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**ADVISORY COMMITTEE ON THE FRAMEWORK CONVENTION FOR
THE PROTECTION OF NATIONAL MINORITIES**

**COMMENTS OF THE GOVERNMENT OF SPAIN
ON THE THIRD OPINION OF THE ADVISORY COMMITTEE ON THE
IMPLEMENTATION OF THE FRAMEWORK CONVENTION FOR THE
PROTECTION OF NATIONAL MINORITIES
BY SPAIN**

(received on 9 November 2012)



**ALLEGATIONS OF THE SECRETARY OF STATE FOR SOCIAL SERVICES AND
EQUALITY IN CONNECTION WITH THIRD REPORT ON SPAIN OF THE ADVISORY
COMMITTEE ON THE FRAMEWORK CONVENTION FOR THE PROTECTION OF
NATIONAL MINORITIES OF THE COUNCIL OF EUROPE**

The following observations are made regarding the third opinion of the Advisory Committee on the Framework Convention for the Protection of National Minorities, based on the Third Report from Spain to the Council of Europe on 23 August 2012, and on the visit to Spain made from 12 to 16 December 2011. Additionally, we must bear in mind that the said report referenced the 2006-2008 period, while the third opinion reflected information collected after the above-mentioned visit to Spain.

Given that the various ministries with jurisdiction in the matter all participated in the preparation of the third report submitted by Spain, and with regard to the Romani people, the observations or nuances that are made by this Secretariat on the information and observations in this third opinion, must be completed with that provided by the various ministries involved.

In general, **we appreciate the recognition** by the advisory committee of the policies that are being implemented in Spain by the different levels of government, as well as the recognition of the progress experienced by the Roma in different key areas of social inclusion, such as education, health and housing, although a situation of full equality with the general population still does not exist. That said, we would like to add **the following new and/or additional information:**

○ **Issues for immediate action:**

-Take more resolute measures to implement effectively the policies aimed at improving the situation and the integration of the Roma, in close co-operation with Roma representatives; ensure that these policies are adequately resourced and are not disproportionately affected by budgetary restrictions.

In general, it should be noted that we continue to be committed to implementing policies aimed at improving the living conditions of the Roma. One example is the adoption, earlier in 2012, of the Strategy for the Inclusion of Roma in Spain 2012-2020, adopted by resolution of Council of Ministers on 2 March.

This strategy aims to continue the policies that have been showing good results so far. Thus, one must bear in mind that, although still far from achieving full equality, indicators have improved in recent years in terms of employment, education, housing and the fight against discrimination. The Government of Spain shares the vision advocated by the Advisory Committee, that is, taking full awareness of the need to maintain and improve these measures over the coming years, especially in view of the possible adverse consequences of the economic crisis and its impact on the most vulnerable sectors of the population. Accordingly, this reality has been present in both NRPs that Spain sends out yearly to the European Union (with particular reference to the case of the Roma in NRP 2011), and during the development of the Spanish Strategy for Social Inclusion of Roma 2012-2020, which strengthened elements of proven success and introduced new ones. We would highlight, for example, the



reinforced cooperation between administrations and the establishment of specific inclusion targets, such as the establishment of specific measures targeting the Romani people from other countries.

Regarding the strengthening of cooperation between the Autonomous Communities (hereinafter the Regions) we have taken up the work of the technical cooperation group with the Regions and local authorities (in this case, represented by the Spanish Federation of Municipalities and Provinces), aimed at obtaining and compiling information about programmes and Roma, sharing best practices, etc.

For the development of the strategy we have followed a participatory approach in line with the process followed for the development of the Action Plan for the Development of Roma 2010-2012. This process has involved consultations --through meetings, communications and mailings-- of eight ministries of the central government, state government, the Spanish Federation of Municipalities and Provinces (FEMP) and the most representative Roma organizations. In addition, the State Council of the Roma has been informed and has participated in the process from the start.

As regards the participation of Romani people in the policies, it should be noted, in 2012, the composition of the State Council of the Roma has been renewed through Ministerial Order SPI/2329/2011 of 24 August, announcing the selection process for the appointment of members to the State Council of the Roma in representation of Romani associations, **and** the completion of the process on 23 February 2012 by Resolution of the Secretary of State for Social Services and Equality. Subsequently, due to the dissolution of the member associations, we opened a new process and to cover the vacancies. (Ministerial Order SSI/1604/2012 of 9 July, announcing the selection process to appoint a new member to the State Council of the Roma, representing the Roma associations, and Resolution of 19 September 2012 of the Secretary of State for Social Services and Equality).

