offered by the centres 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 enrolment 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, etc.⁵¹

E. Training for the unemployed

The persons registered as job seekers may opt to undertake specific training courses⁵² and qualifications through programs at state or regional level. The modalities may be classroom based, distance or mixed. To access these training courses it is necessary to present the employment card 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 user⁵³.

2.3. What are the financial assistance that are accessible to Roms ?

Compulsory education, bachelor and training cycles are free in public schools. However, there is a national scholarship system that provides aid⁵⁴ for both the purchase of equipment and displacement, to promote continuation of 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 qualifications⁵⁵.

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 persists at a higher level compared to the rest of the population. The level of failure and school dropout is also higher in the Roma population compared to the general public⁵⁶.

In secondary education levels the situation worsens. The failure and school dropout are close to 85%⁵⁷, 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 2012⁵⁸ 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 centres 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 centres (usually public schools), in which the concentration of Roma students is higher than the proportion of the population of the area causing schools "ghetto"⁵⁹.

4. Possible recourses to be taken

The general procedure for denouncing discriminations or violation of rights caused by administrations, individuals or private companies to Roma people, will be those relating to racial discrimination referred to in the file 9.

The educational administration can also be sued through administrative proceedings. Any relevant piece of legislation and corresponding official document includes accurate information on how to appeal any such acts.

CZECH REPUBLIC

1. The legislations applying the right to access education

Within the Czech Republic, the right to access education is guaranteed by the Constitution of the Czech Republic⁶⁰, the Charter of Fundamental Rights and Freedoms⁶¹. It is further reinforced by obligations imposed upon the State 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.)⁶² and this law shall remain the key legal instrument stipulating the conditions for the access to education.

The abovementioned Education Act also regulates the right of foreign nationals to access education. The provisions regarding such right are included in the Section 20 of the Education Act. According to the mentioned provision, 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. If the individual is in possession of a residence permit of the Czech Republic exceeding ninety days and they reside in the Czech Republic, or are persons enjoying subsidiary protection, international protection seekers, or persons enjoying temporary protection they shall also receive basic artistic education and school services.

2. The implementation of the law

The compulsory schooling in the Czech Republic starts at 6 years of age. 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 the parents (legal guardians) to decide 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 authorised 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 from the same parties mentioned above. 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 organise entrance exams, some take account of study results at secondary school, and some merely accept all applicants.

NGOs provide help to children from socially disadvantaged families with preparation for secondary and post-secondary education (tutoring, mentoring, career counselling)⁶³. 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 as follows: 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 job⁶⁴.

Homeschooling is an allowed form of schooling for children at primary school from 1st to 5th class (from 6 to 10-11 years). 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 that 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.).

Long distance courses are offered by both private and public secondary schools⁶⁵, colleges and universities. The variety of courses offered at private schools is greater. Public secondary schools prefer 'a combined studying system' which comprises of 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 when calculating welfare benefits. Public universities offer scholarships on merit (excellent study results, representation of the university at competitions, etc.) and needs basis (social scholarship, scholarship for accommodation). Private universities may offer merit scholarships or social discounts on school fees at their discretion. There are also NGOs⁶⁶ and funds⁶⁷ which financially support specific groups of students (socially disadvantaged, disabled) or specific 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 discrimination⁶⁸.

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"⁶⁹. 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 population⁷⁰.

Concerning the preschool education⁷¹, the attendance of Roma children is considerably lower in comparison to non-Roma children from the excluded localities (27 % and 64 % respectively). In consequence, the Roma children are less prepared for primary school, the first year of compulsory education becomes a very difficult moment of the educational process⁷². 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 succeeding 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 Romani pupils at the ratio of one third in special schools is proof of the persistent indirect discrimination against Roma in terms of access to education⁷³. 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 group⁷⁴. 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 relatives⁷⁵. 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 limited⁷⁶.

As a consequence, lower proportion of Roma students can be discerned at secondary schools and at university level of education as well. The considerably worse position that Roma students find themselves in 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 is 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 education⁷⁷.

4. Possible recourses to be taken

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 a class where the members of national minorities are educated in their own language can be established.

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 educators have an obligation to treat children non-discriminatorily. At the same time the person can make a complaint to founder of the school, 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 a 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.

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 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."*

5 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".*

6 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".*

7 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."*

8 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."

9 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."*

10 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".*

11 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."*

12 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 reference book have to implement this Convention since they joined it.

13 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."*

14 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."*

15 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."*

16 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 reference book. See the updated list of the countries which ratified it : conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=163&CM=&DF=&CL=ENG

17 www.legislation.gov.uk/asp/2000/6/pdfs/asp_20000006_en.pdf

18 [www.scottish.parliament.uk/S2/Bills/Further%20and%20Higher%20Education%20\(Scotland\)%20Bill/b26s2-aspassed.pdf](http://www.scottish.parliament.uk/S2/Bills/Further%20and%20Higher%20Education%20(Scotland)%20Bill/b26s2-aspassed.pdf)

19 www.legislation.gov.uk/ukpga/1998/31/contents

20 www.legislation.gov.uk/asp/2000/6/pdfs/asp_20000006_en.pdf

21 www.educationscotland.gov.uk/earlyyears/about/index.asp

22 www.lifelonglearning.co.uk/

23 www.educationscotland.gov.uk/communitylearninganddevelopment/about/index.asp

24 ec.europa.eu/internal_market/qualifications/policy_developments/legislation/index_en.htm

- 25 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
- 26 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
- 27 Article L131-1 <http://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006071191&idArticle=LEGIARTI000006524422&dateTexte=20130418>
- 28 article 227-17-1 <http://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000006418058&cidTexte=LEGITEXT000006070719>
- 29 www.education.gouv.fr/botexte/sp10020425/MENE0201120C.htm
- 30 Classe d'initiation pour non-francophones (Clin) : special class for non french speaking
- 31 Classe d'accueil, Cla : reception classe
- 32 www.lien-social.com/spip.php?article2643
- 33 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>
- 34 www.education.gouv.fr/cid51/aides-financieres.html
- 35 Caisse d'allocation familiale : family allowance fund
- 36 www.education.gouv.fr/cid51/aides-financieres.html#Bourse%20de%20fr%C3%A9quentation%20scolaire%20pour%20le%27%C3%A9cole%20%C3%A9l%C3%A9mentaire
- 37 www.education.gouv.fr/cid151/aides-financieres-au-lycee.html
- 38 Rapport de la Halde de 2008 : halde.defenseurdesdroits.fr/IMG/pdf/Dossier_GDV_BAT_150908-3-2.pdf 2008
- 39 Rapport de Romeurop, 2010 : www.romeurope.org/IMG/pdf/ETUDESCO.pdf
- 40 www.education.gouv.fr/botexte/sp10020425/MENE0201120C.htm
- 41 www.defenseurdesdroits.fr
- 42 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 reference book of the LDH : "les Roms migrants ont des droits »
- 43 See the reference book of the LDH : "les Roms migrants ont des droits » (2013)
- 44 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.
- 45 To access to information for each region visit the website of the Ministry of Education, Culture and Sports : www.mecd.gob.es/educacion-mecd/areas-educacion/comunidades-autonomas.html
- 46 Organic law 5/2002 on Qualifications and Professional Training. Published in BOE no. 147 of 20 june, 2002.
- 47 Organic law 6/2001, of 21 december, on Universities. Published in BOE no. 307 on 24 of december, 2001.
- 48 Cases as : http://elpais.com/elpais/2010/12/16/actualidad/1292491045_850215.html (Consulted on 2/05/2013)
- 49 To access the training programs : <http://www.todofp.es/todofp/formacion/que-y-como-estudiar/oferta-formativa/donde-estudiar.html>
- 50 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.
- 51 Autonomous communities are those that establish the Training Catalog and distribution of modalities on presential or distance.
- 52 Consult the catalog by communities on the web: cursosinem.info/cursos-inem.html
- 53 List of offices of attention for the formation the Roma people of FSJ: <http://www.gitanos.org/que-hacemos/servicios/fichas/82321.html> es
- 54 Calls for scholarships and financial aid are available online: www.mecd.gob.es/horizontales/servicios/becas-ayudas-subvenciones/para-estudiar.html
- 55 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>
- 56 Report on Segregation of Student Gypsy in Spain. 2012. Federation of Gypsy Women Kamira and Mario Maya Foundation.
- 57 Fourth ECRI's discrimination report about Spain. 2010.
- 58 Report on Gypsy community and Discrimination of 2012. FSJ. Madrid.
- 59 Fourth ECRI's discrimination report about Spain. 2010.
- 60 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
- 61 The Charter of Fundamental Rights and Freedoms, The Constitutional Court of the Czech Republic, available at www.concourt.cz/clanek/czech_charter, accessed on March 10, 2013
- 62 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
- 63 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>).
- 64 On website www.rekvalifikace.com the candidate can choose suitable retraining.
- 65 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).
- 66 Project Džadureder (www.džadureder.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.
- 67 Roma Education Fund, available at www.romaeducationfund.hu/vyhlaseni-stipendijniho-programu-na-akademicky-rok-2012-2013.

68 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.

69 In 2005, the special schools were renamed “practical elementary schools”, but the curriculum being taught was not changed.

70 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

71 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.

72 *Ibid.*, p. 51

73 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

74 *Ibid.*, p. 14

75 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

76 Education and employment of Roma people, p. 21, 2008, Frištenská, Hana; Dluhošová, Helena; Sulitka, Andrej; Slovo 21

77 Report on the Roma Minority Situation in 2011, p. 57-59, The Council of the Government of the Czech Republic for Roma Community Affairs

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 contrary to 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 State and, while working, they are under the same conditions as national 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 proof of their job searches.

However, **citizens from Bulgaria, Romania and Croatia** are treated unequally due to the fact their countries have just joined the EU ; they are still under the transitional measures period⁴. 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 States apply restrictions to access to their working market under the transitional measure provision⁵.

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 three months stay⁶. Only students and non-working persons such as retired persons⁷, have the right to reside in another Member State for more than three 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.

For EU job seekers, Member States must have implemented **special services⁸ in charge of advertising job offers**, which may encounter applicants in another Member State, as well as the **applications of workers** who wish to work in another Member State⁹. Concerning the applications, the Member State's 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 State when they mentioned that they wish to work abroad¹¹.

In addition, **non-EU citizens have the right to work and reside within the EU**¹². The rules to work in a Member State depend on the agreements made between the

country of the citizen and the Member State 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 matters reserved to the UK Parliament. Accordingly, there is very limited scope for the four devolved bodies 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 :

(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.

(b) 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 documents: 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)²⁵ or Switzerland. If an individual 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 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 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 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

Unemployment 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 / Travellers²⁰, 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.

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 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 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/Travellers" ²⁵.

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 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 previous systematic failings in the UK 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. Romanian and Bulgarian migrants rights to come to Britain were restricted. However on 31 December 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, but this may harm the job prospects of UK nationals. 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 e.g. 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 scrutinised 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 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 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 law²⁷

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.

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 1969²⁸ 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. 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 2013³⁰.

2. The implementation of this right regarding

Since 1st January 2014, Bulgarians and Romanians entered in community law.

Formalities for Croatians

► At present, and until 31 December 2013, a Croatian citizen who wishes to work in France must have a residence permit. This permit is free of charge on the first application.

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. Romeurop³¹ 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.

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 decree³² and includes** 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 FNASAT³³, help Travellers with administrative procedures³⁴ 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)³⁵, 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)³⁶ (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, for the foreign residents, it is recommended to seek the help of groups such as the “Information and support group for immigrants (Gisti)³⁷.”

► The Solvit³⁸ 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.eu³⁹.

1. Legislation applying this right

According to Article 35 of the Spanish Constitution⁴⁰, Spanish citizens have the right to work freely.

For non-Spanish citizens there is a straight connection between authorisation to work and legal residence in Spain.

In line with the general law of foreigners, non-EU citizens are required a work authorisation 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)⁴¹, are exempt from this need to gain authorisation⁴² 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 Commission⁴³ 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

2.1. Requirements to Obtain work permits

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 illegally within Spain, or be prohibited from entering the country or find themselves within the period of a non-returning commitment programme.

They should not have committed criminal offences within Spain or any other act in a foreign country that would be considered criminal under Spanish law.

Working as employed : such a permit will be managed in the country of origin after having a job offer in Spain. The subject job of the contract must belong to occupations of difficult coverage that the Public Employment Ser-

vice publishes quarterly⁴⁴, 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 Article 40 of the immigration law⁴⁵.

The employer must apply for the authorisation bringing with it the signed employment contract that guarantees the validity of the authorisation. 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, a completed application form, authorisations and licenses relating to the procedures for opening and operation of the activity, and documents relating to training and qualifications, and 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 decision (if there is no answer at this period of time, it means that the application has been denied). If the authorisation 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 permit⁴⁶ :

► **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 citizens⁴⁷ :

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.

2.2. Register as job seekers

The National Employment System⁴⁸ 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. They are also required to communicate the outcomes of job interviews achieved through this service, and to communicate the changes in their professional 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 Switzerland⁴⁹ :

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.).

2.3. 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 base⁵⁰.

The opening of a local establishment license shall be processed at the corresponding municipality.

2.4. Usual occupations

Itinerant trade⁵¹ : 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 authorisation. Nevertheless, the number of available authorisations 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 scrap⁵² : 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

The Roma population is currently experiencing a high level of discrimination in access to employment in Spain. The decline in their traditional professions⁵³ (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 population⁵⁴).

One of the main difficulties Roma faced when looking for work, are the stereotypes and prejudices employers have⁵⁵. The report on Roma Discrimination, 2012 conducted by FSJ⁵⁶, 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. Possible recourses to be taken⁵⁷

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 prosecution of the employer or any person responsible for such exploitation.

Where to turn for support : In addition to labour unions in Spain, there are other NGOs with specific services to support allegations about discrimination and racism. Affected individuals may go to organisations that work specifically the Roma situation (FSG, Romani Union, etc.) or to other organisations 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 :

The general procedure for denouncing discriminations or violation of rights caused by administrations, individuals or private companies to Roma people, will be those relating to racial discrimination referred to in the file 9.

CZECH REPUBLIC

1. Legislation applying the right to access employment

Within the Czech Republic, the right to access employment is guaranteed by the Constitution of the Czech Republic⁵⁸, the Charter of Fundamental Rights and Freedoms⁵⁹, 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)⁶⁰ and Act No. 435/2004 Coll., the Employment Act, as amended (the Employment Act)⁶¹. 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 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 in future⁶².

Concerning the provisions of the EU, the 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, any 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 Seekers takes place only after the person submits the official form and fulfils the required conditions. The jobseeker 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 jobseeker on the labour market. The individual action plan is a document prepared by the regional branch of the labour office in coordination with the jobseeker. This plan shall always be prepared by labour office if the jobseeker is continuously kept in the register of job seekers for more than 5 months.

