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

### **Fourth Opinion on Spain adopted on 3 December 2014**

#### **EXECUTIVE SUMMARY**

Spain continues to take a pragmatic approach in applying the provisions of the Framework Convention to both Spanish Roma and foreign Roma. The Framework Convention however continues to be narrowly understood and is not yet well known in Spain, and few efforts have been made to promote it or to engage in dialogue with other groups that may wish to benefit from its provisions.

Spain has remained active in promoting the equality of Roma and has continued to implement policies and programmes to improve the situation of Roma in all fields of daily life. An Operational Plan for 2014-2016 was adopted in April 2014 in order to implement the National Roma Integration Strategy in Spain 2012-2020. Clear targets, adequate funding and effective monitoring in consultation with Roma representatives are now needed to ensure that the relevant policies and programmes can achieve their intended effect. Despite these efforts, Roma have been disproportionately affected by budget cuts made in response to the economic crisis. The authorities continue to support the Institute for Roma Culture, but more efforts are needed to ensure that Roma culture is preserved, promoted and accepted as an integral part of Spanish culture. There is little teaching about Roma culture in schools and access of Roma to the media remains limited. Weaknesses previously identified regarding the State Council for the Roma People have also not been resolved, limiting its effectiveness and its capacity to influence policy-making.

As regards the climate of tolerance in Spain more generally, prejudice and intolerance against Roma, as well as islamophobia, anti-Semitism and intolerance against migrants continue to be expressed, notably in the print and audiovisual media and on the Internet, as well as in political life. There were also some worrying anti-Roma incidents in the second half of 2014. The creation of a national network of hate crimes prosecutors is a welcome step towards providing a more effective institutional response to hate crimes when they occur, and such efforts now need to be consolidated. Comprehensive anti-discrimination legislation should also be enacted and the structures in place to promote equal treatment and address individual cases of discrimination should also be strengthened.

#### **Recommendations for immediate action**

- **ensure that programmes to promote the full and effective equality of Roma include clear targets and well-defined actions and benefit from adequate, earmarked funding, and ensure that the impact of such programmes is effectively monitored, in consultation with representatives of the Roma;**
- **step up efforts to combat all forms of racism and intolerance; ensure that all alleged cases of hate speech, including those committed on the internet and in the print and audiovisual media, are effectively investigated, prosecuted and sanctioned;**
- **ensure that austerity measures taken in the context of the economic crisis, including in the fields of education, housing and health, do not disproportionately impact, directly or indirectly, on Roma and take resolute measures to redress problems of this nature that have already been identified.**

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## **I. KEY FINDINGS**

### **Monitoring process**

1. This fourth-cycle Opinion on the implementation of the Framework Convention by Spain was adopted in accordance with Article 26(1) of the Framework Convention and Rule 23 of Resolution (97) 10 of the Committee of Ministers. The findings are based on information contained in the fourth State Report, submitted by the authorities on 4 March 2014, and other written sources, as well as on information obtained by the Advisory Committee from governmental and non-governmental contacts during its visit to Madrid, Sevilla and Barcelona on 7-11 July 2014.

2. The Advisory Committee salutes the proactive approach taken by the authorities in submitting the fourth State Report in a timely manner, although the previous report had been submitted more than eighteen months late, and welcomes the considerable assistance provided by the authorities before, during and after the visit as well as their constructive approach to the fourth-cycle monitoring process. It regrets, however, that the Framework Convention remains little known in Spain, including amongst persons and groups potentially interested in the protection that it offers. It expects that the authorities will translate, publish and disseminate the present Opinion and corresponding Resolution of the Committee of Ministers, and underlines the importance of fostering debate on the results of the present monitoring cycle in Spain, possibly in the form of a follow-up seminar.

### **General overview of the present situation**

3. While the notion of national minorities in the sense of the Framework Convention is not recognised in the Spanish legal system, the Spanish authorities take a pragmatic approach in applying the provisions of the Framework Convention to Roma, including foreign Roma. The Framework Convention however continues to be narrowly understood and is not yet well known in Spain, and few efforts have been made to promote it. Moreover, although several other groups have repeatedly expressed interest in benefiting from the provisions of the Framework Convention, in particular those whose language does not have official status anywhere in Spain or who live outside the Autonomous Communities where their language has an official status, there is no interlocutor for such groups.

4. Although society is highly integrated in parts of Spain, many Roma still live in a situation of significant socio-economic disadvantage and face discrimination and prejudice. Spain has continued to implement policies and programmes to improve the situation of Roma in all fields of daily life. An Operational Plan for 2014-2016 was adopted in April 2014 in order to implement the National Roma Integration Strategy in Spain 2012-2020. Clear targets, adequate funding and effective monitoring in consultation with Roma representatives are now needed to ensure that the relevant policies and programmes can achieve their intended effect.

### **Assessment of measures taken to implement the third-cycle recommendations for immediate action**

5. Spain has remained active in promoting the equality of Roma. However, Roma have been disproportionately affected by budget cuts made in response to the economic crisis. They have been particularly hard-hit by evictions and loss of employment, cuts in social welfare and

restrictive conditions and procedures for accessing such aid. Cuts in programmes to promote equal access to education as well as cuts in the number of teachers and, in the case of migrant Roma, restrictions in access to health-care, also exacerbate this situation. There has been little progress towards eliminating the persisting concentration of Roma pupils in schools located in disadvantaged areas and with lower academic achievement.

6. The authorities have taken welcome steps towards eliminating the practice of ethnic profiling by the police, notably issuing a new circular specifying the criteria and procedures to be followed by members of the national police force in carrying out identity checks. However, the large numbers of complaints that continue to be submitted to the Ombudsman (*Defensor del Pueblo*) suggest that ethnic profiling still occurs in the form of excessive stops and searches. Some municipal police forces have introduced commendable new procedures in this respect, but additional efforts are needed in order to put a decisive end to this practice.