Similarly, we would mention that we have maintained the Council's involvement in the policies of the Central Government through the Council's working groups, with the representation of various Roma organizations, relevant ministries and experts. The Council was also consulted on various matters, such as during the preparation of the Draft Law on Equal Treatment and the Integral Strategy against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

As regards funding and the resources that are provided by the Ministry of Health, Social Services and Equality to programmes directly aimed at the Roma population, we would highlight the fiscal effort is made in the context of containment to address the problem of the budget deficit. At any rate, the government has decided to continue to maintain, although reducing the amount, the credit **23.16.231F.453.01** for the Roma Development Plan, through which the Central Government co-finances, along with the Regions and through the latter, the local governments, the comprehensive social intervention projects for the care, prevention of marginalization and integration of the Romani people. Likewise, we convene annual **subsidies for conducting volunteer and social cooperation programmes under the tax allocation of the Personal Income Tax (IRPF for the Spanish initials)**.¹ These include programmes aimed specifically to Romani people, (social integration programmes and job placement),

¹ <http://www.mspsi.es/ssi/familiasInfancia/ongVoluntariado/subvenciones/IRPF/home.htm>



which recorded an increase in allocations every year until 2012. In 2011, the amount allocated by the Ministry to Roma under these subsidies, (including not only programmes funded under this section for the Roma, but also those run by Romani NGOs or pro-Roma associations targeting other groups, such as children or volunteering, amounted to €7,509,743.00.

-Investigate the reasons for the persisting concentration of Roma pupils in schools located in disadvantaged areas and with lower academic achievement, in order to eliminate these practices; ensure that the implementation of admission rules to schools does not result in discriminatory practices against Roma pupils.

Regarding this issue, it should be noted that the Strategy for the Inclusion of Roma in Spain 2012-2020 specifically contemplates measures to prevent the concentration of Roma students in certain schools or classrooms as one of the strategic lines of action in education.

The Integral Strategy against Racism, Racial Discrimination, Xenophobia and Related Intolerance also refers, in the section on education, to measures to reduce school segregation and concentration.

o **Description of the situation and recommendations for Articles**

Point 14

It should be noted that it states that the establishment of the Council for the promotion of equal treatment and non-discrimination of persons for racial or ethnic origin was established in 2010, when in fact the inaugural meeting of this body took place on 27 October 2009.

Accordingly, it is proposed that the paragraph be amended to contemplate the aforementioned fact. This same observation is applicable to paragraphs 40 and 153.

Point 34. Point 74 and recommendation 82. On the foreign Roma population

We appreciate the positive assessment made by the advisory committee on the approach applied to policies with Eastern Roma.

Additionally, it should be noted that the Spanish Strategy 2012-2020 recognizes the phenomenon of migration of Roma from other countries (EU and non-EU) and includes, in complementary lines of action, a number of specific measures, based, as stated explicitly, on an inclusive approach, so as to achieve their participation in the measures and actions that target the Spanish Roma population. At the same time, and where circumstances recommend, we will implement specific measures and actions to promote and facilitate social inclusion. These activities will concentrate preferentially on:



- Protection of fundamental rights, through effective implementation of European instruments, particularly the directives on free movement and residence² and anti-discrimination.³
- Actions of basic care and mediation with social services.
- Actions supporting and monitoring schools.
- Encourage joining existing programmes and training activities and access to employment.
- Activities for health education and support for access and use of health services.
- Language teaching.
- Access to housing in inclusive settings.
- Promotion of transnational cooperation programmes, especially with Romania, with the support of the instruments provided by the European Social Fund.

For the development of these measures we will pay special attention to the involvement of local authorities, especially those municipalities where there is a greater concentration of Roma EU citizens, or who have special difficulties for reception and integration.

Point 39

It is claimed that Spain drafted an Equal Treatment Act which, among other things, created a Council for the promotion of equal treatment and non-discrimination of persons based on racial or ethnic origin with more powers than the present. This statement does not accurately reflect the reality that it is intended to reflect, because what that project created was an "Authority for Equal Treatment and Non-Discrimination", different from the present Council with powers referred to cases of discrimination for reasons other than racial or ethnic origin.

Also, while footnote 5 mentions that while the said bill was discussed and approved, it was postponed by the electoral process of 20 November, the current wording of the report might suggest that the bill was approved and is in force, so it is recommended that the clarification in that footnote be introduced in the body of the report.

Point 41

The Committee expresses its concern regarding the Council's lack of resources for the promotion of equal treatment and non-discrimination of persons based on racial or ethnic origin, it should be noted that the budget in 2011 allowed for the execution of all actions that were designated as priority by the Council and approved in the Annual Work Plan for 2011. Therefore, it can be said that the economic resources allocated to it were sufficient.