The Labour Office of the Czech Republic is realising activity policy programs⁶³ 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 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 such as special courses⁶⁴. Roma youth, however, have relatively limited motivation as a result of misgivings and lack of interest on behalf 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 part⁶⁵.

As for the concrete measures, the Roma are in most cases provided with the individual action plans as they belong to the group of jobseekers for more than 5 months. Ac-

According to actual surveys the Roma participation in the frame of public services⁶⁶ has a rising trend while their participation in requalification courses is not as high. 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 employment⁶⁷.

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 community⁶⁸.

Participation of Roma in the labour market is thus incomparably lower compared to the 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 realise the systematic barriers in access to employment and discrimination on labour market.

The Roma unemployment is usually due to applicants being unable to fulfil the requirements of the proposed position as their education and experiences are usually unsatisfactory. Also, the segregation in education with territorial segregation is another crucial factor impeding their access to employment. According to research studies, unemployment in the segregated areas ranges between 70 % and 100 %. Those people often have no other option but to accept illegal forms of work⁶⁹.

The position of the Roma in 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 workers⁷⁰.

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 ins-

tance, the employer pay lower wage to Roma employee than to non-Roma just because the former 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 recognise 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 true⁷¹.

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 to establish discrimination are difficult, 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 in order to motivate Roma youths 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 market⁷².

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 so. Likewise, it is forbidden to demand extract from the criminal 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.

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.

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.

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.

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=o&lang=en&acro=links&orgTypeId=o&myOrgTypeId=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"

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.
- 20 an umbrella term encompassing a variety of groups including but not limited to Romani Gypsies, Roma, Irish Travellers, and Scottish Travellers
- 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).
- 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).
- 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.
- 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=JORFTEXT00000317526>
- 29 europa.eu/legislation_summaries/internal_market/living_and_working_in_the_internal_market/l33152_fr.htm
- 30 www.gisti.org/IMG/pdf/norimim1000116c.pdf
- 31 Romeurop is a collective of associations that defend Roma people http://www.romeurope.org/IMG/pdf/Fiches_non_salaries_a_jour_juilet_2011DEF.pdf
- 32 www.immigration-professionnelle.gouv.fr/proc%C3%A9dures/m%C3%A9tiers-en-tension
- 33 www.fnasat.asso.fr/codipe/initiativesterrain.htm
- 34 www.angvc.fr/pages/vieprofessionnelle.html
- 35 www.depechestsignes.fr/wp-content/uploads/2012/02/barometre-discrimination-emploi.pdf
- 36 www.defenseurdesdroits.fr
- 37 Gisti : Groupe d'Information et de Soutien aux Immigrés, <http://www.gisti.org/index.php>
- 38 ec.europa.eu/solvit/site/index_fr.htm
- 39 ec.europa.eu/justice/mission/index_en.htm
- 40 Spanish Consitution 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
- 41 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, UnitedKingdom. Liechtenstein, Iceland, Norway and Sweden.
- 42 Exceptforcitizensof Romania.
- 43 Instruction SGIE/3/2012 as renewing of SGIE/1/2012 instructionsontheregimeapplicabletodomesticemployees and theirfamilies of Romania applicableuntilDecember 31, 2012.
- 44 Catalogue available online : http://www.sepe.es/contenido/empleo_formacion/catalogo_ocupaciones_dc/
- 45 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.

46 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.

47 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.

48 Law 56/2003 of 16 December on Employment. Posted in BOE. 301, December 17, 2003

49 Data from the employment guide of Job Ministry. : http://www.empleo.gob.es/es/Guia/texto/guia_1/contenidos/guia_1_1_1.htm

50 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.

51 Law 1/2010 of 1 March, amending the Law 7/1996 of 15 January on the Retail Trade. BOE, no. 53, March 2, 2010

52 Law 22/2011, of 28 July, about waste and contaminated soils. Published in BOE no. 181 of July 29, 2011.

53 According to the report of Social Inclusion Policies and Roma in Spain made in 2012 by FSJ. Ed Soros Foundation Romania. Bucharest.

54 Data from the report about Spanish Roma and Eastern Europe: Employment and Social Inclusion 2011, Fundación Secretariado Gitano, Madrid. 2012.

55 Data from the report about Spanish Roma and Eastern Europe: Employment and Social Inclusion 2011, Fundación Secretariado Gitano, Madrid. 2012.

56 Annual Report 2012 Discrimination and the Roma Community, Fundación Secretariado Gitano Madrid. 2012.

57 Guide of Employment discrimination. Spanish Commission for Refugee Aid. 2007. Madrid. http://www.informateyactua.org/Guia_CEAR.pdf

58 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

59 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

60 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

61 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

62 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

63 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>

64 Examples: Project „Personality“ (Osobnost) aimed at improving of different skills to have better job opportunities, information available at www.romea.cz/cz/zpravodajstvi/domaci/iq-roma-servis-vzdelavani-mladych-romu-v-ramci-projektu-osobnost-a-zivotni-smer), 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-ohrozeno-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>

65 Education and employment of Roma people, p. 25, 2008, Frištenská, Hana; Dluhošová, Helena; Sulitka, Andrej; Slovo 21

66 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.

67 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

68 Education and employment of Roma people, p. 24, 2008, Frištenská, Hana; Dluhošová, Helena; Sulitka, Andrej; Slovo 21

69 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

70 Education and employment of Roma people, p. 24-25, 2008, Frištenská, Hana; Dluhošová, Helena; Sulitka, Andrej; Slovo 21

71 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

72 *Ibid.*, p. 15-16

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 (...).

THE EUROPEAN LEVEL

Legislation applying this right

Member States agreed on two ways of accessing healthcare for their residents in another Member State : **planned care or urgent care**. To access either you must be a resident of a Member State (or resident of Norway, Iceland and Lichtenstein), Residency means to be legally living in one of these States and being affiliated to the healthcare system.

Regarding planned care, within the context of the EU, recent legislative developments have clarified previously confusing rules as to how far a right to access healthcare existed. Directive 2011/24/EU was agreed upon in March 2011 and formalised decisions made by the European Court of Justice (ECJ) on the right to access healthcare. This resulted in the Directive not actually providing individuals with new rights, but it made these rights clearer and therefore more accessible. In essence it entitles all EU citizens to obtain healthcare services in another EU Member State.

In practice, the individual seeking healthcare in another Member State must ask for prior authorisation from his/her own country. If granted, then costs incurred by the individual for any healthcare which they would have been entitled in their country of residence, will be reimbursed the individual. To qualify for this right to reimbursement the healthcare service must also be available in the applicant's own country and they must be unable to obtain such services in their own country within a reasonable amount of time.

This Directive clarifies the rights that EU citizens have when considering healthcare in another EU Member State. The Directive has to be implemented by Member States by October 2013 and as with all Directives the method of implementation is left to the specific Member States.

Regarding urgent care, EU citizens are covered by the framework of the European Health Insurance Card system which covers all healthcare provided in emergency situations. This system only applies to temporary stays and travelling in another State.

Outside of these two layouts decided at EU level, Member States are completely in charge of their healthcare system and decide under which conditions their nationals, EU citizens or third-country nationals, resident or not, may get access.

However, the European Union recognises the right to access healthcare for preventive care and medical treatments. The EU considers that everyone should be highly protected in matters of health and Member States should take this into account¹. In addition, healthcare services should not discriminate against anyone and access should be equal for all².

Children's access to care, including for rehabilitation purposes as well as pre-natal and post-natal cares for all mothers, has been recognised at the international level by Member States³.

Again at the international level, Member States have recognised the right for everyone to be on the top of his/her physical and mental health. Consequently, they must provide medical services and care to everyone who is ill⁴.

UNITED KINGDOM

1. Legislative texts which apply the right to access health care services

Healthcare in the UK is provided by the National Health Service (NHS), this body provides free healthcare to all those that are ordinarily resident in the UK. The National Health Service provides primary care to patients alongside long-term healthcare, ophthalmology, and dentistry. The NHS across UK is divided into primary and secondary care and Trusts which are given responsibilities to deliver health care. Similarly, the Welsh health care system is similar to that of Scotland and rest of the UK, the health care is free and prescriptions are free 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 needed⁵ (see link for full details).

The EU Directive as discussed above is of relevance but has not been implemented into domestic law as of yet. The deadline for implementation is October 2013. The most recent development was the completion of the consultation period for the best method of implementation which ended on 24 May 2013.

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 inconsistencies in the migrant's access to care in the legal framework⁶. 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.

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
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

Table 1 : International and regional legal instruments governing the health rights of trafficked adults

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 people⁷.

2. The Implementation of the Law in the UK

Once the EU migrants have established an 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 native 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.

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 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.

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 2011/36⁸ of 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.

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 counseling 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 health⁹ and are therefore 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 ;
- 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 Departments¹⁰.

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.¹¹ 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 L1110¹² : "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 : Code de la santé publique Article L1110-3, "No one should be discriminated against access to prevention and health care."¹³

Health care providers cannot refuse care to anybody on the grounds covered by the law on discrimination¹⁴ or because one receives aid such as State medical aid (AME).

For rules on doctor/patient confidentiality and conditions of application¹⁵ :

*"Anyone taken into care by a professional institution, a health network or any other organisation involved in the prevention and health care has the right to respect his private life and secrecy of information about it."*¹⁶

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.1111-6¹⁷ 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 GDP¹⁸ 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.

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 (CMU¹⁹) 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)²⁰ provides free medical prescriptions and hospitalisation for foreigners in irregular or unstable situations. The State medical aid allows illegal aliens to have their medical prescriptions and hospitalization taken care of without the need to advance 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.

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 address²¹ to help foreigners obtain the AME.

CMU and AME are valid for any member of the family registered on the parents’ form. Access to health care (PASS)²² functions within the medico-social sector should facilitate the access of poor people to both the hospital system and 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 treatments¹².

For children under six and pregnant women, PMI centres²³ (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 health²⁴ are delay in seeking medical care, neglecting preventive approaches, living conditions and an unhealthy way of life, which include a degraded habitat and weak environment, dangerous occupational activities (metal recovery, pruning etc.). 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 doctors²⁵.

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 do not speak French and cannot communicate with the doctors or social workers. Very often they are not welcomed because they come as a group, and do not 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 complaint²⁶.

► Recourse to the Human Rights defender²⁷ (see file 1, 2.3). 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 courts²⁸.

SPAIN

1. Legislation applying this right

The Spanish Constitution²⁹ recognises the right to health protection, and the public nature of provision of the service.

All Spaniards, in addition to foreigners with legal residence within the national borders, are entitled to health protection and attention³⁰.

The national health system establishes a common portfolio of services for the entire Spanish territory³¹ and leaves Spanish autonomous communities the complementary services portfolio³².

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 ignored the cut on care to irregular immigrants and continue offering complete attention to these people³³.

Only those citizens with the status of insured have the right to healthcare assistance³⁴.

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 EU, 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) ;
- 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 dependent 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”³⁵.

Rules on doctor/patient confidentiality and the conditions of application

The right to confidentiality of information is protected in Article 7 of Law 41/2002³⁶ : *“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, specialised 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).

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 concerned³⁷.

An individual is required to provide their ID, passport or valid alien identification card, registration certificate and family book.

For irregular immigrants the situation varies according to the area in which they reside, however, they should go to a non-governmental³⁸ 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 center, hospital or specialty centers

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 Law³⁹ 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 prevent people living in slums, in shacks or controlled or urbanised settlements from registering.

Another factor that inhibits Roma and other immigrants from accessing 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 listings accessible to the police, may also deter migrants without a residence permit from registering in the place of residence.

The passive rejection by the system or by health professionals⁴⁰. 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 betaken

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 Office⁴¹ ; telephone or email service in which users can get information or make a complaint ;
- making a complaint in writing⁴² to the Complaints and Suggestions unit of the Ministry ;
- book of claims from health centres or health districts concerned ;
- through associations working in the health field (APDHA, Doctors of the World, Andalucía Acoge, etc.).

The general procedure for denouncing discriminations or violation of rights caused by administrations, individuals or private companies to Roma people, will be those relating to racial discrimination referred to in the file 9.

CZECH REPUBLIC

1. Legislation 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 Republic⁴³, the Charter of Fundamental Rights and Freedoms⁴⁴, 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 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 Health Services Act⁴⁵ and the Public Health Insurance Act⁴⁶.

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 patient⁴⁷, 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 communication of the information about his/her 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 health-care (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**

► 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. Medication 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 out, 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.

Some procedures require person's co-financing. These are some dental procedures, some balneological care and some medicaments or medical devices. Some prescriptions are reimbursed in full whereas some are co-financed by the patients. There are some healthcare practices 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.)⁴⁹.

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 law⁵⁰.

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 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 risks⁵¹.

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 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 stigmatisation or unacceptable comments in front of the patient. One of the reasons is undoubtedly the communication barrier on both sides. Some patients 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 have often suffered bad experiences (unreliability of patients, problems with paying the fees etc.) and these stereotypes and prejudices are then transferred onto other individuals or family mem-

bers. 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 stigmatisation from the part of medical institutions and the employees decreases trust of Roma clients towards them and prevents them e.g. from preventive care⁵².

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 test⁵³. 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. Disciplinary action can be taken in the 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 insufficient. In such case, civil proceedings 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"). A 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 opinion⁵⁴.

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. »

5 <http://www.lawcentreni.org/policy/policy-briefings/865%20Refused%20asylum%20seekers%20and%20access%20to%20free%20healthcare>

6 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.

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.