### **Assessment of measures taken to implement the further recommendations from the third cycle**

7. No comprehensive anti-discrimination legislation has been adopted, as the Bill pending before Parliament in 2011 was never enacted. The work of the Council for the Promotion of Equal Treatment of all Persons without Discrimination on Grounds of Ethnic or Racial Origin also continues to be hampered by a lack of sufficient resources; however, after an interruption in its work between 2012 and early 2013, the Network of Assistance to Victims of Racial or Ethnic Discrimination is again active, with offices in twenty cities. The Spanish authorities have taken some steps towards gathering more comprehensive data on discrimination and access to equality. The establishment of a new national network of hate crimes prosecutors is a welcome step towards providing a more effective institutional response to hate crimes when they occur and towards building up a more accurate picture of the prevalence of such offences. Amendments expected to the Criminal Code in this field should moreover significantly broaden the definition of crimes of incitement to hatred. As regards the climate of tolerance in Spain more generally, prejudice and intolerance against Roma, as well as islamophobia, anti-Semitism and intolerance against migrants, continue to be expressed, notably in the print and audiovisual media and on the Internet, as well as in political life.

8. The authorities continue to support the Institute for Roma Culture, but more efforts are needed to ensure that Roma culture is preserved and promoted, and accepted as an integral part of Spanish culture. There is little teaching about Roma culture in schools and access of Roma to the media remains limited.

9. The State Council for the Roma People continues to operate as a consultative body to foster the participation of Roma civil society in policy development. However, weaknesses previously identified have not been resolved, limiting its effectiveness and its capacity to influence policy-making. Significant progress has been made over the past decades as regards equal access of Roma to education, employment and housing and it is essential, despite the serious budgetary challenges faced by Spain in the context of the economic crisis, that this progress continues.

## II. ARTICLE-BY-ARTICLE FINDINGS

### Article 3 of the Framework Convention

#### Scope of application of the Framework Convention

10. The Advisory Committee acknowledges that the notion of “national minority” in the sense of the Framework Convention does not exist in the Spanish legal order. However, it underlines that the Framework Convention was conceived as a pragmatic instrument, to be implemented in very diverse social, cultural and economic contexts and to adapt to evolving situations, and that its application with respect to a group of persons does not necessarily require the latter’s formal recognition as a national minority, a definition of this term or the existence of a specific legal status for such groups of persons. The Advisory Committee therefore again welcomes the pragmatic approach taken by the Spanish authorities in considering Roma as a specific minority that may benefit from the protection of the Framework Convention. It also underlines as particularly positive the fact that the authorities do not distinguish between Spanish and foreign Roma in implementing certain programmes designed to promote the full and effective equality of Roma (see further below, comments under Articles 4 and 15).

11. The Advisory Committee has again been approached by persons belonging to organisations representing the Basque, Catalan and Galician cultures and languages, who have expressed interest in the protection offered by the Framework Convention, while at the same time observing that awareness of the Framework Convention in Spain is generally very low. Oliventine Portuguese-speakers living close to the Portuguese border have also expressed interest in benefiting from the Framework Convention’s provisions.

12. As the Advisory Committee has previously noted, persons having cultures and languages different from those of the majority population and living in the Autonomous Communities where their language has co-official or protected status benefit from specific recognition and are protected under the Spanish Constitution and the statutory laws of the relevant Autonomous Communities as well as the European Charter for Regional or Minority Languages. Regular monitoring of the implementation of the Charter is accordingly carried out by its Committee of Experts. In this context, the authorities have reiterated their view that the current level of protection makes it unnecessary for persons belonging to these groups to benefit from the protection offered by the Framework Convention.

13. The Advisory Committee underlines, however, that the standards that are currently applicable in Spain do not in themselves make the protection of the Framework Convention superfluous.<sup>1</sup> Moreover, persons belonging to the above-mentioned groups and who live outside the areas where their language has co-official or protected status – for example, Basque-speakers living in southern Navarre, Catalan-speakers living in Murcia and Galician-speakers living in Asturias or Castile and León – receive considerably less support for the protection of their languages and cultures, and it may therefore be especially beneficial for them to enjoy additional protection under the Framework Convention. The Advisory Committee emphasises in this context the importance of the enjoyment of minority rights in practice, whether or not the

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<sup>1</sup> In this respect, the Advisory Committee notes, for example, the controversial amendments passed in May 2013 to Aragon’s Law on Languages, which changed the official names used to designate Catalan and Aragonese to *Lengua Aragonesa Propia del Área Oriental* (“LAPAO”) and *Lengua Aragonesa Propia de las áreas Pirenaica y Prepirenaica* (“LAPAPYP”) respectively. See also additional comments made under Articles 9 and 14 below.

persons concerned are officially recognised in the Spanish legal system as belonging to national minorities.

14. The Advisory Committee considers it important that the authorities engage in consultations with these groups, in order to ascertain whether the positions conveyed to it during the monitoring process are shared by other representatives of the Basque, Catalan and Galician languages and cultures. Similar consultations with representatives of other groups that may be interested in benefiting from the provisions of the Framework Convention, such as speakers of Aranese, Oliventine Portuguese and Tamazight,<sup>2</sup> would also be useful. In this respect, the Advisory Committee was particularly struck during its visit by the fact that no government department or body currently appears to have responsibility for addressing such concerns. It notes that in this situation, it is unsurprising that no consultations have been held in response to the recommendations to this effect contained in its Third Opinion. It also observes that the fact that no data is currently collected regarding ethnic diversity in Spain (see also below, comments under Article 4) does not mean there is no such diversity in reality, nor does it absolve the authorities from addressing the concerns of persons belonging to minority ethnic groups.