² European Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

³ European Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.



Data Collection. Point 47 and 48 and recommendation 51.

The Committee notes the problems in data collection, especially at regional and local levels, which has a negative impact on the identification of problems facing the Roma and limits the effectiveness of policies and measures. It indicates that there is a gap between the needs and the allocation of funds, due to the lack of precise information on the number and geographic distribution of the population.

It is stressed, however, that the volume and quality of data collected has grown in recent years, and is part of the lines of work of the government, citing the Action Plan for the Development of Roma in Spain 2010-2012 and the Council for the Promotion of Equal Treatment.

In this regard it should be noted that while there is not, in general, due to the legislation on data protection --which considers data referring to ethnicity as particularly protected data-- for official data, especially in for the forma of a census of Romani people, there is also a wealth of information, from studies, surveys and reports (most of them funded by the government), and derived from the management of related programmes.

It should also be noted that the strategy, along with the general need to obtain data on the indicators specified in the strategy, includes the objective of improving knowledge through the following measures:

- Support for studies that expand socio-demographic knowledge of the Roma population, fostering collaboration with the government bodies responsible for official statistics.
- Improvement of health information systems at the local, regional and national levels to identify needs and inequalities of the Roma, and maintenance of a longitudinal study on the health of the Roma community.
- Promotion of studies and research to assess the progress and difficulties of the educational situation of Roma students.
- Support for the development of studies and periodic statistics to analyze the situation of Roma in the labour market, as well as the analysis of pathways for the conversion and modernization of street vendors.
- Support for the development of tools, materials and specialized intervention methods, and the dissemination of those which have been successful.
- Support for the development of studies and research that help improve knowledge about discrimination exerted against the Roma.
- Promotion of the dissemination of best practices and the exchange of experiences and transfer of knowledge between different territories and institutions, with a focus on local initiatives.

To fulfill this objective, and the objective of strengthening cooperation with regional and local administrations, have begun to work to continue and boost the technical cooperation group on Roma within the Executive Committee of Directors general social services and inclusion of local authorities, bringing together state, regional and local authorities (through the Spanish Federation of Municipalities and Provinces). We have sent a draft questionnaire for member comments, which will be sent annually to for completion, and which should reflect population information, policies and funds.

Similarly, we plan to set up a working group on studies that will be comprised of the ministries with jurisdiction in the matter, experts and representatives of civil society.



Promotion of full and effective equality of the Roma

Point 55. The Action Plan indicates that no specific allocations have been made by the institutions involved, and that the amounts are included in the general budget, including funds for programmes that do not specifically target the Roma.

In this regard, it should be noted that while it is true that, in general, the budgets of the various ministries do not include specific items targeting programmes aimed at the Roma population, with the exception of the Roma Development Programme, funded by the state administration (Ministry of Health, Social Services and Equality), regional and local authorities (integral social intervention projects for the care, prevention of marginalization and inclusion of Roma through collaboration with the Regions and between them and the Local Authorities).

Thus, many of the actions contained in this Plan are financed with budget allocations targeting the most vulnerable sectors, including the Roma population, who have a significant presence in many cases. For example, tutoring programmes, (PROA programme, which makes specific reference to ethnic minorities as recipients), or relocation programmes and housing rehabilitation.

Along with these actions, which may be included in the budget with a specific or nonspecific allocation, and run by the government, --such as actions in programmes aimed at the general population, other studies and reports; cooperation agreements with various institutions, congresses, seminars, conferences and workshops--, there are also social and labour integration projects promoted by Roma associations and financed through the tax allowance of the Personal Income Tax, which are programmes that specifically target Roma. This is in addition to the annual grants for the maintenance of associations, or grants on the general regime, which are offered by the Ministry.

This **same point** indicates that the committee reported delays in the start of the implementation of the Action Plan 2010-2012. Similarly, **recommendation 60** calls for the implementation of the existing programmes and measures. In this regard, we have developed a system of indicators within a working group of the State Council of the Roma, as well as two reports monitoring the plan covering the years 2011 and 2012, submitted to the State Council of the Roma.

With regard to **recommendation 61**, which calls attention to the effects of the crisis on the Roma population, especially the most vulnerable, it should be noted that the Government of Spain shares this concern, and it is expressly reflected in the Strategy 2012-2020.

Point 85. Media. The Advisory Committee regrets the fact that the media contribute to the dissemination of stereotypes and prejudices. In this regard, we continue to fund annual publication prepared by Romani Union, Journalists against Racism, which analyzes the presence of Roma in the media.