7 <http://www.hhrjournal.org/index.php/hhr/article/view/432/708>

8 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>

9 http://fra.europa.eu/sites/default/files/fra_uploads/180-ROMA-HC-EN.pdf

10 <http://www.dhsspsni.gov.uk/index/hss/equality/eq-travellers/all-ireland-traveller-health-study.htm>

11 http://www.mind.org.uk/policy/equality_and_human_rights/mental_health_discrimination_act_2013#propose

12 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?sessionId=BF1ACFF6362DA8057A7FEEA17B329E69.tpdjoo4v_3?idSectionTA=LEGISCTA000006170991&cidTexte=LEGITEXT000006072665&dateTexte=20130421

13 <http://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000026268225&cidTexte=LEGITEXT000006072665>

14 <http://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000006417831&cidTexte=LEGITEXT000006070719>

15 Code de la santé publique - Article L1110-4 http://www.legifrance.gouv.fr/affichCodeArticle.do?sessionId=BF1ACFF6362DA8057A7FEEA17B329E69.tpdjoo4v_3?idArticle=LEGIARTI000024462526&cidTexte=LEGITEXT000006072665&dateTexte=20130421

16 http://www.legifrance.gouv.fr/affichCode.do?sessionId=C7014C575C857DC2ED413CBC10B87B7D.tpdjoo6v_2?idSectionTA=LEGISCTA00006170991&cidTexte=LEGITEXT000006072665&dateTexte=20130421

17 http://www.legifrance.gouv.fr/affichCodeArticle.do?sessionId=BF1ACFF6362DA8057A7FEEA17B329E69.tpdjoo4v_3?idArticle=LEGIARTI00006685773&cidTexte=LEGITEXT000006072665&dateTexte=20130421

18 GDP : Gross Domestic Product : PIB (Produit intérieur brut)

19 CMU : Couverture médical universelle- <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000198392>

20 AME : Aide médicale d'Etat, <http://vosdroits.service-public.fr/F3079.xhtml>

21 <http://vosdroits.service-public.fr/F17317.xhtml>

22 Pass : Permanence d'accès aux soins de santé : <http://www.sante.gouv.fr/les-permanences-d-acces-aux-soins-de-sante-pass.html>

23 Mother and child Center

24 Investigation in the department of Deux-Sèvres : <http://fr.calameo.com/read/000960180c8627661c1e1>

25 Magazine "Santé de l'homme" N°390 : <http://www.inpes.sante.fr/slh/articles/390/07.htm>

26 <http://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000026268225&cidTexte=LEGITEXT000006072665>

27 Défenseur des droits (DDD) : www.defenseurdesdroits.fr

28 <http://vosdroits.service-public.fr/F10342.xhtml>

29 Art. 43 of Spanish Constitution of 1978. Published in BOE no. 311 29 December, 1978.

30 In line with Article 1.2 of the General Law of Health 14/1986, of 25 April.

31 Available in: <http://www.msc.es/profesionales/prestacionesSanitarias/CarteraDeServicios/ContenidoCS/Home.htm>

32 Information relating to each region: http://www.seg-social.es/Internet_1/Pensionistas/Derechos/Asistenciasanitaria/37522#37522

33 Consulted on 23/04/2013: <http://www.elmundo.es/elmundo/2012/08/30/espana/1346348494.html>

- 34 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.
- 35 Doctors of the World Report about Access to healthcare in Europe in times of crisis and rising xenophobia. 2012. Edited by MDM Greece.
- 36 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.
- 37 To identify the appropriate location of INSS office use the following web link: http://www.seg-social.es/Internet_1/Oficinas/index.htm
- 38 Directory: <http://www.guiaongs.org/directorio/inmigrantes-5-3-15>
- 39 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.
- 40 As mentioned in the Handbook for the Attention of Immigrants in Andalusia (2007),
- 41 Access in: <http://www.msc.es/oficinaInformacion/home.htm>
- 42 Official form; <http://www.msc.es/servCiudadanos/docs/QuejaSugerenciaMSSSI.pdf>
- 43 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
- 44 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
- 45 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.
- 46 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.
- 47 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.
- 48 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.
- 49 Ministry of Health of the Czech Republic, available at <http://www.mzcr.cz/prevence/uk/uk.html>, accessed on April 14, 2013
- 50 Further information on the concrete circumstances, see the link: <http://www.mzcr.cz/prevence/uk/uk.html>
- 51 Report on the Roma Minority Situation in 2011, p. 78, 2012, The Council of the Government of the Czech Republic for Roma Community Affairs
- 52 *Ibid.*, p. 81-82
- 53 Further information on this case available at: http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Kauzy/zdravotni_pece/Ne-poskytnuti_zdravotni_pece_z_duvodu_etnickeho_puvodu.pdf
- 54 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 even been informed of it. He also stressed the unfair removal of the children from their parents only on grounds 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 the victims of human trafficking through sexual exploitation, labor exploitation, domestic servitude, illegal adoption and begging¹. To answer this double 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 could 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 time, 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 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 a 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 from the protection of specific legislation. The UN made a Convention to avoid the exploitation and mistreatment of disabled individuals, including a definition of a "disabled person"¹⁰. 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).

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 created a Convention, ratified by Member States, to protect women from any type of discrimination, which includes a definition of discrimination itself¹⁴. In this Convention¹⁵, States should cancel or modify any legislative texts discriminating women. The Convention also prohibited any discrimination based on gender 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 healthcare (Article 12). Regarding work, the right of women to work and access employment without discrimination, and not be fired due to the fact they are pregnant or married is protected within Article 11. Furthermore, they should be free to choose their spouse and to decide whether or not they want to get married (Ar-

ticle 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).

EU legislation aims to ensure equal treatment of women and 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 to ensure that rape and any sexual violence perpetrated against women would be considered 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 one spouse can take the other spouse to court in case of rape within the couple. To avoid medical abuses including forced sterilisation, the Charter of Fundamental Rights states the right of the patient to have a free and informed consent before receiving any medical care¹⁹.

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 only four States²⁰.

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 include the spouse or legal partner, direct descendants under 21 years old (children) and direct relatives on an "ascending line" who is dependant for living on this person (parents and parents-in-law)²¹. 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 mistreatment²². 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 facilitate this. In case the separation is due to an imprisonment or expulsion ordered by the State, parents and children should be informed of each others' whereabouts. Still, parents and children are required to request this information from the State as this information will not be released without a request. Nevertheless, for any action made by the State, the persons involved

(e.g. parents, children...) have the right to express their views and the State should always behave in the best interest of the child²³.

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)²⁴.

In relation to divorces the parties have a variety of choices as to jurisdictions to get divorced within if there is some cross border element. It is possible to get divorced 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 annulment²⁵. In addition, a legal decision taken in a Member State should apply to all other Member States²⁶.

Human trafficking

Human trafficking is the trade of individuals for various purposes including labour services or sexual ones. Any act related to this trade (from recruitment to reception and including the control over someone) is forbidden and punishable. If the use of force or fear has been proven during the actions then whether the individual consented at any point is irrelevant. Regarding children, if human trafficking is proven, there is no need of proving any use of force or threat over them²⁷. To face the traffic of human beings, Member States must provide assistance to the victims, for them to recover physically, psychologically and socially, which amongst others includes providing housing, healthcare and employment, educational and training opportunities²⁸. Besides, they should have the right to remain in the Member State's territory temporarily or permanently²⁹. In case of repatriation, the Member State should make sure this person is safe³⁰. Furthermore, the EU has set out 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 period³¹.

1. National Legislative Texts

Previous file submissions have dealt with statutes based on equality principles in the UK offer protection for Gypsy and Traveller individuals, the focus here is on family law and legislation for vulnerable persons. There are three jurisdictions that can competently legislate in the area of family law within 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, as well as many other issues. There is no piece of legislation in any of the jurisdictions that encompasses all family law matters.

Article 8 of the European Convention on Human Rights, which was also incorporated into UK law through the Human Rights Act 1998³², 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.

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 1973³³, or issues of parental responsibility for children e.g. the Children Act 1989³⁴. Furthermore, some issues are not dealt with through legislation but are governed by common law principles e.g. the ownership of assets during marriage.

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 2006³⁵. This legislation is, in effect, complemented in Scotland by other key statute, such as the Children (Scotland) Act 1995³⁶ 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.

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 2001³⁷, 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.

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 relevant to issues affecting vulnerable persons. Relevant policy and legislation includes criminal justice, child protection, and health. Again, there is piece of legislation in any of the four countries that encompasses all issues concerning vulnerable persons across these and other policy areas.

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 2006³⁸ that applies in England, Northern Ireland, and Wales and (b) the Vulnerable Witnesses (Scotland) Act 2004³⁹, Adult Support and Protection (Scotland) Act 2007⁴⁰, and the Protection of Vulnerable Groups (Scotland) Act 2007⁴¹ are all pieces of legislation introduced through the Scottish Parliament.

2. Implementation of the law

It is widely acknowledged across the UK that the communities under the umbrella term of Gypsy/Traveller are (a) disadvantaged in many areas of life and public policy; (b) suffering disproportionate levels of prejudice; and (c) suffering from internal problems, which whilst not unique to these communities, nonetheless exist; an example being domestic violence towards female members of the community⁴².

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 participation⁴³.

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 evi-

dence... highlights high rates of anxiety, depression and at times self-destructive behaviour (for example, suicide and/or substance abuse)"⁴⁴.

There are different approaches taken across the four countries of the UK to overcome the vulnerabilities and disadvantages affecting the Gypsy/Traveller communities. All share recognition of discrimination and disadvantages that stem from a lack of appropriate accommodation. The systems all recognise that leadership is needed, locally and nationally, to overcome these challenges.

In 2012, the UK Government published its approach to community integration in, predominantly England. 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 community relations across the UK⁴⁵.

In 2010, the new UK Government established a cross-departmental Ministerial Working Group on Gypsy/Travellers. This welcome and ongoing initiative 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. In particular, it aims to combat the fundamental issue of gaps in suitable accommodation. On that, in January 2012, the UK Government announced £ 47 million to for over 600 new, and refurbish over 160 existing, pitches for Gypsy/Traveller communities⁴⁶.

The approach to Gypsies/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) 2011⁴⁷, the primary purpose of which is statutory protection for those who occupy a caravan as their main residence on sites approved for that purpose⁴⁸.

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/Travellers⁴⁹. There has also been considerable work done, since 2001, in The Scottish Parliament to articulate recommendations to improve the position of Gypsy/Travellers in Scotland⁵⁰.

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"⁵¹. 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

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. Two 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.

As conveyed in this and other submissions, the lack of appropriate and quality accommodation underlies 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 outcomes⁵².

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 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 communities⁵³.

4. Recourse

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 Centers 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 is considered as an aggravating factor when assessing the criminality of any action.

The Penal Code, Article 222-14⁵⁴ 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 2⁵⁵ 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 375⁵⁶ : *“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”* ;
- in the social work and family Code, article L112-3⁵⁷ : 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 Court⁵⁸ 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 authorising the ratification of the agreement was contrary to the Constitution, due to paragraphs 10 and 11 of the Preamble of the Constitution of 1946⁵⁹ and of the article 16 of the Declaration of Human and Civil Rights of 1789⁶⁰.

The notion of a "*marginalised community*" *being automatically considered as vulnerable has developed*. "*Marginalised communities*" are defined as populations or groups of 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 Code⁶¹.

► 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 :

"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 which collecting, processing and evaluating alarming reports (Crip)⁶². Their mission is to centralise data and organise 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 Education⁶³ 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 endure poor living conditions owing to inadequate and precarious housing , the lack of financial resources combined with the impossibility of having a job , and the difficulty of schooling⁶⁶.

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)⁶⁷, foster care, arrests. However, according to some case law, the children are not necessarily at risk⁶⁸.

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"⁶⁹ and sometimes an "interim supervision order"(OPP)⁷⁰. 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 rights⁷¹.

► Associations play an important role⁷², in particular the platform of associations, called Infomie⁷³ and devoted to Foreign Unaccompanied Minors.

1. Legislations applying this right

The Spanish Constitution recognises the right to equality in Article 14⁷⁴ *"The Spanish are equal before the law"*.

In addition, Article 9.2⁷⁵ 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 39.1⁷⁶. Public authorities⁷⁷ are responsible, within their competence, to provide families who need financial assistance in order to help them fulfil their responsibilities, meet their basic needs and support them when they pass through particularly difficult situations.

The Organic Law 3/2007, of March 22⁷⁸, incorporates substantial legislative changes to advance true equality between women and men. It implements transverse measures affecting all spheres of political, legal and social, to eliminate discrimination against women. This law determines the legal consequences⁷⁹ of discriminatory conduct and incorporates procedural safeguards to strengthen judicial protection of the right to equality. It also creates the State Observatory on Violence against Women⁸⁰, which deals with counseling, assessment, institutional collaboration, reporting, studies and proposals for action on violence against women.

Protection against domestic violence is regulated in accordance with the Organic Law 1/2004, of 28 December on Integrated Protection Measures against Gender Violence⁸¹. 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 dependency⁸². 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 dependency⁸³.

Spanish legislation⁸⁴ 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

Specific situations

Marriage : spanish legislation establishes, through provisions in the Civil Code, conditions of marriage⁸⁵. It is no competent to marry minors (or from age fourteen to eighteen without parental consent), people who are already married, lineal relatives to third grade⁸⁶, or those 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 Code⁸⁷ (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 sixteen⁸⁸, in addition to the punishment by law for forced marriage⁸⁹.

Divorce : it is only necessary that one of the spouses does not want to be married to be able to sue for divorce⁹⁰. After three months of marriage, either spouse may request a separation and/or divorce claim without good cause. Regarding the care and custody of the children, parents must decide whether it shall be 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 with strong reasons. If parents do not decide by mutual agreement, the judge will decide⁹¹ who will take care of the minor children, the child's interests are the paramount consideration.

Child begging : The use of children in the practice of begging is treated in the Spanish Penal Code⁹², with sentences of six months to four years (in cases in which violence is used to coerce).

Child work : According to the Statute of Workers⁹³, workers under sixteen are prohibited. Additionally the mandatory school age is from six to sixteen.

2. The implementation of the law

There are state organisations that provide access to those who need to the remedies provided by law.

The Women's Institute⁹⁴ 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 programs⁹⁵, including specific programs for immigrant women who are victims of social and cultural barriers, risk or exclusion. These programs are offered

throughout the country, managed by non-profit organizations like the Red Cross⁹⁶, Fundación CEPAIM⁹⁷ or Fundación Secretariado Gitano⁹⁸.

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 - 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 - 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 with information, guidance or refers them to specialised services.

Human trafficking : sexual exploitation is a crime⁹⁹ that violates several fundamental rights such 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. Individuals who suffers from this treatment or others who know the existence of this treatment may receive information and advice¹⁰⁰ 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 cannot move, the security forces can go at their request by phoning 112.

Separation or divorce : in the process of separation or divorce, the parties must be assisted by a lawyer or a solicitor. Legal aid¹⁰¹ may be requested from office through demonstrating evidence of lack of resources. The individual seeking separation or divorce may apply to either the Court of First Instance of the last domicile of the marriage or the residence of the defendant.

Dependent persons : procedure for the recognition of the dependence¹⁰². To request information, they may go to Community Social Services closest to the place of residence¹⁰³. 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 the services or benefits to be given¹⁰⁴ to the dependent person will be decided.

3. Discriminations made to the vulnerable persons

The situation regarding gender equality of Roma women in Spain is doubly affected, for being women, in a patriarchal¹⁰⁵ society and for belonging to an ethnic minority that suffers the 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. Roma¹⁰⁶ 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 feminisation 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 poverty¹⁰⁷ 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 cases of opposition from non-Roma parents to share school with Roma students occur. In addition, the school failure is much more pronounced in Roma girls than in Roma boys.

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, they are immigrants or they are impoverished may address to the Information Centers of women. These centers perform a global intervention, providing comprehensive care and counseling.

The centers are scattered throughout the national territory¹⁰⁸, 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 institutions or bodies they must recourse to the general procedures for denounce discriminations 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 organisations (Fundación Secretariado Gitano¹⁰⁹, Romani Union¹¹⁰, etc.) to get support and guidance on the denounce process.

CZECH REPUBLIC

1. Legislations applying the defence of the vulnerable members of Roma community

Within the Czech Republic, defence of the vulnerable members of Roma (or any other) community is guaranteed by the Constitution of the Czech Republic¹¹¹, the Charter of Fundamental Rights and Freedoms¹¹², 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 irrepealable."