#### *Recommendation*

15. The Advisory Committee again recommends that the authorities actively raise awareness among groups other than the Roma of the protection offered by the Framework Convention. It recommends that the authorities undertake consultations with representatives of such groups in order to ascertain whether they are interested in such protection and that the authorities rapidly designate a structure or body with clear competences in this field.

### **Article 4 of the Framework Convention**

#### **Legislative and institutional framework against discrimination**

16. No comprehensive equality and antidiscrimination legislation has been enacted in Spain. The Bill that was pending before the Parliament in 2011, and which was widely praised, was never enacted, due to the early general elections held in November 2011. Antidiscrimination provisions thus continue to be found in separate laws, and there is no single equality body competent to deal effectively with all forms of discrimination. The Spanish authorities have indicated that they consider it more important at this stage to collect data to determine the real incidence of discrimination in Spanish society (see further below) and to correct any specific weaknesses identified in the existing legislation.

17. The Council for the Promotion of Equal Treatment of all Persons without Discrimination on Grounds of Ethnic or Racial Origin has continued to publish useful studies, reports and recommendations for public authorities and private stakeholders on racial discrimination and has given input on various draft Bills and government strategies; it has also provided training to professionals and public servants on the prevention and elimination of racism and xenophobia. The Advisory Committee nonetheless regrets that the Council remains integrated as part of the Ministry of Health, Social Services and Equality rather than being a fully independent body; half of its members are moreover civil servants. It also notes with regret that in mid-2014 the President of the Council, who had been appointed in June 2013 and was appreciated by its members, resigned, reportedly in protest against the lack of effectiveness and weak institutional position of the Council, and has still not been replaced.

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<sup>2</sup> See the Advisory Committee's Third Opinion on Spain, paras. 29 and 33.

18. As regards individual complaints of discrimination, the Advisory Committee again welcomes the valuable work of the Network of Assistance to Victims of Racial or Ethnic Discrimination. Set up under the auspices of the Council for the Promotion of Equal Treatment but run in practice by seven NGOs able to provide specialised assistance and guidance to victims of discrimination,<sup>3</sup> it is designed to serve as a first port of call for victims of racial or ethnic discrimination and continues to provide advice to them free of charge. In addition to the network's headquarters in Madrid, twenty offices are now in operation, with at least one in each Autonomous Community as well as an office in Melilla. Despite a regrettable interruption in its work between 2012 and early 2013, the Advisory Committee notes with interest that the network has handled over 1000 cases since its establishment in 2010, including 376 cases between March and December 2013. It warmly welcomes the provision of €600 000 per year in state funding to the network for each of the past two years (2013 and 2014).<sup>4</sup>

19. Nonetheless, the Advisory Committee regrets that important questions relating to the resources available to the Council for the Promotion of Equal Treatment do not appear to have been resolved. While its budget for producing studies and reports was tripled from 2012 to 2013 – a welcome development –, the budget allocated for staffing was halved. Moreover, the Advisory Committee understands in particular that the members of the Council who are not civil servants, including its President, still carry out this function on a voluntary basis,<sup>5</sup> a factor that may seriously compromise the Council's sustainability, and which also raises questions as to the role and level of importance accorded to its work by the authorities. Similarly, the Network of Assistance to Victims does not have the capacity to litigate on behalf of victims and is only very rarely able to take on strategic litigation due to a lack of sufficient funds. In addition to the lack of an equality body empowered to handle individual complaints through informal procedures, victims of discrimination are often hampered in their access to courts, as such proceedings prove too costly and difficult for them. In this respect, the fact that discrimination appears mostly to occur in the private sector (in fields such as access to employment, access to goods and services and access to housing, where it reportedly remains a widespread belief that the principle of freedom of contract prevails over that of equal treatment) is an additional hindrance.

20. The Ombudsman (*Defensor del Pueblo*) continues to play an important role in cases involving allegations of misconduct by public authorities or civil servants. While relatively few of these cases expressly concern discrimination or equal treatment, the Advisory Committee notes with particular interest the Ombudsman's involvement in issues concerning police practices of ethnic profiling, school segregation and denial of health care to migrants (see further below, comments under Articles 6, 12 and 15 respectively). It welcomes the fact that the avenue of redress provided by the Ombudsman appears to be relatively well known, although it regrets that the number of complaints submitted by Roma reportedly remains low compared with the level of discrimination they face.

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<sup>3</sup> The Fundación Secretariado Gitano provides this service together with ACCEM, Cruz Roja Española (the Spanish Red Cross), Fundación CEPAIM, Movimiento contra la Intolerancia, Movimiento por la Paz and Red Acoge, each of which operates one or more of the offices in the network.

<sup>4</sup> By way of comparison, the total budget of the Council for the Promotion of Equal Treatment for 2011, including funding allocated to the Network, was 300 000€. See European network of legal experts in the non-discrimination field, Report on measures to combat discrimination: Directives 2000/43/EC and 2000/78/EC, Country Report Spain 2011: State of affairs up to 1 January 2012, by Lorenzo Cachón, p114.

<sup>5</sup> See Royal Decree 1262/2007 of 21 September 2007, which provides only for travel expenses to be covered if needed.

21. As is the case for hate-motivated criminal offences (see further below, comments under Article 6), Roma and other groups rarely report discrimination, due inter alia to low awareness of their rights and of the available avenues of redress, as well as to a lack of confidence that taking action will change the outcome. Against this background, the Advisory Committee underlines the particular importance of awareness-raising amongst Roma as to the actions they can take when faced with discrimination, and of ensuring that they are not prevented from accessing justice in such cases due to a lack of financial means.

### *Recommendations*

22. The Advisory Committee again calls on the authorities to enact comprehensive anti-discrimination legislation. It notes that such legislation could be based on the Bill that was introduced in Parliament in 2011, but not enacted.