The 2012-2020 Strategy also includes a measure in this area (under social awareness), which proposes the promotion of a communication strategy, including the promotion of self-regulatory codes for the media regarding the treatment of the information concerning Roma.



Point 97

This point refers to the application of Circular 1/2010 of the Police and Civil Guard, and claims that the application of the same permits preventive detention of illegal immigrants which leads, in practice, to a disproportionate number of arrests based on ethnic profiling, it should be noted that on 21 May 2012 the General Directorate of the Police adopted a circular banning quotas on immigration detention and indiscriminate raids and addresses the planning and execution of operational devices avoiding any practice involving an undue restriction of rights and liberties of immigrants.

In this regard, we recommend that you enter a clarification in that paragraph reflecting the efforts to being made correct the situations that may have occurred prior to the approval of the circular and amendments in this regard paragraphs 98-101 the report.

Points 113, 114, 115, and recommendations 118 and 119. Article 12 of the Framework Convention. Equal access to education.

In regard to education programmes, these are a priority of the government of Spain, in all stages of education, and this is reflected in the action lines set out in the 2012-2020 Strategy.

In secondary education, specific mention should be made of the Promociona Programme, managed by Fundación Secretariado Gitano and co-financed through grants from the the Ministry of Health, Social Services and Equality charged against the personal income tax. Similarly, it should be noted that we plan to publish a study/survey on Roma and secondary education in 2013.

As to **item 115**, which refers to the work of mediators, it should be noted that mediation programmes in schools are funded through the NGO subsidies charged to income tax.

Point 113 and 115 and recommendation 137. Article 15 of the framework convention. Roma participation in public affairs

As regards the participation of Romani people in public affairs, it should be noted, in 2012, the composition of the State Council of the Roma has been renewed through Ministerial Order SPI/2329/2011 of 24 August, announcing the selection process for the appointment of members to the State Council of the Roma in representation of Romani associations, and the completion of the process on 23 February 2012 by Resolution of the Secretary of State for Social Services and Equality. Subsequently, due to the dissolution of the member associations, we opened a new process and to cover the vacancies. (Ministerial Order SSI/1604/2012 of 9 July, announcing the selection process to appoint a new member to the State Council of the Roma, representing the Roma associations, and Resolution of 19 September 2012 of the Secretary of State for Social Services and Equality).

Similarly, two Roma associations are represented on the NGO Social Action Council, whose composition was also renovated in 2011, by Ministerial Order of 18 November 2011, by the General Secretariat for Social Policy and Consumers.



The Advisory Committee regrets that, although the composition of the council is regulated in accordance with detailed rules of procedure, including public calls and a selection procedure based on a number of criteria, the final selection is made by the government, who also heads the committee. In this regard, it should be noted that the Government of Spain considers that the selection system sufficiently guarantees the representativeness of the Roma associations and the transparency of the process, which is based on a public call and objective criteria. It is, moreover, the usual way of selecting members of committees and councils of this type. Moreover, it should be noted that the administration dialogs with Roma associations and organizations not only within this Council, as there is regular contact with other associations on the occasion of calls for subsidies and the sending of relevant information, etc.

Similarly, we would mention that we have maintained the Council's involvement in the policies of the Central Government through the Council's working groups, with the representation of various Roma organizations, relevant ministries and experts, which can make proposals and recommendations on the policies implemented by the government. The Council was also consulted on various matters, such as during the preparation of the Draft Law on Equal Treatment and the Integral Strategy against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

As for the statement about the participation of members of the State Council of the Roma in the allocation of funds, it is noted that it is not part of the functions of the Council, which has an advisory, not executive, function. Moreover, as regards the items with a budget reflecting, such as the Roma Development Plan, they are approved by the State Budget Act, enacted by Parliament, which does not envisage a process of this type. Also, notices to apply for public funds (grants) are based on principles of transparency, openness, competition and competitiveness. The grants establish objective criteria and requirements for organizations to apply and for the programmes are to be subsidized. The distribution and subsequent award of the grants are published in the Official Bulletin of the State and the Autonomous Communities. We suggest removing the reference to participation in the allocation of funds.

Point 140. Recommendation 142. Participation of Roma in socio-economic life: Employment

As regards the reference to street vending, which employs many of the Roma, please note that a new priority for employment programmes has been included in the call for grants to NGOs in 2012, charged to the 0.7% of personal income tax, which finances, for example, *business training programs for the sustainable maintenance of self-employment activities of the Roma, such as street vending.*

Madrid, 25 October 2012