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 enforced 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 (the Civil Act)¹¹³. 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."

Section 13 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 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)¹¹⁴.

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 a declaration from 2010 stated its intention 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 the Government introduced in reaction to the economic crisis significantly affected the situation of people endangered by poverty or socially excluded.

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 inadmissibility of child withdrawal on the basis of unfavourable social conditions and the Court likewise emphasises 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 of becoming 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 majority 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 prevail over the supportive services. The intervention does not take into account the socio-cultural context of the families.

There is also no mechanism for a systematic and early analysis of the level of 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 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 missed¹¹⁵.

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 exists 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.

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 intercourse (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".

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.

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 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"

20 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=>

21 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.

22 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).

23 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".

24 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(...)"

25 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".

26 *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."

27 Council Framework Decision 2002/629/JHA on combating trafficking in human beings of 19 July 2002.

28 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".

29 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."

30 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."

31 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".

32 See: <http://www.legislation.gov.uk/ukpga/1998/42/introduction>.

33 See: <http://www.legislation.gov.uk/ukpga/1973/18>.

34 See: <http://www.legislation.gov.uk/ukpga/1989/41/introduction>.

35 See: <http://www.legislation.gov.uk/asp/2006/2/contents>.

36 See: <http://www.legislation.gov.uk/ukpga/1995/36/contents>.

37 See: <http://www.legislation.gov.uk/nisi/1995/755/contents>.

38 See: <http://www.legislation.gov.uk/ukpga/2006/47/introduction>.

39 See: <http://www.legislation.gov.uk/asp/2004/3/introduction>.

40 See: <http://www.legislation.gov.uk/asp/2007/10/introduction>.

41 See: <http://www.legislation.gov.uk/asp/2007/14/introduction>.

42 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 www.equalityhumanrights.com/key-projects/good-relations/gypsies-and-travellers-simple-solutions-for-living-together/gypsies-and-travellers-research-reports.

43 See footnote 11.

44 pp. iii-iv: footnote 11.

45 Commission for Racial Equality (2006) "Common Ground": Equality, Good Race Relations, and Sites for Gypsies and Irish Travellers", (London: Commission for Racial Equality).

46 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/>.

47 See: <http://www.legislation.gov.uk/nia/2011/12/contents>.

48 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/>.

49 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/>.

50 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).

51 pp.8-9: footnote 15.

52 pp.5-34: footnote 15.

53 pp.136-146: footnote 15.

54 Code pénal, article 222-14 http://www.alma-france.org/IMG/pdf/ARTICLE_222-14.pdf

55 www.legifrance.gouv.fr/affichCodeArticle.do?jsessionid=593CEC268996D07D21A231717169DBFE.tpdj010v_2?cidTexte=LEGITEXT000006070719&idArticle=LEGIARTI000006418047&dateTexte=20130505&categorieLien=cid#LEGIARTI000006418047

56 www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006070721&idArticle=LEGIARTI000006426776

57 Code de l'action sociale et des familles, <http://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000006796426&cidTexte=LEGITEXT000006074069&dateTexte=20091231>

58 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>

59 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>

60 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.

61 www.legifrance.gouv.fr/affichTexteArticle.do?jsessionid=47DC09AF658AB397C240B3A5218C7075.tpdj010v_1?cidTexte=JORFTEXT00000215460&idArticle=LEGIARTI000006682019&dateTexte=20130505&categorieLien=id#LEGIARTI000006682019

62 Crip : cellule départementale de recueil, de traitement et d'évaluation des informations préoccupantes

63 www.education.gouv.fr/cid49632/la-protection-de-l-enfance.html

64 See file 3

65 See file 5

66 See file 4

67 AEMO : action éducative en milieu ouvert

68 www.depechestsiganes.fr/?p=1637

69 vosdroits.service-public.fr/F17777.xhtml

70 OPP : Ordonnance de placement provisoire

71 www.defenseurdesdroits.fr/connaître-son-action/la-defense-des-droits-de-lenfant

72 See the reference book of the LDH « Les Roms ont des droits », file 6

73 www.infomie.net/spip.php?article652

74 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.

75 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.

76 Article 39.1 of the Spanish Constitution. "Public authorities shall ensure the social, economic and legal protection of the family"

77 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.

78 Organic Law 3/2007, of March 22, for the effective equality of women and men. Published in BOE no. 71, 23 march, 2007.

79 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.

80 www.msssi.gob.es/ssi/violenciaGenero/ObservatorioEstatal/home.htm.

81 Organic Law 1/2004 of 28 December on Integrated Protection Measures against Gender Violence. Published in BOE no. 313, 29 december, 2004.

82 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.

83 www.laleydeladependencia.com.

84 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.

85 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).

86 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.

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 http://sociedad.elpais.com/sociedad/2013/04/05/actualidad/1365148818_690132.html (Consulted on 09/05/13)

89 www.lamoncloa.gob.es/ConsejodeMinistros/Enlaces/111012-enlaceante proyectodelcp.htm

90 Law 15/2005, on July 8, by amending the Civil Code and the Civil Procedure Act relating to separation and divorce. Published in BOE no. 16, 19 January, 2006

91 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.

92 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.

93 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.

94 www.inmujer.es/elinstituto/conocenos/home.htm

www.inmujer.es/areasTematicas/multiDiscriminacion/mujeresMigrantes/home.htm

95 www.inmujer.es/areasTematicas/multiDiscriminacion/minEtnicas/home.htm

96 www.cruzroja.es/portada

97 cepaim.org/programa

98 www.gitanos.org

99 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.

100 www.inmujer.es/servRecursos/servInformacion/trataMujeres/home.htm

101 www.justiciagratis.es

102 www.dependencia.imserso.es/dependencia_01/tramitacion/solicitud_tramitacion/index.htm

103 www.dependencia.imserso.es/dependencia_01/tramitacion/ccaa_dt_imserso/index.htm

104 www.dependencia.imserso.es/dependencia_01/normativa/texto_ley/titulo_uno/prestaciones_saad/index.htm

105 Grounds of discrimination in Spain. An exploratory study. Directorate General against Discrimination, Ministry of Equality. February 2009. Madrid. Pag. 62.

106 Gypsy Women. Bimonthly Magazine Association Gypsy Secretariat. No. 5. June 2000. Pag 22.

107 Grounds of discrimination in Spain. An exploratory study. Directorate General against Discrimination, Ministry of Equality. February 2009. Madrid..Pag. 90.

108 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>

109 www.gitanos.org/que-hacemos/areas/vivienda/nuestro_trabajo.html

110 www.unionromani.org/union_es.htm

111 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

112 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

113 The Civil Act, available at <http://www.czechlegislation.com/en/40-1964-sb>, accessed on April 30, 2013

114 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

115 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

Legislation applying this right

Providing social assistance is a topic dealt with 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 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 a job. Nor shall the Member State be obliged to provide any educational assistance before the citizen receives 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 that a citizen of the country where he/she lives⁴ would receive.

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.

fits, bringing together different benefits, and combining 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 amount of financial benefit a single individual, single parent, or couple 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) jobseeker'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 2012 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.

UNITED KINGDOM

1. National Legislative Texts relating to social assistance

In the UK, social assistance is an area of competency reserved to 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", is a new way of paying bene-

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 authorisation to work in the UK. This restriction will be lifted from the start of 2014. Romanian and Bulgarian individuals who have right to remain in the UK and have the right to apply for benefits, social housing, and help from the council if they become homeless, this applies to the 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 information.

The old benefit system is being replaced by Universal Credit which was introduced in April 2013 which is currently being practiced in England and which will cascade to other parts of the UK. This will likely cause difficulties in assessing 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 which will be paid if one is unemployed or workless. It will apply across the whole of the UK.

This may have an adverse effect on migrants, especially the Roma/Gypsy Travellers. An individual applying without an address 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 appropriate work, but also 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 submissions⁸. There is a universal push for the

"Universal Credit" to be accessed online which will further discriminate many communities.

Romanian and Bulgarian and some other migrants from the EU countries can lose their benefits if they lose their job and do not have access to social security. This is due to a requirement to be registered under the Home Office scheme for twelve months without interruption if the 30 day period is fulfilled, lack of resources may result in an individual being unable to continue residence. 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 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 are 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.

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 system¹⁰ fails then there are various means of support available from NGO's, which are 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 until 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 a language barrier can end up sleeping on the streets. The situation is worse if migrants do not have any savings, interruption of employment and family circumstances can have devastating effects if this is the case. It is beneficial for any migrant coming to the UK to be able to be fully informed of the social security system in the UK so that they reduce the chance of falling into poverty or homelessness.

FRANCE

1. The national legislative texts which apply the right to receive social assistance

Social assistance is a term used to cover 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 Code²¹ provides all the laws and regulations about social action and family.

Every person living in France, if he/she fulfills the conditions provided for in the legislation, has the ability to benefit from social assistance²² for child welfare, accommodation or a place in a social rehabilitation center amongst other services.

For the others benefits for social assistance a resident permit is required.

2. The implementation

Social assistance involves three public stakeholders :

- the department for social assistance for the elderly and the disabled people, child welfare and social development ;
- the State for accommodation and social rehabilitation center²³ ;
- the township for the Social Action Community Centers²⁴.

The Family Allowance Fund, (CAF)²⁵ 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 Travellers¹⁶, ADGV, as the one in Essonne¹⁷, created by different partners (Sub-prefect, county administration, town councillors, volunteers, travellers, associations...) or the ADGV which sets up social accompaniment measures with the urban community of Orléans Val de Loire (Agglo)¹⁸.

Fields concerned by social assistance

Housing (see file 3) :

The joint ministerial circular of the 26 of July 2012¹⁹ 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)²⁰ without conditions of nationality or legality of stay on French territory.

To have access to emergency housing :

- call the emergency number, 115 ;
- request housing under the integrated service of reception and orientation, (SIAO)²¹ ;
- fax to the Prefect, with a copy to the administration responsible of social monitoring²².

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, however, requires that the individual must be a French citizen or have a right of residence or a resident permit.

Travellers

► The Besson law of 5 July 2000 (See file 3) provides the law relating to halting sites.

► The CAF in some department (for example Rhône and Loire, Finistère) gives grants for the restoration or the purchase of a caravan. The conditions for these aids differ between each CAF.

Education (see file 4)

- Financial aid²³ exists to help low-income families. Back-to-school allowance (ARS)²⁴ is paid by the Family Allowance Fund (CAF)²⁵ 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).

> When applying for the first time applicants have to declare to the CAF their family benefits and accommodation situation and their income for the last year. It is also possible to download the application 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.

- A specific aid is given by the School Fund²⁶, 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 center etc.

> The applications for aids are evaluated by the social worker and submitted to a commission who meets regularly.

- The Academic Centers for the Schooling of Newly Arrived and Travelling Children²⁷, CASNAV, coordinates the reception, the orientation and the housing of the children coming from foreign countries, and also 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 speaking²⁸ classes. They will carry out a French language training course before joining an ordinary class.
- For Travellers : some regions, some municipalities take various initiatives including personalised tutoring in caravans by student volunteers, help with school registration, and assistance with paying for school supplies.

Employment (see file 5)

National employment agency (Pôle emploi), registers jobseekers and gives assistance with job-searching whilst also paying benefits to the unemployed.

The agency provides the following assistance to jobseekers²⁹ :

- jobseekers can get a formation. In that case, they may have assistance the necessary expenses, the Afa³⁰ ;
- there is the possibility to have help with transport and the opportunity to obtain a driving license ;
- assistance in setting up businesses.

Provision of such assistance requires that the individual has previously been employed.

Every jobseeker may registers in "Pôle emploi" with the procedural rules in force³¹. Unemployment benefit is paid to employees deprived of employment, the benefit is

paid during an unsettled period which depends on the previous activity³². Afterwards, it is possible to get the allowance offered to people wishing to return to work (ARE)³³.

RSA (Active Solidarity Income)³⁴ was created to combat poverty more effectively. It is an income support payment that takes into account the earnings and expenses of a family.

Only French citizens or legal migrants can get the RSA.

Without residence permit, Romanians or Bulgarians nationals are not entitled to receive any aid or any support (family benefits, housing allowance etc.). It is necessary to have a residence card and work permit.

Retirement³⁵

There are differences depending on whether the individual had worked in the private or the public sector and the number of years that they worked. Nowadays retirement age is 62 years old.

Health care (see file 6)

People with low income have access to universal medical cover (CMU)³⁶, to the supplementary CMU-c and, for undocumented migrants, the "State Medical Assistance" (AME)³⁷. The Permanent Access to Healthcare (PASS)³⁸ scheme facilitates the access of poor people to the hospital system and institutional networks or associations of home care and social support.

For people benefiting from AME, it is better to go to hospital or health centers. In Paris some hospitals have continuous access to health care³⁹. It is possible to contact the Medical committee for exiles (Comede)⁴⁰.

Some centers are open to everybody whether or not they receive social welfare including a mother and child center (PMI)⁴¹ and Family Planning and Education Center (CPEF)⁴².

Vulnerable members of the community : on a social level, how can they be helped if they are mistreated ? Without a residence permit, Romanian or Bulgarian nationals are not entitled to receive any aid or support (family benefits, housing allowance). 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. There has been an increase indiscriminatory, racist and xenophobic comments of media and political

figures. The special provisions⁴³ for Romanian and Bulgarian nationals make their life difficult in France. Although the joint ministerial circular of 26 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 the other tools required to protect their security and their rights (among them schooling or medical follow-up continuity) out in place. 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.

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 Pharmacist or the individual can ask for help from 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 and support individuals and groups, with the objective of achieving greater social welfare and quality of life.

The Spanish Constitution, Article 9.2⁴⁴, recognizes the responsibility of public authorities⁴⁵ (the State) in establishing measures to promote equality and freedom. Article 39.1⁴⁶ 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 Communities⁴⁷ are competent in the field of Social Services⁴⁸, assuming responsibility for its management in their Statutes of Autonomy of each Community⁴⁹.

Moreover, the Law 7/1985⁵⁰, of 2 April 1985, reinforces the approach of Social Services to citizens. Under this law the municipalities must exercise competencies⁵¹ in the field of Social Services⁵².

2. The implementation of the law

The Ministry of Health, Social Services and Equality⁵³ 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 free⁵⁴ and depend on each autonomous community⁵⁵ and local authority. 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.

Bodies other than the Ministry of Health and Social Services and Equality are involved in social aid management policy. 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 Centres is the 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 it is necessary to be registered at the local council in which the individual will apply for the benefit. For most applications it is necessary for non-Spanish citizens to have a residence permit. This prevents some migrants from accessing the same benefits that national citizens are automatically able to obtain.

The documentation required⁵⁶ 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 assistance requested).

With respect to non-regularized foreigners, they are entitled only to welfare-oriented social resources (no access to financial aid). For example, the shelters⁵⁷ are a temporary social resource that does not distinguish among its recipients.

Social Services carry out the management and processing of primary care services⁵⁸, referral to other resources and coordination with other agents.