23. The Advisory Committee recommends that, in the absence of a fully-fledged equality body, the status and independence of the Council for the Promotion of Equal Treatment of all Persons without Discrimination on Grounds of Ethnic or Racial Origin be strengthened. This should include reviewing the current rules according to which the members of the Council who are not civil servants receive no remuneration for their work. It also calls on the authorities to appoint a President of this Council as a matter of urgency. The authorities are moreover encouraged to continuing funding and supporting the Network of Assistance to Victims of Discrimination and, in the absence of alternative dispute resolution mechanisms, to ensure that legal aid is available to victims of discrimination.

24. The authorities should also step up their efforts to raise awareness among groups most frequently targeted by discrimination of the legislative standards that currently apply and of the avenues of redress available to victims of discrimination, including in the private sector.

### **Equality data**

25. The authorities have expressed recognition that measures to promote equality can be more effective if designed on the basis of reliable data. They have also indicated that according to the National Statistics Institute, the collection of data broken down by ethnicity is not excluded under Spanish law. However, technical issues may arise in the case of surveys conducted by the National Statistics Institute, according to the latter, because international standards require that ethnic data be collected on a voluntary basis, whereas its surveys are compulsory. The Institute has expressed concerns that, while compulsory surveys could include optional questions, low numbers of answers to such questions would mean the results would not be representative and might weaken the credibility and reliability of the Institute's work. The Advisory Committee observes that issues such as this were examined in depth in the context of preparations in Europe for the 2010 censuses of population and housing, where it was noted that in order to guarantee free self-identification, compulsory questions on ethnicity may for example include the possibility for respondents to answer "none" or "not declared".<sup>6</sup> The same model could equally be used in the context of other obligatory surveys.

26. The Advisory Committee notes that in practice, when data providing information on the situation of persons belonging to specific groups is sought in the context of designing effective

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<sup>6</sup> United Nations Economic Commission for Europe, Conference of European Statisticians Recommendations for the 2010 Censuses of Population and Housing prepared in cooperation with EUROSTAT, United Nations, New York and Geneva, 2006, Chapter IX.

measures to promote equality in Spain, the authorities refer to research carried out by other bodies such as the Centre for Sociological Research and the *Fundación Secretariado Gitano*. It also notes with interest the on-going work of the Ministry of Health, Social Services and Equality towards drawing up a “Discrimination Map” covering all grounds of discrimination. It welcomes the completion of the first phase of this project<sup>7</sup> and notes that the results of a follow-up study on perceptions of discrimination in Spain were due to be published in early 2014.

27. The Advisory Committee welcomes the steps taken by the authorities to ensure that measures taken to promote equality are based on objective studies of the existing situation. It nonetheless underlines that the lack of up-to-date and accurate data on the socio-economic and educational situation of persons belonging to national minorities hampers the ability of the authorities to design, implement and monitor targeted measures to promote the full and effective equality of persons belonging to national minorities.

#### *Recommendation*

28. The Advisory Committee encourages the authorities to pursue and expand their efforts to improve practices of obtaining reliable equality data broken down by ethnic or national origin, language, religion and culture, in full respect of the relevant international data protection standards, in order to increase the effectiveness of measures designed to promote the full and effective equality of persons belonging to national minorities.

#### **Promotion of full and effective equality of Roma**

29. Spain remains active in promoting the equality of Roma and has continued to implement policies and programmes to improve the situation of Roma in all fields of daily life. The Advisory Committee welcomes the fact that the National Roma Integration Strategy in Spain 2012-2020 expressly applies not only to Spanish Roma but also to Roma originating from other countries.<sup>8</sup> It notes with satisfaction that an Operational Plan for the Social Inclusion of Roma People 2014-2016 was adopted in April 2014, with input from non-governmental organisations that are members of the State Council for the Roma People (see further below, comments under Article 15). The Advisory Committee welcomes the development of this Plan in consultation with the Autonomous Communities (which have competencies in many of the fields covered), as well as the clear designation in the Operational Plan of actors responsible for implementing relevant activities in the fields of education, employment, housing, health, social services, equality and non-discrimination and the promotion of Roma culture. Actions to address aspects of gender violence specific to the Roma community are also incorporated in the Operational Plan.<sup>9</sup> In this respect the Advisory Committee notes the particular importance of working with the Roma community to promote increased reporting of gender-violence-based offences. It also notes with interest that the National Roma Integration Strategy in Spain 2012-2020, to which the Operational Plan is intended to give effect in 2014-2016, is based on available equality data in all the relevant fields, and the updating and gathering of new such data are foreseen as part of

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<sup>7</sup> Ministry of Health, Social Services and Equality, Diagnostic study of secondary sources about discrimination in Spain, Executive Summary, September 2013.

<sup>8</sup> See Section 3.2.5 of the Strategy, Roma population originating from other countries.

<sup>9</sup> See Section 3.5.2 of the Operational Plan.

the Operational Plan. The Strategy moreover includes clear targets as well as a series of indicators by which progress towards achieving these targets can be measured.<sup>10</sup>

30. The Advisory Committee observes nonetheless that a number of factors may reduce the effectiveness of the Operational Plan for 2014-2016 and the implementation of the National Roma Integration Strategy in Spain 2012-2020 more generally. First, due in part to the lack of a question on ethnic origin in Spanish censuses (see also above, comments with respect to Article 3), no reliable data exist as to the size of the Roma population in Spain or in its various Autonomous Communities. Overall estimates vary by as much as 100%,<sup>11</sup> a discrepancy that makes project-planning difficult and carries with it obvious budgetary ramifications. Second, Roma representatives repeatedly emphasised to the Advisory Committee that little monitoring is carried out of the implementation of the various action plans in favour of Roma, and, to the extent that such monitoring is done, Roma have little involvement in the evaluation process. Third, as regards the Operational Plan 2014-2016 in particular, the Advisory Committee notes that while it refers to numerous programmes and activities in a broad range of relevant areas, these references for the most part remain at an abstract level; few specific actions to be carried out are listed and no indicators included. For this reason, some Roma representatives have expressed the view that the Operational Plan 2014-2016 is a step back from the National Roma Integration Strategy in Spain 2012-2020 that it is intended to implement. Fourth, although mid-term targets for the implementation of the Strategy have been fixed for 2015, it appears from the information provided to the Advisory Committee that little data is yet being gathered in order to monitor progress towards these targets.

31. The Advisory Committee notes that a number of sources of funding that have regularly been used to support programmes promoting the equality of Roma are identified in the context of the Operational Plan. These include the funds assigned to measures targeting the population more broadly and that will promote the realisation of the Operational Plan, support provided by government departments to relevant activities carried out by non-governmental organisations (notably through sums received via voluntary 0.7% personal income tax allocations,<sup>12</sup> amounting to approximately €7 million in total), agreements between the State and Autonomous Communities as part of the Roma Development Plan, the European Social Fund and other European funds. The Advisory Committee warmly welcomes the indication by the authorities that government funding transferred to Autonomous Communities and municipalities under the Roma Development Plan will increase by €1 million to €1.4 million in 2014.<sup>13</sup> However, it notes with regret that within the overall envelopes identified, funding for the implementation of the various lines of action in the Operational Plan is not clearly earmarked, which may considerably hamper the implementation of these actions in practice and means it is impossible to assess the adequacy of the budgetary resources ultimately allocated.<sup>14</sup> Moreover, many Roma

<sup>10</sup> See Chapter 1 of the Strategy for an overview of the current situation based on available data, Section 2.2 of the Strategy for further recent data and social inclusion targets for 2015 and 2020, and Annex II to the Strategy for the definitions of the relevant indicators.

<sup>11</sup> The figure generally cited at European level is approximately 750 000, but estimates range from 500 000 to 1 000 000. See National Roma Integration Strategy in Spain 2012-2020, section 1.1, p4.

<sup>12</sup> *Asignación tributaria del IRPF*. Individual taxpayers in Spain may designate each year the use to be made of 0.7% of their personal income tax, choosing to allocate this amount to the Catholic Church, to social or non-governmental organisations engaged in the field of social action or to both of these, or allowing the amount to be used as part of the general State budget.

<sup>13</sup> This budget line had previously dropped from just over €1 million in 2009, 2010 and 2011 to €510 000 in 2012 and €382 000 in 2013.

<sup>14</sup> See also Decade of Roma Inclusion 2005-2015, Updated Civil Society Monitoring Report on the Implementation of the National Roma Integration Strategy and Decade Action Plan 2012 and 2013 in Spain, Hungary, 2013, p39.

representatives consider the extensive reliance on projects implemented by non-governmental organisations as a sign that the authorities are not taking sufficient responsibility for improving the situation of Roma (see further below, comments under Article 15).

32. The Advisory Committee is deeply concerned that Roma are being disproportionately affected by budget cuts made to the Spanish welfare system in response to the economic crisis. Roma have been particularly hard-hit by evictions and loss of employment (see further below, comments under Article 15), meaning that Roma who were previously autonomous are increasingly turning to the social protection system for assistance. In parallel, austerity measures taken at all levels of authority, such as cuts in social welfare and the introduction of more restrictive conditions and procedures for accessing such aid, as well as long waiting periods for access to aid, not only impact on individuals who were already reliant on such assistance but also aggravate the situation of those newly in need of it. Cuts in programmes to promote equal access to education as well as cuts in the number of teachers and, in the case of migrant Roma, restrictions in access to health-care also exacerbate this situation.<sup>15</sup> The Advisory Committee acknowledges the severe financial difficulties faced by Spain but stresses the need to ensure that the most marginalised groups in society, which include some parts of the Roma population, are not disproportionately affected by budgetary cuts. Even where intended for the short term only, such cuts may have far-reaching consequences, both direct and indirect, that set back progress achieved by many years and that resonate in the long term.

#### *Recommendations*

33. The Advisory Committee strongly encourages the authorities to continue implementing programmes to promote the full and effective equality of Roma, covering both Spanish and foreign Roma. It calls on the authorities to ensure that such programmes, including those specified under the Operational Plan for the Social Inclusion of Roma People 2014-2016, include clear targets and well defined actions and benefit from adequate, earmarked funding. The authorities must also ensure that the impact of these programmes is effectively monitored, in consultation with representatives of Roma.

34. It further calls on the authorities to ensure that austerity measures taken in the context of the economic crisis do not disproportionately impact, directly or indirectly, on Roma and to take resolute measures to redress problems of this nature that have already been identified.

### **Article 5 of the Framework Convention**

#### **Preservation and promotion of the Roma culture**

35. The Advisory Committee welcomes the continuing support provided by the authorities, through the Ministry of Education, Culture and Sport, to the Institute of Roma Culture, a public foundation that aims to develop and promote Roma history, culture and language and increase public knowledge and recognition thereof. It notes with interest that the Institute has continued to organise cultural events and exhibitions aiming to give greater visibility to Roma culture, such as the annual *O Dikhipen* Roma film cycle at the Spanish Film Institute and the Romani Lives travelling exhibition, as well as to support activities focusing on equality for Roma women. Work towards the opening of a documentation centre on Roma culture, to be housed at the University of Alcalá de Henares, is on-going. In addition, the Advisory Committee welcomes the introduction of the “Roma in Spain: History and Culture” subject at the University

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<sup>15</sup> See generally Fundación Secretariado Gitano, *El impacto de la crisis en la comunidad gitana*, Madrid, 2013.

of Alcalá de Henares, which has been running since 2011, and the organisation of cycles of conferences on similar themes in several other universities.