Their attention can be complemented by other service provided such as : soup kitchens, offices or information services, day centres, residences or supervised apartments.

Where to go ? At the Social Services Centre of the local council.

Steps :

- be registered at the City Hall ;
- the Social Services Centre 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 ;
- between the ages of 18 and 65 ;
- 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 an allowance, free medical, pharmaceutical care and complementary social services. This is provided even if they have not contributed or have not contributed 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 received the power to carry out these functions and services from the Institute of Elderly and Social Services⁵⁹ (IMSERSO).

Requirements :

- lack of sufficient income ;
- be aged 65 or over ;
- reside in Spanish territory and have done so for a period of ten years.

Housing⁶⁰

The aids in the field of housing are determined by the State Housing Plan in force at any time⁶². The plan affords various aids provided both in the purchase, rental or rehabilitation of housing and requirements to access to these aids.

Who can access this aid ? 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 refuges⁶³ for the needy. To access to this social resource, as mentioned above, there are no requirements 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 not shelters in every municipalities and a stay in this form of accommodation is temporary. This forces the homeless to rotate between shelters.

Education

Scholarships and financial aids from the Ministry of Education, Culture and Sport :

Who can access ? All national students or those students with a residence permit. This aid is granted on the basis of academic and financial considerations (family income) established by a regulation published annually in the Official State Gazette (BOE).

How to access ? The application is made online by filling in the application form. This form can be accessed through the website of the Ministry of Education, Culture and

Sports at 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. The Social Services office of the town or the school in which the student is enrolled can provide further information.

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 workers who can, and are willing to, work and lose their jobs.

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 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 amongst other considerations).

Where to go ? The Employment Office within the individual's municipality.

Health

Medicines :

There are different levels for the pharmacy payment, according to three criteria: income, age and extent of disease (according the recent reform on health system⁶⁶).

Access to health care :

Who have free access to the health system ? The Spanish and legalised foreigners have free access to the Spanish health system. However, foreign adults⁶⁷ that are unregistered as residents in Spain⁶⁸ will only be cared for by

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 locality⁶⁹ or through electronic registry⁷⁰ along with the application form.

Documentation required⁷¹ :

- Spanish Citizens : National Identity Document (DNI), for those over 14 years old ;
- Foreigners Citizens: Certificate of registration in the Central Register of Foreigners along with passport or identity and family book.

Social care for dependant persons⁷²

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. This care in the home can include, where appropriate, the provision of a caregiver.

Who is entitled to this benefit ? People of Spanish nationality and foreigners⁷³ with legal residence who are in dependent situation and meet the legal⁷⁴ requirements for this benefit.

Application procedure⁷⁵ : They may go to Community Social Services closest to the place of residence⁷⁶. They will have to submit an application on the official form concerned and an assessment of the applicant's dependency needs will be made. The services or benefits that correspond⁷⁷ to the dependent person will be determined dependent on the individual's circumstances.

NGOs that provide some form of social assistance

There are several non-governmental organisations that provide assistance to people in need. The way in which this assistance is provided is 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 include :

- Cáritas⁷⁸ : 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 Cross⁷⁹ : Develop various programs in different scopes such as employment, immigration, prisoners, etc.
- Red Acoge⁸⁰ : Its objective is to promote the rights of immigrants in Spain. Currently, the Network is a federation of 17 organizations spread throughout the state.
- FundaciónSecretariadoGitano (FSJ)⁸¹ : 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"⁸², made to promote labor market integration of Roma in the labor market.
- Romani Union⁸³ : This organization is dedicated to the defense of the Roma community. They 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 emphasise that the social assistance system provides a number of programs and institutions focused specifically⁸⁴ on the needs of the Roma.

The implementation Roma Development Programme⁸⁵, in effect since 1989, and the creation of the State Council of the Romany Population⁸⁶, in 2005, are decisive instruments founded, to combat the shortcomings and needs of the Roma. This is achieved through cooperation between the State, autonomous communities and Roma organisations.

These initiatives have facilitated the access of Roma families to social service resources. They have also aided in the creation of specific resources for this population such as the Action Plan to promote development among the Roma population 2010-2012⁸⁷ and the Strategy for Social Inclusion of Roma people 2012-2020⁸⁸ approved on March 2, 2011.

Therefore, we must note that the Spanish State develops several policies considered as good practices⁸⁹ in combating discrimination against Roma.

4. Possible recourses to be taken

In case of discrimination in obtaining and implementing protection resources for women, children or any other vulnerable person from the Government institutions or bodies they must recourse to the general procedures for denounce discriminations 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 organisations (Fundación Secretariado Gitano⁹⁰, Romani Union⁹¹, etc.) to get support and guidance on the denounce process.

CZECH REPUBLIC

1. Legislation applying the right to receive social assistance

Within the Czech Republic, the right to receive social services is guaranteed by the Constitution of the Czech Republic⁹², the Charter of Fundamental Rights and Freedoms⁹³, 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, namely in 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 to 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 amended⁹⁴.

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 lack of work are regulated by many acts and decrees. The legislation covers various means of providing the social assistance, from provision 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 are 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 years⁹⁵.

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)⁹⁶. 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 the competencies of the Ministry of education, youth and sports (MEYS). In 2009 a 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 was created. 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)⁹⁷.

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 realising the inclusive education and education of pupils with disadvantage”, “Support of financing the assistants of pedagogues for children, pupils and students with disadvantage”⁹⁸.

Further, the organisation “IQ Roma Servis” also deals with the issues of Roma education and provides several opportunities for education of children, teenagers, and adults⁹⁹. Association Romea likewise works on improvement of Roma education with different workshops, exhibitions or methodological support of teachers¹⁰⁰.

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 detailed information on how enter the job market, various kinds of requalification programs and the way how to apply for such courses on their website¹⁰¹.

The labour office provides a jobseeker with information concerning the job opportunities, working conditions and further education¹⁰². The unemployment benefit is a social benefit that can be paid in the case of losing 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. The amount of the benefit depends on the average monthly salary from the last employment and the duration that the benefit shall be paid depends on the age of the applicant¹⁰³.

The Czech Social Security Administration determines the retirement income insurance according to the law and includes 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 Administration¹⁰⁴. All the applications are afterwards forwarded to the Czech Social Security Administration that is responsible for taking the final decision. The whole process takes 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 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 in order to fall within this exception.

Medical services are also provided by NGO's, which are focused on certain groups, such as socially-disadvantaged people. For example the Naděje group in the Czech Republic delivers free services of medical practitioners and psychological counselling.

Mistreatment

Citizens of the Czech Republic have, in the case of mistreatment, a right to social services assistance. According to the Social Services Act, there is a distinguishment between basic social counselling that should be provided by each social service and specialised social counselling. People in unfavourable social situations can address public advisory centres where the services are provided free of charge. In certain cases, a victim of mistreatment can turn to the Public Defender of Rights for help 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 “inadaptable”. 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 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 frustrated because of the power of social worker to decide according to their own consideration when assigning the social benefits¹⁰⁵. Likewise, the social workers sometimes are not sufficiently professionally qualified and thus do not know how to appropriately deal with them. Social

services staff have a lack of cultural sensitivity. There also is an obvious differentiation in approach toward the Roma people 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 the general accessibility of housing to low-income families and related social services is difficult. The discriminatory approach of landlords toward Roma is a characteristic aspect of the real estate market. 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 rental¹⁰⁶.

As an example of abuse, Roma people can be refused as a potential tenant of a municipal flat because they are unemployed and thus assessed as a rental non-payer. This further worsens his/her position¹⁰⁷.

Housings issues have a direct impact on accessibility of other social services as in the Czech Republic the social rights are derived from the permanent residence status. Concerning healthcare, 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 an amount of money. Though, this barrier is the same for non-Roma vulnerable individuals. On the other hand, the Roma have considerably worsened access to healthcare as the doctors (especially dentists) often refuse to provide the care even when they are entitled to it.

Regarding the retirement system, there is a risk that part of the Roma population will not have right to claim the retirement pension as entitlement depends on payment of insurance for 25 years. In this context, the Roma women are especially endangered as their traditional role is in the household¹⁰⁸.

4. Possible recourses to be taken

The Social Services Act (108/2006 Coll.) does not explicitly prohibit discrimination, 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 that investigate. An inspector may require remedial action and in case of the facility's non-compliance with the

remedial action the authority has the power to revoke the facility's licence.

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 service¹⁰⁹. Naturally discrimination on the basis of nationality, race or ethnicity is forbidden.

Complaints on quality or manner of provided social assistance can be lodged according to the criteria that the provider has to prepare¹¹⁰. The criteria have to be understandable to the clients of the concrete social assistance or service. The provider informs clients about the possibility of lodging the complaint, about the relevant body to which the person can refer to and who is responsible for settling the issue. The provider has to deal with any such complaint in an appropriate time period. The provider shall also inform the client about the possibility of referring to the superior body or to the organisation monitoring human rights in case the client is not satisfied with the complaint proceedings made by the provider. These bodies can afterwards examine the entire proceedings¹¹¹.

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."

6 See: www.legislation.gov.uk/ukpga/2012/5/contents.

7 www.gov.uk/browse/benefits/entitlement,

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 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.

10 Pleasesealso File 9.

11 Code de l'action sociale et desfamilles: <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006074069>

12 legifrance.gouv.fr/affichCode.do?sessionId=13F5E0C7478F2A65C006AD82D81B2F28.tpdjo11v_3?idSectionTA=LEGISCTA000006157551&cidTexte=LEGITEXT000006074069&dateTexte=20130508

13 Centres d'hébergement et de réinsertion sociale (CHRS).

14 Centres communaux d'action sociale (CCAS).

15 www.CAF.fr

16 Association Départementale Action pour les Gens du Voyage (ADAGV).

17 adgve.jimdo.com/gens-du-voyage

18 www.agglo-orleans.fr/competences-partagees/cohesion-sociale/accueil-des-gens-voyage-92.html.

19 circulaire.legifrance.gouv.fr/pdf/2012/08/cir_35737.pdf.

20 www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTL000021641132&cidTexte=LEGITEXT000006074069.

21 www.developpement-durable.gouv.fr/Systeme-Integre-d-Accueil-et-d.html

22 Aides pour ces démarches sur www.jurislogement.org/index.php?option=com_content&view=frontpage&Itemid=10u sur <http://115juridique.org/preparer-la-procedure>.

23 www.education.gouv.fr/cid51/aides-financieres.html

24 vosdroits.service-public.fr/F1878.xhtml

- 25 Caisse d'allocation familiale : [familyallowancefund](#)
- 26 Caisse des écoles
- 27 CASNAV : Centre Académique pour la Scolarisation des enfants allophones Nouvellement Arrivés et des enfants issus de familles itinérantes et de Voyageurs
- 28 Classe d'initiation pour non-francophones (Clin) : special class for no french speaking
- 29 [vosdroits.service-public.fr/particuliers/N178.xhtml](#)
- 30 Afaf : aide aux frais associés à la formation
- 31 [vosdroits.service-public.fr/particuliers/F1636.xhtml#N10099](#)
- 32 [vosdroits.service-public.fr/particuliers/F14860.xhtml](#)
- 33 ARE : Aide au retour à l'emploi, [http://vosdroits.service-public.fr/F1447.xhtml](#)
- 34 [vosdroits.service-public.fr/N19775.xhtml](#)
- 35 [vosdroits.service-public.fr/N381.xhtml](#)
- 36 CMU : Couverture maladie universelle
- 37 AME : Aide médicale d'état
- 38 Pass : Permanence d'accès aux soins de santé : [http://www.sante.gouv.fr/les-permanences-d-acces-aux-soins-de-sante-pass.html](#)
- 39 [www.aphp.fr/site/cartes/pass.htm](#)
- 40 Comede : Comité medical pour les exiles, [www.comede.org](#)
- 41 PMI : centre de protection maternelle et infantile, [allopmi.fr](#)
- 42 CPEF : centre de planification familiale et d'éducation, [www.sante.gouv.fr/les-centres-de-planification-ou-d-education-familiale.html](#)
- 43 See file 1.
- 44 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."*
- 45 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.
- 46 Article 39 of the Spanish Constitution. 1. The public authorities shall ensure the social, economic and legal status of the family.
- 47 Go to "Social services websites (by each autonomous communities)" directory in the annex to this file.
- 48 Article 148 of the Spanish Constitution : 1. The Autonomous Communities may assume competences in the following areas : 20th. Social assistance.
- 49 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"*.
- 50 Law 7/1985, of April 2, regulating the Local System. Published in BOE no. 80, 3 April, 1985.
- 51 under the terms of the legislation of the State and the Autonomous Communities
- 52 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"*.
- 53 [www.msc.es/ssi/portada/home.htm](#)
- 54 Funding is charged to public budgets (State Budget, Social Security, Autonomous Communities and Local Corporations).
- 55 To access the autonomous community portals: [http://www.msc.es/organizacion/ccaa/directorio/home.htm](#)
- 56 These regulations are established by the regions and local authorities, therefore it is recommended to consult these agencies to receive information specific of each region.
- 57 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.
- 58 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 them overcome their situation. [www.msc.es/ssi/familiasInfancia/inclusionSocial/serviciosSociales/home.htm](#).
- 59 [www.imsero.es/imsero_01/prestaciones_y_subvenciones/donde_solicitar_pnc/index.htm](#)
- 60 (More information in the file 3)
- 61 The National Plan of Rental Housing, Rehabilitation, Urban Renovation and Regeneration 2013-2016.
- 62 For more information about the State Housing Plan and Rehabilitation 2009-2012 : [www.fomento.gob.es](#), well as in autonomous administrations.
- 63 For more information : [www.noticiaspsh.org/spip.php?rubrique137](#)
- 64 (More information in the file 4)
- 65 (More information in the file 6)
- 66 In the following link you can access to a leaflet that outlines the key points of this reform : [www.msc.es/gabinetePrensa/reformaSanidad/docs/cuadripticoReformaSanitaria.pdf](#).
- 67 Foreigners under eighteen receive healthcare under the same conditions as Spanish.
- 68 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.
- 69 To identify the appropriate location of INSS office use the following web link: [www.seg-social.es/Internet_1/Oficinas/index.htm](#)

70 sede.seg-social.gob.es/Sede_1/OficinadeRegistro/oficinaderegistro/index.htm?ssUserText=231629

71 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.

72 (More information in the file 7)

73 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 of 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.

74 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.