36. Some regional authorities provide funding for the preservation and promotion of Roma culture, such as the continued support of the Andalusian authorities to the Andalusian Centre of Roma Culture and its Roma library. However, it appears that overall, little public support is available for other Roma cultural initiatives. A number of representatives of Roma have also expressed indignation that public support to certain NGO initiatives such as the publication of *O Tchatchipen*, a quarterly magazine on the current situation, history and culture of Roma that has been published since 1993, has recently ceased. In addition, the Advisory Committee notes with regret that, aside from a summer course in basic Romani run by the University of Alcalá de Henares and isolated local or NGO initiatives, for example in Barcelona, opportunities to learn the Romani and *caló*<sup>16</sup> languages remain scarce. The Advisory Committee again underlines that the promotion of the Romani and *caló* languages should form part of the broader efforts to promote recognition of and respect for Roma culture (see also observations under Article 14, below, as regards the teaching of these languages in schools).

#### *Recommendations*

37. The Advisory Committee encourages the authorities to continue to provide adequate support to the Institute of Roma Culture so as to enable it to pursue effectively and independently its work to promote Roma culture. The authorities at all levels should furthermore ensure that sufficient funding is allocated to support other projects and programmes aimed at preserving and promoting Roma culture, in order to ensure that information and courses on Roma culture are broadly available, and that Roma culture is recognised as an essential element of the Spanish society.

38. The Advisory Committee again calls on the authorities to identify the needs and demands of the Roma with regard to studying the Romani and *caló* languages. It invites the authorities to continue to support non-governmental projects in this field where they exist and to develop additional means and structures for supporting the study of these languages.

### **Article 6 of the Framework Convention**

#### **Combating racism and intolerance**

39. According to some of the Advisory Committee's interlocutors, in some parts of Spain, notably in parts of Andalusia, integration is such that it is impossible to distinguish between Roma and non-Roma. Indeed, on some levels, Roma are accepted as an integral part of Spanish society. However, this acceptance generally remains superficial (for example, the cliché that flamenco culture is part of Spanish culture), and prejudices against and stereotypes about Roma still abound. The Advisory Committee notes with concern in this respect the inclusion – despite continuous protests by Roma representatives and the Ombudsman – in the 23<sup>rd</sup> edition of the Royal Language Academy's Dictionary of the Spanish Language, published in October 2014, of one definition of the word "gitano" (the word usually used for Roma in Spain) as "swindler", a definition denounced by Roma organisations as highly offensive. Positive images of Roma are mostly confined to those of musicians and dancers; otherwise, Roma are frequently identified in

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<sup>16</sup> *Caló*, which is reportedly spoken less and less by new generations of Roma, has been described as a hybrid language composed of isolated Romani words using the grammar of local Spanish languages (Castilian, Catalan, Basque etc).

the public imagination with poverty and social exclusion. While the latter phenomena are a reality experienced by many Roma and that must be addressed (see comments with respect to Articles 4 and 15), their portrayal as synonymous with Roma identity is not merely wrong as a question of fact but also deeply harmful to all Roma.

40. Such prejudices and stereotypes can lead to persisting discrimination against Roma in all fields of daily life, including in private-law relations such as access to goods and services, employment or housing<sup>17</sup> (see also comments with respect to Article 15). Roma representatives report that the concept of anti-Gypsyism is not widely understood in Spain, and the Advisory Committee notes with concern that, according to some Roma representatives, this means that large parts of Spanish society do not recognise as unacceptable the notion that individuals may be insulted or treated less well because of their Roma ethnic origin. It is therefore particularly welcome that the Council of Europe's *Dosta!* campaign encouraging the general public to overcome prejudice and meet the Roma was launched in Spain in April 2013.

41. The Advisory Committee expresses deep concern that, following the alarming events that occurred in Estepa and Castellar (Jaén) in July and August 2014 (see further below), the mayors of these towns appear to have responded by suggesting that targeting Roma did not amount to a racist act and that an appropriate solution would be for certain Roma families to leave their towns. The Advisory Committee observes that such responses send a message that Roma are troublemakers whom it is acceptable to treat as second-class citizens, and legitimise the prejudices and racist acts of those who take the law into their own hands. It underlines that, to the contrary, politicians should emphasise that racist acts are especially grave offences that by definition deny the equality of all human beings. In this context, it welcomes the call for calm and peaceful coexistence between residents made by the City Council of Bujalance, in response to similar confrontations there in October 2014.

42. Muslims report that the climate of tolerance towards Muslims, which had deteriorated significantly in the early 2000s, has slightly improved over the past years. Nonetheless, incomprehension of and intolerance against Muslims, and in particular against the manifestation of their religious beliefs, are expressed in a variety of ways, including in the persisting shortage of places of worship and continued opposition from other local inhabitants as well as some local politicians to the building of new mosques. At the same time, access to religious education about Islam remains very limited. In Catalonia, a parliamentary motion inviting the government to take action that would effectively ban the wearing of the burqa and the niqab in public places was reportedly enacted without consulting Muslim women and without knowing how many Muslim women living in the community would be affected.<sup>18</sup> Moreover, police practices of ethnic profiling (see further below) affect Muslims and it appears that a disproportionate number of Muslims are placed in pre-trial detention.<sup>19</sup>

43. The Advisory Committee also observes with concern that certain government policies – in particular health reforms defined at state level in September 2012 and applied in most

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<sup>17</sup> Numerous examples of such discrimination are set out in Fundación Secretariado Gitano, Annual Report 2013: Discrimination and the Roma community.

<sup>18</sup> On the above points see generally UCIDE, Observatorio Andalusi, Informe Anual 2013, Madrid 2014.

<sup>19</sup> There is a significantly higher proportion of Muslims amongst persons in detention pending trial than amongst convicted prisoners, suggesting that there may be a tendency towards excessive detention of Muslims at a stage of proceedings when the presumption of innocence applies. See UCIDE, Observatorio Andalusi, Estudio demográfico de la población musulmana: Explotación estadística del censo de ciudadanos musulmanes en España referido a fecha 31/12/2012, Anexo II.

Autonomous Communities,<sup>20</sup> according to which undocumented migrants no longer have access to free health services – have been directly harmful to the migrants targeted while at the same time reinforcing negative messages about migrants generally. Migrants moreover continue to be used as scapegoats in political discourse, with some politicians portraying migrants in general as responsible for the economic crisis. At a time when unemployment is high and the economic crisis as well as austerity measures are having a painful impact on broad swathes of Spanish society, the Advisory Committee notes that such messages are especially damaging. Depictions by some politicians of attempts by migrants in northern Africa to enter Spanish territory through Ceuta and Melilla as “attacks” on a massive scale convey the impression that migrants are somehow a threat to Spanish society, and increase the damage as regards community relations and attitudes towards migrants.<sup>21</sup>

44. Despite the fact that the Jewish community in Spain is very small, anti-Semitism also persists and is expressed through a variety of channels. Although verbal and physical attacks against persons or property are reportedly rare, several cases of anti-Semitic graffiti were recorded in 2012 and anti-Semitic discourse is reportedly widespread on websites and in social media.<sup>22</sup> The publication of thousands of anti-Semitic messages on Twitter in May 2014 following the victory of the Maccabi basketball team from Tel Aviv over Real Madrid is particularly striking in this regard. The Advisory Committee welcomes information received from the authorities according to which, in response to a complaint lodged by an NGO about these events, the prosecution authorities launched criminal investigations against two Twitter account holders, and proceedings in these cases are currently pending before the courts. In addition, the prosecution authorities referred the actions of a further four account holders, which were not considered to amount to possible criminal offences, to the State Commission against Violence, Racism and Xenophobia in Sport (see further below).

45. The Advisory Committee also notes with concern that some political parties whose platforms rely on overtly xenophobic/anti-immigrant policies have encountered increasing success in elections, especially at local level. This success reflects growing levels of intolerance in Spanish society, as well as increasing tolerance of intolerance. It emphasises that mainstream political parties must counter xenophobic discourse effectively; ignoring it or moving their own discourse closer to the rhetoric of exclusion allows intolerance to become increasingly the norm.

46. While it is too soon to analyse the extent to which the Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia and related Intolerance (adopted by the Spanish authorities in November 2011) has had an impact in reducing the prevalence of these phenomena in Spanish society, the Advisory Committee notes that it was developed in recognition of the growing diversity of Spanish society, with the involvement of bodies such as the Council for the Promotion of Equal Treatment and the State Council of Roma People, and with the aim of better co-ordinating the actions being taken in this field.<sup>23</sup> It includes 41

<sup>20</sup> Although not in Andalusia, which decided to maintain universal health care.

<sup>21</sup> The Advisory Committee also notes with regret in this context that the practice of returning asylum-seekers to Morocco without adequately examining their requests for asylum – condemned in itself by the European Court of Human Rights in the case of *A.C. and others v. Spain* (application no. 6528/11) – further heightens prejudices against migrants.

<sup>22</sup> See Observatorio Antisemitismo, *Informe sobre el antisemitismo en España durante el año 2012*, Madrid, May 2013.

<sup>23</sup> See inter alia CERD, Concluding observations on the combined eighteenth to twentieth periodic reports of Spain, adopted by the Committee at its seventy-eighth session (14 February-11 March 2011), Addendum: Information

objectives and 129 measures covering fields such as combating racial discrimination in education and employment as well as actions to strengthen the fight against hate-motivated offences (see further below). In addition, following on from the first such plan covering the period 2007-2010, a second Strategic Plan for Citizenship and Integration 2011-2014 was approved by the Council of Ministers in September 2011. The Advisory Committee notes with interest that it is addressed to the entire population of Spain, that it highlights that integration is a two-way process and that education is considered in this context as a cornerstone in the creation of a cohesive society.<sup>24</sup> It regrets, however, that no information is yet available as to the impact in practice of these strategies.

47. The Advisory Committee welcomes the continued operation of Oberaxe, the Spanish Monitoring Centre on Racism and Xenophobia. This centre, which now operates within the Ministry of Health, Social Services and Equality, is entrusted with collecting, analysing and disseminating information on racism and xenophobia in Spain, promoting the principle of equal treatment and the fight against racism and xenophobia and co-operating with public and private actors at domestic and international level in this field.<sup>25</sup> The centre publishes an annual report on the evolution of racism, xenophobia and related forms of intolerance in Spain,<sup>26</sup> with particular reference to attitudes towards migrants, and makes available through its website a range of reports and other documentation related to racism and xenophobia. It also recently published a Guide to managing cultural diversity in small and medium-sized enterprises.

#### *Recommendations*

48. The Advisory Committee recommends that the authorities step up their efforts to combat all forms of racism and intolerance, including anti-Gypsyism, Islamophobia and anti-Semitism. The authorities should go beyond supporting research in this sector and take a leading role in both promoting tolerance and sending a strong message to society as a whole that racism is never acceptable.

49. It calls on the authorities to condemn all expressions of racism and intolerance, including those formulated by politicians, and to ensure that all alleged cases of hate speech are duly investigated, prosecuted and sanctioned.

50. It further invites the authorities to pursue their dialogue with representatives of the Muslim community in order to find solutions to the specific practical problems they face.