75 www.dependencia.imserso.es/dependencia_01/tramitacion/solicitud_tramitacion/index.htm

76 www.dependencia.imserso.es/dependencia_01/tramitacion/ccaa_dt_imserso/index.htm

77 www.dependencia.imserso.es/dependencia_01/normativa/texto_ley/titulo_uno/prestaciones_saad/index.htm

78 More information on : www.caritas.es/qhacemos.aspx.

79 www.cruzroja.es/isocial/home

80 www.redacoge.org/

81 www.gitanos.org/

82 www.gitanos.org/que-hacemos/areas/empleo_y_formacion_profesional/acceder.html

83 www.unionromani.org/index_es.htm

84 More information on : www.msc.es/ssi/familiasInfancia/inclusionSocial/poblacionGitana/home.htm.

85 www.msc.es/ssi/familiasInfancia/inclusionSocial/poblacionGitana/programaDesarrolloGitano/home.htm

86 More information on : www.msc.es/ssi/familiasInfancia/inclusionSocial/poblacionGitana/consejoEstGitano.htm.

87 More information on : www.msc.es/ssi/familiasInfancia/inclusionSocial/poblacionGitana/planAccionGitano.htm.

88 www.msc.es/ssi/familiasInfancia/inclusionSocial/poblacionGitana/estrategiaNacional.htm

89 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 ».

90 www.gitanos.org/que-hacemos/areas/vivienda/nuestro_trabajo.html

91 www.unionromani.org/union_es.htm

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

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

94 Basic information about social assistance in Czech Republic can be found e.g. via following link : www.cssz.cz/en/information, accessed on April 9, 2013.

95 This limitation is not applicable on people older than 70 years and handicapped persons. Ministry of Labour and Social Affairs, available at www.mpsv.cz/cs/2, accessed on May 2, 2013.

96 Ministry of Labour and Social Affairs, available at www.mpsv.cz/cs/5, accessed on May 2, 2013.

97 Ministry of Education, Youth and sports, available at www.msmt.cz/socialni-programy/stipendijni-program-ref-pro-romske-vysokoskolske-studenty, accessed on May 4, 2013.

98 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>, www.msmt.cz/socialni-programy/podpora-inkluzie, www.msmt.cz/socialni-programy/asis-tent-pedagoga.

99 IQ Roma Servis, available at www.iqrs.cz/search.php?rsvelikost=sab&rstext=all-phpRS-all&rstema=164, accessed on May 2, 2013.

100 ROMEA (2013), available at www.romea.cz/sdruzeniromea/index.php?option=com_content&view=article&id=75&Itemid=97&lang=cs, accessed on May 2, 2013.

101 Information concerning programs on requalification: <http://portal.mpsv.cz/sz/obcane/navod>, portal.mpsv.cz/sz/obcane/rekvalifikace.

102 Ministry of Labour and Social Affairs, available at http://portal.mpsv.cz/sz/obecne/cinnosti_up, accessed on May 2, 2013.

103 Ministry of Labour and Social Affairs, available at <http://socialnireforma.mpsv.cz/cs/5>, accessed on May 4, 2013.

104 The Czech Social Security Administration, available at www.cssz.cz/cz/duchodove-pojisteni/davky/, accessed on May 4, 2013.

105 Social Inclusion through the Social service, p. 26-27, 2007, European Roma Rights Centre ; Númena, available at www.numena.org.pt/ficheiros/Socialni%20zaclenovani%20prostrednictvim%20socialnich%20sluzeb_CZ.pdf, accessed on May 10, 2013.

106 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.

107 Social Inclusion through the Social service, p. 28-29, European Roma Rights Centre ; Númena.

108 *Ibid.*, p. 30-32.

109 Social Services Act No. 108/2006 Coll., Division 3, § 91.

110 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.

111 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 level

1.1. European Union's rules

The EU only provides legal remedies against its Institutions¹ and not against Member States, their agencies or 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.

The EU defined the concept of discrimination for this purpose. 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 provide remedies and make them accessible to everyone³. NGOs or any other legal entity should be able to bring and conduct a legal action on behalf of any Roma persons who seek 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, victims who are not EU citizens are entitled to special protection, in particular related to the right to be informed in their own language. This includes the right to interpretation, the right to translation of essential documents and that Member State pay for the interpretation and/or translation costs⁸. In addition Member States should place the burden of proof upon the respondent to the case. This requires the person who is sued to prove he/she did not discriminate against the victim who raised the case⁹. However, this only applies to civil and administrative cases and not ones of a criminal nature.

Finally, according to decisions of the European Court of Justice (ECJ), EU law is directly effective and can be relied upon by citizens even if their national State does not include such provisions in domestic law¹⁰. If a right exists in the European legislation, but not in national legislation, a citizen can still rely upon it before a national jurisdiction¹¹. If there is any doubt about the interpretation or validity of EU law, the national judge should refer the case to the Court of Justice¹². Moreover, EU citizens possess a right for compensation from a Member State if it has 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 (ECtHR). Thus, as written in the European Convention on Human Rights, anyone is allowed to make an appeal whenever a State, which ratified the Convention, violated one of these rights (including the ones within the Protocols)¹³. However, any application should occur only after all the remedies at national level have been used. It is worth noting that the ECtHR is divided into five Chambers and a Grand Chamber. If the decision taken by a Chamber does not suit the party to the case, they have three months following the delivery of this judgment to request a new judgment of the case by the Grand Chamber (i.e. referral) which will decide whether or not such referral is appropriate (i.e. when there is no other serious question of interpretation or inconsistency with a previous judgment of the ECtHR). If the Grand Chamber decides to consider the case, its decision is final and binding. If the Grand Chamber refuses the case, the decision taken by the Chamber becomes binding and cannot be appealed. At national level, the rights mentioned in this Convention can also be reused before a national court. Member States should also guarantee that a victim can access effective remedies in their countries¹⁴. As anyone can make an appeal to the ECtHR, NGOs can also represent individuals at the Court.

2. The possible recourses to be taken within the Council of Europe

As seen previously in the reference book, the Member States can be the first ones responsible for discriminating against Roma persons. The only legal recourse that Roma persons have to defend their rights is with the European Court of Human Rights (ECtHR). Several stages are to be taken into account whenever someone wants to have recourse before the ECtHR :

- **admissibility stage** : the first step is to complete an application form, in one of the Member States' languages, explaining clearly your case and send it, with the document requested to the Court Registrar¹⁷. The Court will consider the facts that are alleged to violate the Convention and apply a checklist in order to consider whether the application is procedurally compliant. This "admissibility criteria" includes checks relating to time period, the status of the applicant and whether all domestic remedies have been exhausted. 90 % of the applications do not reach the second stage as they do not match the admissibility criteria. From the application form, the ECtHR will decide whether or not your case can go to

the second stage. If your application is rejected, the decision is final and the procedure stops here ;

- **friendly settlement** : If your application has been accepted as admissible the ECtHR will try, first, to solve the problem by reaching a friendly settlement between the applicant and the respondent State ;
- **judicial procedure** : If there is no a successful friendly settlement the ECtHR examines the application further and decides whether or not a violation of the Convention occurred. From that stage starts the judicial procedure.

To reach the second stage and move on from the admissibility criteria your application must match the ECtHR's conditions to have recourse. Therefore:

- the recourse should relate to one of the rights enshrined in the Convention ;
- the violation must have happened after the State concerned had ratified 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 ECtHR must be used as a last resort. You can have recourse only after using all the remedies available in the State violating your rights and have already received the final decision of the highest court of the country ;
- you must make your application within 6 months from the moment this final decision has been pronounced.

This process before the ECtHR can take a lot of time. Due to the heavy caseload before the ECtHR it is taking longer and longer to process cases and to reach decisions. It can take a year before the ECtHR examines your application. The earlier you apply the better. If a danger is imminent your case can be examined quicker.

The ECtHR does not have authoritative power on the national level, their power is essentially political. Thus, it cannot overturn domestic court decisions; this stems from the principle that the ECtHR is not a "Court of Appeal". However, it can offer compensation for the violations occurred and direct the respondent State to refund the expenses that an applicant has incurred²⁹.

UNITED KINGDOM

1. National Legislative Texts

There are two key pieces of legislation available to, inter alia, Gypsy/Traveller communities, for protection against unlawful acts of the UK and its devolved institutions, such as 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 majority 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 comprise a group of absolute and qualified rights some of which are highly relevant to Gypsy/Traveller groups.

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 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

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 jurisdictions 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.

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). The HCJ is the highest court in the Scottish system in relation to criminal cases. However, if an issues relating to human rights arises then the case can be referred to the Supreme Court as a "devolution issue". The Supreme Court does not make a decision but merely refers the case back to the HCJ with recommendations. Thus, the HCJ retains the power ultimately to resolve 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.

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."

There is the possibility that such "positive obligations" could also be placed upon the State in the context of other issues involving the Gypsy/Traveller community. 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."

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 www.gardencourtchambers.co.uk/practice_areas/gypsy_and_traveller_rights.cfm.

FRANCE

1. The national legislative texts

a) Current laws about discrimination are based (see in the appendix) :

► on the Penal code

- article 225-1²⁸ 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 a "race" ;
- article 225-2²⁹ provides penalties for discrimination in the fields of employment, housing, education and access to goods and services ;
- article 432-7³⁰ provides penalties when the discrimination is committed by a person who holds public authority or who has a public service remit when carrying out their duties.

► Labour code :

- article L.122-45³¹ provides the prohibited grounds for basing a decision upon in relation to labour matters. As regards Roma : "(...) his/her membership or non-membership whether true or presumed of an ethnic group, a country, a race (...)".

b) The laws against racist offence can be useful. Many section of the law can be used for provocation relating to discrimination, racial hatred or defamation/violence. See table in appendix.

2. The possible recourses

2.1. Independent authority : the Human rights defender³³

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 country³⁴.

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 refers the case to 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).

2.2. The judicial authorities

In those cases, it is safer to ask help of an association or a lawyer.

► Criminal court

The victim of discrimination may file a complaint³⁵. 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 July 2001, the law³⁶ 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 as a fundamental right that requires to be 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 53.2³⁷ of the Constitution and regulated in different procedural laws. This procedure allows access to the courts in order to challenge those acts considered a violation of fundamental rights, including equality.

However, there are rights that are not recognised to foreigners, as it is the case in those mentioned in Article 23 of the Constitution³⁸ 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 Elections³⁹.

Discrimination is reflected in the Spanish Penal Code, considering it a crime⁴⁰ 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' Statute⁴¹ highlights as a *"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"*.

The Immigration law⁴² 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 Xenophobia⁴³ 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 aimed at combatting racism and xenophobia⁴⁴.

In addition, through specific legislation⁴⁵, measures are set up to ensure the principle of equal treatment and non-discrimination on grounds of racial or ethnic origin. Their aim is to promote real and effective equality in education, health, benefits and social services, housing and in 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 Origin"*⁴⁶ and *"Reversal of the Burden of Proof"*⁴⁷ 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 motivation⁴⁸).

Despite existing legislation in Spain, the regulation is insufficient, especially because of the difficulties of proving discrimination disguised, and to invoke this right⁴⁹.

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, it can be challenged via **Civil Proceeding** in order to obtain compensation.

If discriminatory attitudes occur within the administration, or in the context of an employment relationship,

the Court for Contentious Administrative Proceedings and Labour will have jurisdiction respectively. This is subject to being able to use Criminal Proceedings whenever the conduct can be a crime included in the Penal Code.

1.A. Procedure for reporting crimes of discrimination in the Criminal proceeding

► 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 prosecutor⁵¹ of the town⁵² ;
- 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 factor 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 from imprisonment to disqualification from public office or a fine. In these cases there is also the need to compensation the victim.

The procedure 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.

These procedures are exempt from payment of court fees⁵³.

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 victim can go to the civil courts to claim compensation.

This procedure requires a lawyer and a 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 First Instance.

1.C. Procedure for reporting discrimination made by a public administration

If discrimination is considered a crime under the Penal Code criminal proceedings will generally follow (as outlined in the previous section). That is, if the administrative court believes the crime of discrimination has occurred, it will be referred to the Instruction Court.

If the discrimination is not a crime under the Penal Code : it will be conducted through a preferential and summary procedure⁵⁴ to be solved in a short period of time (around a month).

These procedures are exempt from payment of court fees⁵⁵.

When the citizens sues the administration (i.e., 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 authorised by law to do so ;

- any citizen in the exercise of popular action, where provided by law ;
- the prosecutor when so determined by law ;
- the parties must participate in the mandatory administrative proceedings assisted by a lawyer.

► How the appeal is lodged :

The administrative appeal is initiated in 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 cannot override or amend the acts or decisions of public authorities. However, 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 free information line (900 101 025).

It is also possible to turn to Ombudsmen within specific Autonomous Communities : www.defensordelpueblo.es/es/Enlaces/index.html

► Entities that provide support :

- **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 centers for victims of discrimination: 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 specialised 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 organisations** : 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 Gitano⁵⁶ (FSJ) or Romani Union⁵⁷ among others. Besides, there are other organisations that work with immigrants as CEAIN⁵⁸, Cardjin Association⁵⁹, or human rights organisations as APDHA⁶⁰, SOS Racism⁶¹, etc.

that came into effect from 1 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.

This Anti-discrimination Law sets out the legal means of protection against discrimination within Section 10 :

*"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."*⁶²

The Anti-discrimination law further specifies that in the event that 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 appeal to such organisations or institutions in order to get assistance or counselling.

It is not competent for an individual to raise a judicial action directly against 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

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 and education.

The most important Act regarding the equality principle is the Anti-discrimination Law No. 198/2009 Coll.

"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

The 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 and two 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.

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 :

*"Everyone may assert, through the prescribed procedure, her rights before an independent and impartial court or, in specified cases, before another body."*⁶³

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 civil proceedings it is crucial that the onus of proof is completely on the side of complainant⁶⁴ 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 delivery of the decision. Against the decision of the second instance court, it is possible to file extraordinary appeal, in certain cases within 2 months from the delivery of the decision and in such case it is the Su-

preme Court that shall decide. If the person has a suspicion that fundamental rights or freedoms were 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 of an individual. In this kind of proceeding, 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 suspect. 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 recourse against illegal decisions or actions 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 act⁶⁵, and on the action against unlawful interference⁶⁶. Regional courts make decisions in administrative proceedings, against the decision it is possible to raise a 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 turn 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.

- 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.
- 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" It is also competent, under Article 33, for another State that is signatory to the Convention to raise an application against any other State, but this practice is rarely used.
- 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.
- 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](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 : www.echr.coe.int/ECHR/EN/Header/Applicants/Apply+to+the+Court/Checklist
- 19 For a quick introduction on the admissibility criteria see the video summarizing the conditions : www.youtube.com/watch?v=mcbDDhs5ZVA&feature=plcp&context=C3oefc93UDOEgsToPDsklpNWkEYVYZOOvXrNxqMNLEe
- 20 Have also a look at the Question and Answer file of the ECHR on the whole procedure : www.echr.coe.int/ECHR/EN/Header/Applicants/Information+for+applicants/Frequently+asked+questions
- 21 See as well the case processing flow charts : www.echr.coe.int/ECHR/EN/Header/The+Court/How+the+Court+works/Case+processing
- 22 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).
- 23 They are called at the UN The human rights treaty bodies. For more information about them, see : www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx or <http://www2.ohchr.org/english/bodies>
- 24 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>
- 25 See : www.legislation.gov.uk/ukpga/1998/42/introduction.
- 26 Section 6 Human Rights Act 1998 : footnote one.
- 27 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 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.

www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTL000006417831&cidTexte=LEGITEXT000006070719

29 www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTL000026268210&cidTexte=LEGITEXT000006070719

30 www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006070719&idArticle=LEGIARTL000006418508&dateTexte=20091207

31 www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006072050&idArticle=LEGIARTL000006646204&dateTexte=20101107

32 In Penal Code : <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070719>

33 Défenseur des Droits (DDD) : www.defenseurdesdroits.fr

34 www.defenseurdesdroits.fr/contacter-votre-delegate

35 vosdroits.service-public.fr/F1435.xhtml

36 www.legifrance.gouv.fr/affichTexte.do;jsessionid=F4503FEB5BA850AE8ADFDB3EBCE0D2A8.tpdj011v_3?cidTexte=JORFTEXT000000588617&categorieLien=id

37 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.

38 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."

39 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.

40 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. "

41 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. "

42 According 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.

43 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.

44 www.oberaxe.es/quienes

45 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 gives 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.

46 Regulated 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.

47 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..

48 Discrimination and the Roma Community. Annual report FSG 2007. In Depth: Study of 9 cases of discrimination. FSG. 2007. Madrid.

49 The principle of equality and non-discrimination in the workplace. Raúl Hernández Cuevas. 2007. <http://noticias.juridicas.com/articulos/40-Derecho%20Laboral/200702-989785263254556.html> (Consulted on 05/05/2013)

50 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).

51 www.fiscal.es/El-ciudadano.html?cid=1240559967605&pagename=PFiscal%2FPage%2FFGE_sinContenido

52 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

53 Law 10/2012 on legal fees. Published in BOE no. 280, november 21, 2012.

54 Law 62/1978, of December 26, Judicial Protection of Fundamental Rights of the Persons.. Published in BOE no. 3 January 03, 1979.

55 Law 10/2012 on legal fees. Published in BOE no. 280, november 21, 2012.

56 www.gitanos.org

57 www.unionromani.org/asos_es.htm

58 www.ceain.acoge.org/?lang=es

59 www.asociacioncardijn.org

60 www.apdha.org/index.php

61 www.sosracismo.es

62 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

63 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

64 In certain anti-discrimination civil proceedings the onus of proof is shared.

65 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.

66 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.

APPENDIX

Appendix European level

Appendix 1 : How does the European Union 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

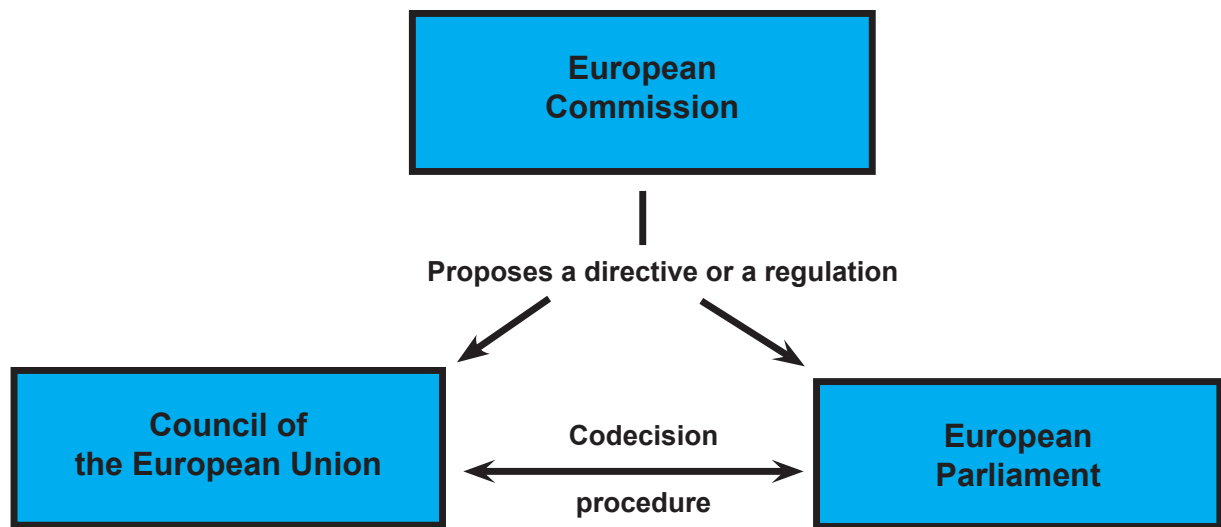
Appendix 5 : Legislation about racist offense

Appendix 6 : Discriminations in labour competent jurisdictions

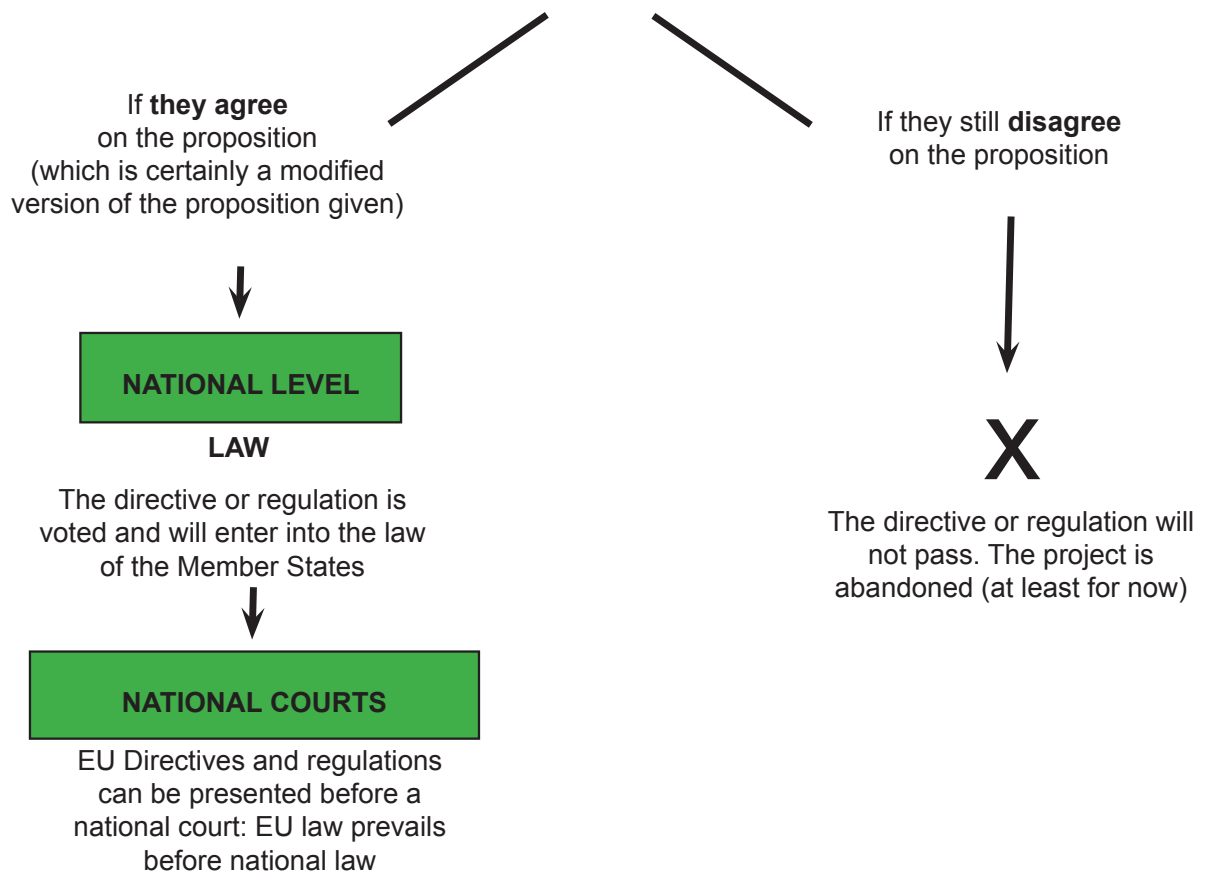
Appendix Spain

Appendix 6 : social services websites (by each autonomous community)

Appendix 1 : How does the European Union 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 2 : 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 states¹.

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 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.

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.

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.

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.

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 Immi-

gration 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, Breems 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 re-considered, 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 sources .

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 rights ; and also human rights act and equality act, Race Relations Act 1976; notingthatindefinitedetentionwithout trial whollynegates the right to liberty for an indefiniteperiod.

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 race¹ 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"² 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. with this secondary legislation providing explicit protection for unlawful discrimination against Irish Travellers under the category of race³.

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.

¹ Section 9 Equality Act 2010.

² Department of Justice (2013) "Jurisdiction List Guidance for Employment Tribunal" (London : Department of Justice).

³ Article 6 Race Relations Order (Amendment) Regulations (Northern Ireland) Order 2003.

Appendix 3 : 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	1-year imprisonment and A € 45 000 fine	1 year for religious of racist provocation 3 months for provocation relating to sexual orientation
Public defamation	Offence	Articles 23, 29, paragraphs 1, 32, paragraphs 2 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 ²	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 ³ 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 ⁴ 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

1 www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006070722&dateTexte=20080312

2 www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006070719&idArticle=LEGIARTI000006419520

3 www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006070719&idArticle=LEGIARTI000006419501&dateTexte=

4 www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006070719&idArticle=LEGIARTI000006419503&dateTexte=20130409

Appendix 6 : Discriminations in labour competent jurisdictions

		Civil courts	Criminal court	Administrative court
Competence		<p>« Conseil des prud'hommes » Labour court : Discrimination in labour relations (for example : anti-union, sex discrimination) :</p> <p>District Court : Outside contractual relationship</p>	<p>Criminal court: Offence of discrimination, moral or sexual harassment, infringing to the principle of equality between women and men Competence : private and public sphere</p>	<p>Administrative court : in the field of public service in order to obtain an action for damage and cancellation</p>
	Applicants	Individuals, trade unions, associations (under conditions)	Individuals, public prosecutor, trade unions, associations under conditions)	Individuals, trade unions
Request	Deadline to take legal action (prescription)	<p>30 years (for reparation of injury) 5 years for salary payment for example</p>	3 years	2 months of the date of the notification of the discriminatory decision 4 years for compensation
	Burden of the proof	Sharing between applicant and defendant testimonies, writings, minutes, comparison	Applicant has the burden of proof with the public prosecutor and the investigating judge By any means : confession, writings, testing	Sharing between applicant and defendant
Proofs	Mode of proof	Free : testimonies, writings, minutes, comparison of situation (with expert panels)		Free
	Role of the judge for taking evidence	<p>Contradictory procedure : The judge may order production of information as it deems necessary</p>	<p>Inquisitorial approach Procédure inquisitoire</p>	<p>Inquisitorial approach Procédure inquisitoire</p>

Appendix 7 : Social services websites (by each autonomous community)

ANDALUCIA

<http://www.juntadeandalucia.es/igualdadybienestarsocial/opencms/system/modules/com.opencms.presentacion-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=ab8344fafo8ad210VgnVCM1000002fo30003RCRD&vgnextchannel=dad56fc85c97d210VgnVCM1000002fo30003RCRD&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=infciu>

<http://ie.juntaex.es/>

GALICIA

<http://traballoeibenestar.xunta.es/portada>

ISLAS BALEARES

<http://www.caib.es/sacmicrofront/contenido.do?idsite=567&cont=21357&lang=es&camp=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?vgnextfmt=default&vgnextchannel=fe8a171c30036010VgnVCM100000dcoca8coRCD>

<http://www.madrid.org/cs/Satellite?c=Page&cid=1273687122273&idTema=1142598549936&language=es&pagenam e=ComunidadMadrid%2FEstructura&pid=1273078188154>

<http://www.madrid.org/cs/Satellite?c=Page&cid=1109265463086&language=es&pagenam e=ComunidadMadrid%2FEstructura>

MELILLA

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.bsosocial.gva.es/portal/portal?id=S>

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<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:en:HTML>

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
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:158:0077:0123:en:PDF>

Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, OJEU 21 March 2001
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:081:0001:0007:EN:PDF>

Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas, OJEU 15 September 2009
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:243:0001:0058:en:PDF>

Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, OJEU 13 December 2005
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:0034:EN:PDF>

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<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:141:0001:0012:EN:PDF>

Council Directive 77/486/EEC of 25 July 1977 on the education of the children of migrant workers, OJEU 06 August 1977
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31977Lo486:EN:HTML>

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<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:en:HTML>

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<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:026:0001:0021:EN:PDF>

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Agreement between the European Union and the Republic of Moldova amending the Agreement between the European Community and the Republic of Moldova on the facilitation of the issuance of visas, OJEU 20 June 2013

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:168:0003:0009:EN:PDF>

Agreement between the European Community and the Republic of Montenegro on the facilitation of the issuance of visas, OJEU 19 December 2007

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:334:0109:0119:EN:PDF>

Agreement between the European Community and the Russian Federation on the facilitation of the issuance of visas to the citizens of the European Union and the Russian Federation, OJEU 17 May 2007

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:129:0027:0034:EN:PDF>

Agreement between the European Community and the Republic of Serbia on the facilitation of the issuance of visas, OJEU 19 December 2007

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:334:0137:0147:EN:PDF>

Agreement between the European Union and Ukraine amending the Agreement between the European Community and Ukraine on the facilitation of the issuance of visas, OJEU 20 June 2013

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:168:0011:0017:EN:PDF>

→ Council of Europe legislation

European Social Charter (revised), Strasbourg, 3 May 1996

<http://conventions.coe.int/Treaty/en/Treaties/Html/163.htm>

List of countries which ratified the revised version

<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=163&CM=8&DF=&CL=ENG>

List of the provision to the Charter per country

http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/ProvisionsIndex_en.asp

Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 November 1950

http://www.echr.coe.int/Documents/Convention_ENG.pdf

Convention on preventing and combating violence against women and domestic violence, Istanbul, 11 May 2011

<http://www.conventions.coe.int/Treaty/EN/Treaties/Html/210.htm>

→ International legislation

United Nations Convention on the Rights of the Child of 20 November 1989

<http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

International Covenant on Economic, Social and Cultural Rights, of 16 December 1966

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

International Covenant on Civil and Political Rights, 16 December 1966
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

Unesco Convention against Discrimination in Education, Paris, 14 December 1960
http://portal.unesco.org/en/ev.php-URL_ID=12949&URL_DO=DO_TOPIC&URL_SECTION=201.html

Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 7 November 1962
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/MinimumAgeForMarriage.aspx>
List of countries which ratified it
http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVI-3&chapter=16&lang=en

Optional Protocol to the Convention on the Rights of the child on the sale of children, child prostitution and child pornography, New York, 25 May 2000
http://ec.europa.eu/anti-trafficking/download.action?nodePath=%2FLegislation+and+Case+Law%2FInternational+Legislation%2FUnited+Nations%2FUN+optional+Protocol+on+sale+and+pornography_en.pdf&fileName=UN+optional+Protocol+on+sale+and+pornography_en.pdf&fileType=pdf

Convention on the Rights of Persons with Disabilities, New York 13 December 2006
<http://www.un.org/disabilities/convention/conventionfull.shtml>

Convention on the elimination of all forms of discrimination against women, 18 December 1979
<http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#intro>

→ Jurisprudence

European Court of Human Rights

Case of S.W. v. The United Kingdom (Application no. 20166/92), 22 November 1995
<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57965>

Court of Justice of the European Union

CJEC, Costa c/ Enel, 15 July 1964, Case 6/64
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61964CJ0006:EN:HTML>

CJCE, Van Gend en Loos, 5 February 1963, Case 26-62
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61962CJ0026:EN:HTML>

Studies

→ Council of Europe Commissioner for Human Rights

"Human rights of Roma and Travelers in Europe", Commissioner for Human Rights of the Council of Europe, Council of Europe Publishing, February 2012
http://www.coe.int/t/commissioner/source/prems/prems79611_GBR_CouvHumanRightsOfRoma_WEB.pdf

Webpages

→ European Commission

"Infringements of EU law", European Commission, 21 March 2013
http://ec.europa.eu/eu_law/infringements/infringements_en.htm

Information on the transitional rules governing the free movement of workers from, to and between the new Member States
<https://ec.europa.eu/eures/main.jsp?&countryId=&accessing=o&content=1&restrictions=o&step=o&acro=free&lang=en>

Table overview of the decisions taken by each Member States on the conditions of transitional measures for Romanian and Bulgarian workers (PDF file)

ec.europa.eu/social/BlobServlet?docId=119&langId=en

List of the national employment services

<http://ec.europa.eu/eures/main.jsp?catId=o&lang=en&acro=links&orgTypeId=o&myOrgTypeId=1>

→ **European Parliament**

Procedure file of the EU/Ukraine Visa Facilitation Agreement: amendments and additions to EC/Ukraine Agreement, 2012/0138(NLE)

<http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2012/0138%28NLE%29&l=EN>

Procedure file of the EC/Moldova Visa Facilitation Agreement: amendments and additions, 2012/0140(NLE)

<http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2012/0140%28NLE%29&l=EN>

European Parliament resolution of 5 April 2011 on priorities and outline of a new EU policy framework to fight violence against women

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:204:0023:0036:en:PDF>

And press release

<http://www.europarl.europa.eu/news/en/pressroom/content/20110405IPR16956/html/Parliament-urges-automatic-prosecution-for-sex-crimes>

→ **European Union Agency for Fundamental Rights (FRA)**

Fundamental Rights Agency

<http://fra.europa.eu/en>

→ **European Court of Human Rights**

European Court of Human Rights website

<http://www.echr.coe.int/Pages/home.aspx?p=home>

The application form to apply to the Court:

<http://www.echr.coe.int/ECHR/EN/Header/Applicants/Apply+to+the+Court/Application+pack/>

Information requested and documents to be sent to apply to the Court:

<http://www.echr.coe.int/ECHR/EN/Header/Applicants/Apply+to+the+Court/Lodging+an+application/>

Simulation of a check-list to apply to the Court:

<http://www.echr.coe.int/ECHR/EN/Header/Applicants/Apply+to+the+Court/Checklist/>

Video introducing the admissibility criteria by summarizing the conditions:

<http://www.youtube.com/watch?v=mcbDDhs5ZVA&feature=plcp&context=C3oefc93UDOEgsToPDsklpNWkEVYZOOvrxNqMNLEe>

The Question and Answer file of the European Court of Human Rights on the whole procedure: <http://www.echr.coe.int/ECHR/EN/Header/Applicants/Information+for+applicants/Frequently+asked+questions/>

The case processing flow charts:

<http://www.echr.coe.int/ECHR/EN/Header/The+Court/How+the+Court+works/Case+processing/>

→ International organisations

Website of the United Nations on the human rights treaty bodies

<http://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx>

<http://www2.ohchr.org/english/bodies/>

Website on complaints mechanism at international level

<http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx>

Website on procedures at international level

<http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#proceduregenerale>

UNITED KINGDOM

File 1

When a treaty requires ratification, accession, acceptance or approval, the Government does not usually proceed with this until a period of twenty-one days has elapsed from the date on which the text of such a treaty was laid before Parliament by Her Majesty's command, a practice which allows Parliament the opportunity to consider commitments which the Government is proposing to enter.

Hardly any treaties laid under the 'Ponsonby Rule' are debated on the floor of the House; whether or not a treaty is debated is a matter for the Government and its business managers, although it is conceivable that the Opposition or a backbencher could secure a debate.

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. 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 Equality Act 2010 replaced the Human Rights Act 1998, which provided rights of the convention. The Race Relations Amendment Act 1976 and (2000 Act) replacing all other previous legislations.

In addition, often cases of discrimination fail to be reported or represented. Connors VS the UK, Case Law 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.

The Human Rights Act:

<http://www.equalityhumanrights.com/human-rights/what-are-human-rights/the-human-rights-act/>

The Human Rights Act (HRA) incorporates most of the European Convention on Human Rights (ECHR) into UK domestic law. It came into force throughout the UK on 2nd October 2000 signifying a major constitutional change. It marked the beginning of a new era by giving the Courts the mandate to protect human rights and interpret legislation in a way that is compatible with the ECHR (where possible) and to issue declarations of incompatibility where this cannot be achieved. The Human Rights Act places an obligation on public authorities to act in a way that is compatible with the ECHR.

<http://www.legislation.gov.uk/ukpga/1976/74:>

<http://www.legislation.gov.uk/ukpga/1976/7>

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.

Session2. In relation to the 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.

CASE Tried under the RR Act1976: (Clark 2006, McKinney 2003).. Only from, October 2008 the Scottish Gypsy/Travelers became recognised as an ethnic distinct group under the Race Relation Act 1976 (as amended 2000).⁴

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.

<http://www.ukba.homeoffice.gov.uk/sitecontent/applicationforms/bulgariaromania/Employingabulgarianromano408>

UK appeals court rules criminal records disclosure law violates human rights: <http://jurist.org/paperchase/2013/01/uk-appeals-court-rules-disclosure-law-violates-human-rights.php>

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.

File 2

Tier 1: This category is for entrepreneurs, investors, and graduate students, and those very few top people who meet the requirements of the exceptional talent visa category. The UK also recently introduced a Post Study Entrepreneur Visa for foreign graduates.

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

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

Tier 4: This category is for foreign students wishing to study in the UK.

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

Act 1998 holding devolved powers for education, housing and health, therefore, can act to ensure an inclusive system independently within these matters

<https://www.gov.uk/devolution-settlement-wales>

Devolved powers for education, housing and health in Scotland.

<http://www.scottish.parliament.uk/visitandlearn/25488.aspx>

"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."

<http://www.bailii.org/ew/cases/EWCA/Civ/2012/1363.html>

File 3

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

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

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

www.bre.co.uk/sap2005

"We let pitches in a way that ensures fair and open access for all. We take Gypsies/Travellers' views into account in delivering our services, and we are responsive to their needs". (Performance Standard AS6.1) The Scottish Planning

Policy 3: Planning for Homes (SPP3), revised in 2008. "Local authorities should consider the needs of all Gypsies and Travellers for appropriate accommodation within their housing need and demand assessment and take these into account in preparing their local housing strategies and make provisions for existing communities and as well as for new arrivals and identify suitable sites for Gypsies and Roma communities. Planning authorities should ensure that Gypsy and Traveller communities are involved in decisions about sites for their use" (Scottish Government 2008: 21)

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

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.

The Scottish Government published in 2004 Guidelines for managing unauthorised camping by Gypsies/Travellers in Scotland

<http://www.scotland.gov.uk/Publications/2004/12/20417/48826>

Course of redress for Roma individuals experiencing harassment would be using the Equality Act 2010 in the first instance.

Many LA and/or Police agencies now have Gypsy/Traveller liaison officer allowing 'remote reporting' of racist incidents.

<http://www.scotland.gov.uk/Publications/2004/12/20417/48826>

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 2001 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.

[http://www.scottish.parliament.uk/S3_Bills/Housing%20\(Scotland\)%20Bill/b36bs3-aspassed.pdf](http://www.scottish.parliament.uk/S3_Bills/Housing%20(Scotland)%20Bill/b36bs3-aspassed.pdf)

The Public Order Act 1986 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

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

File 4

http://www.legislation.gov.uk/asp/2000/6/pdfs/asp_20000006_en.pdf

[http://www.scottish.parliament.uk/S2_Bills/Further%20and%20Higher%20Education%20\(Scotland\)%20Bill/b26s2-aspassed.pdf](http://www.scottish.parliament.uk/S2_Bills/Further%20and%20Higher%20Education%20(Scotland)%20Bill/b26s2-aspassed.pdf)

Education (Scotland) Act 1980;

Standards in Scotland's Schools etc., Act 2000;

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."

Education (Additional Support for Learning) (Scotland) Act 2009

<http://www.legislation.gov.uk/ukpga/1998/31/contents>

<http://www.legislation.gov.uk/ukpga/1980/44/contents>

http://www.legislation.gov.uk/asp/2000/6/pdfs/asp_20000006_en.pdf

<http://www.educationscotland.gov.uk/earlyyears/about/index.asp>

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 children's charter which is in line 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.

<http://www.educationscotland.gov.uk/earlyyears/about/index.asp>

Directive 2005/36/EC on the recognition of professional qualifications came into force in 2007:

http://ec.europa.eu/internal_market/qualifications/policy_developments/legislation/index_en.htm

File 5

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. <http://www.companieshouse.gov.uk/about/miscellaneous/listeeaCountries.shtml>.

Romani Gypsies , Irish Travellers , Roma Scottish Travellers are all recognised ethnic groups in UK equality jurisprudence:

Commission for Racial Equality v Dutton [1989] 1 All ER 306.

O'Leary v Allied Domecq, 29/8/2000, CL 950275.

http://books.google.co.uk/books?id=IN1Nj_ljUiUC&pg=PA6&lpg=PA6&dq=O'Leary+v+Allied+Domecq,+29/8/2000,+CL+950275.&source=bl&ots=ZsrIY7skqh&sig=jZ8PwNoNdEBoj6K13jJAgPohTd8&hl=en&sa=X&ei=iVOTUpLhOseRhQeKxoHYAw&ved=oCDwQ6AEwAg#v=onepage&q=O'Leary%20v%20Allied%20Domecq%2C%2029%2F8%2F2000%2C%20CL%20950275.&f=false

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.

MacLennan v Gypsy Traveller Education and Information Project, Employment Tribunal (Aberdeen) S/13272/07 f599/132.

<http://www.casecheck.co.uk/Default.aspx?tabid=1184&EntryID=11243>

Section 149 Equality Act 2010.

Public Sector Equality Duty , 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

(b) Positive Action has two provisions in the Equality Act 2010:

Sections 158 and 159 Equality Act 2010.

http://www.barcouncil.org.uk/media/165051/positive_action_guidance_2012.pdf

Equal Rights Review, "Educational Equality for Gypsy, Roma and Traveller Children and Young People in the UK" (London: Equal Rights Review).

Parry, G. et al. (2004) "The Health Status of Gypsies and Travellers in England"(Sheffield: University of Sheffield). http://www.shef.ac.uk/polopoly_fs/1.43713!/file/GT-report-summary.pdf

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.

<https://www.gov.uk/government/publications/gypsy-and-traveller-caravan-count-january-2013>

File 6

<http://www.treatmentabroad.com/eu/what-are-my-rights/overview-of-the-directive-on-cross-border-healthcare/>.

<http://www.sochealth.co.uk/health-law/>

"The 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

http://www.scan-health.co.uk/wp-content/uploads/2011/08/EU-Treatment-Guide_270611.pdf

Hardship 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.

http://ecdc.europa.eu/en/publications/publications/0907_ter_migrant_health_hiv_access_to_treatment.pdf

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 <http://www.hhrjournal.org/index.php/hhr/article/view/432/708>

Health care system in the UK in relation to medical care and prescription charges:

http://fra.europa.eu/sites/default/files/fra_uploads/180-ROMA-HC-EN.pdf

<http://www.dhsspsni.gov.uk/index/hss/equality/eq-travellers/all-ireland-traveller-health-study.htm>

File 7

<http://www.legislation.gov.uk/ukpga/1998/42/introduction>.

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.

<http://www.legislation.gov.uk/ukpga/1973/18>.

the Human Rights Act 1998, and Equality Act 2010

<http://www.legislation.gov.uk/ukpga/1989/41/introduction>.

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/>.

Commission for Racial Equality (2006) "Common Ground": Equality, Good Race Relations, and Sites for Gypsies and Irish Travellers", (London: Commission for Racial Equality).

Government (2012) National Strategy on Roma Inclusion (London: UK Government), accessible at <http://ec.europa.eu/justice/discrimination/roma/national-strategies/>.

Department of Justice (2013) "Jurisdiction List Guidance for Employment Tribunal" (London: Department of Justice

See: <http://www.legislation.gov.uk/nia/2011/12/contents>.

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/>.

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/>.

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-volo1-01.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>.

File 8

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.equalityhuman-rights.com/key-projects/good-relations/gypsies-and-travellers-simple-solutions-for-living-together/gypsies-and-travellers-research-reports/>

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 2012.

See: <http://www.legislation.gov.uk/ukpga/2012/5/contents> ancillary regulations that flowed from it

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).

<https://www.gov.uk/browse/benefits/entitlement>,

If the judiciary system 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.

<http://www.lawcentreni.org/policy/policy-briefings/201.html>.

File 9

The first is the Equality Act 2010, which has been considered in other submissions, so the focus here is on the Human Rights Act 1998 (the HRA).

See: <http://www.legislation.gov.uk/ukpga/1998/42/introduction>.

Section 6 Human Rights Act 1998: footnote one.

Section 3 Human Rights Act 1998: footnote one.

Section 6(3) Human Rights Act 1998: footnote one.

Please see concise information on the Supreme Court and the UK Judicial system at: <http://www.supremecourt.gov.uk/about/uk-judicial-system.html>.

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>.

Schedule 6 Scotland Act 1998:

<http://www.legislation.gov.uk/ukpga/1998/46/schedule/6>.

Sections 36(6) and 34(3) Scotland Act 2012:

<http://www.legislation.gov.uk/ukpga/2012/11/contents>

FRANCE

Codes useful for the users:

Code pénal, Dalloz, 2014

Code de l'éducation, Dalloz, 2013

Code de l'action sociale et des familles, Dalloz, 2013

Code de l'entrée et du séjour des étrangers et du droit d'asile, Dalloz, 2014

Pedagogical kit :

- "Les Roms ont des droits !" : LDH, 2013

Websites :

Legifrance, public service for the dissemination of legislation (Constitution and all the applicable laws and regulations) : <http://www.legifrance.gouv.fr/>.

All the french legislation: constitutions, applicable laws, regulations, codes may be found there.

In particular :

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