#### **Media, Internet and social media networks**

51. The Advisory Committee notes with regret that negative stereotypes about Roma are regularly relayed and amplified by the media.<sup>27</sup> Roma representatives consistently report that the small amount of space given to Roma in the mass media, both audiovisual and the press, is most often devoted to covering news items in which Roma are portrayed in a negative light, and that in cases where a defendant in a criminal case is Roma, their ethnic origin is regularly revealed.

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provided by Spain regarding the recommendations in paragraphs 9, 14 and 17 of the concluding observations, 25 February 2013, CERD/C/ESP/CO/18-20/Add.1.

<sup>24</sup> Plan Estratégico Ciudadanía e Integración 2011-2014.

<sup>25</sup> Royal Decree 343/2012 of 10 February 2012.

<sup>26</sup> See most recently M<sup>a</sup> Ángeles Cea D'Ancona and Miguel S. Valles Martínez, *Evolución del racismo, la xenofobia y otras formas conexas de intolerancia en España [Informe 2013]*.

<sup>27</sup> For examples, see Fundación Secretariado Gitano, *Discrimination and the Roma Community: Annual Report FSG 2012*, Madrid, 2013, pages 15-16 and 19-38 and *Annual Report FSG 2013*, Madrid, 2014, pp17-26.

Some media have also reportedly adopted a somewhat hysterical tone regarding attempts by migrants over recent months to enter Spain by scaling the fences surrounding the territories of Ceuta and Melilla.

52. The Advisory Committee wishes to express particular concern at the television series *Palabra de Gitano*, broadcast recently on privately owned television station Cuatro. Although it purported to be about “getting to know the Roma”, this series was notorious for treating Roma as a group apart from the rest of Spanish society, exotic at best, and focusing on extremes and stereotypes in the interests of increasing its audience,<sup>28</sup> while making no attempt to build a balanced or complete picture of the Roma minority in Spain today.<sup>29</sup> While the programme is no longer on air in Spain, it has been sold to other countries and its website is still online. The Advisory Committee is concerned that the stereotypes and prejudices the programme fostered will likely long outlive its screen life in Spain, especially as few alternative, more positive images of Roma receive air-time (see also comments below, under Article 9). The Advisory Committee regrets in this context that the State Council for Audiovisual Media has never been established. The functions attributed by law to this body are currently exercised by the National Markets and Competition Commission, which does not appear to have been able to provide a remedy against such programming. It notes with interest, however, that in a response to a request from the Institute of Roma Culture and 19 NGOs with seats on the State Council for the Roma People, the Audiovisual Council of Andalusia ordered the television station to remove from its website certain comments of a clearly xenophobic nature.<sup>30</sup>

53. Comments sections under internet news articles as well as social media networks also provide increasingly fertile ground for the dissemination of racist, xenophobic and anti-Semitic messages (see also above). The Advisory Committee notes with concern the existence of pages on certain social media networks with specifically anti-Gypsy, anti-Semitic or islamophobic content. It welcomes the fact that prosecutors specialised in cybercrimes have been designated within each of the prosecution services in Spain, and notes with interest that amendments proposed to Article 507 of the Criminal Code (see further below) would provide expressly for the possibility for judges to order the withdrawal from websites of content found to be in breach of the prohibition of incitement to hatred and for the blocking of access to or the suspension of websites of which most or all of the content is in breach of such provisions. In the meantime, however, efforts to combat hate speech on the internet are frequently hampered inter alia by the low rate of reporting and difficulties in identifying the authors of such comments. This allows hate speech on the internet to proliferate, while its authors enjoy a sense of anonymity and impunity.<sup>31</sup> The recent criminal proceedings launched following the spreading of anti-Semitic messages on Twitter (see above) are a welcome exception in this regard.

#### *Recommendation*

54. The Advisory Committee calls on the authorities to intensify their efforts to effectively combat hate speech on the internet and in the print and audiovisual media. It further calls on

<sup>28</sup> For example, reportedly the only Roma women shown on this programme were women living at home, raising children and not working; much mileage was extracted from the (now rarely practiced) tradition of the *pañuelo*, etc.

<sup>29</sup> See notably *Comunicado de las ONG del Consejo Estatal del Pueblo Gitano en relación a la emisión del programa “Palabra de Gitano” a los medios de comunicación y a la sociedad civil*; see also Javier Sáez del Álamo, “De las ferias de monstruos a la televisión”, *El País*, 10 October 2013.

<sup>30</sup> Audiovisual Council of Andalusia, Press release of 21 March 2013, “*El CAA exige a Cuatro la retirada inmediata de los comentarios xenófobos publicados en su web del programa ‘Palabra de Gitano’*”.

<sup>31</sup> In one notable exception, the administrator of a website spreading islamophobic ideas was convicted in Barcelona in March 2014 of incitement to hatred and violence on religious grounds.

them to establish an independent council on audiovisual media at state level as provided for by law, with the powers and capacity to handle effectively complaints about the dissemination of discriminatory material in the audiovisual media.

### **Combating hate crime**

55. Referring to concerns expressed in its Third Opinion as regards the difficulties encountered when seeking to prosecute and punish hate-motivated offences, due to the narrow wording of Article 510 of the Criminal Code,<sup>32</sup> the Advisory Committee is pleased to note that the government has now proposed amendments to this provision and to Article 607 of the Criminal Code, aimed at significantly broadening the definition of crimes of incitement to hatred. These amendments are now pending before the Spanish Parliament as part of a series of broader proposed reforms to the Criminal Code.<sup>33</sup>

56. The Advisory Committee also welcomes the creation in 2013, as a step in implementing the Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia and related Intolerance, of a national network of hate crimes prosecutors, co-ordinated at state level and including prosecutors specialised in hate-motivated offences from each of the provinces in Spain.<sup>34</sup> It notes with interest that this network is also co-operating with the police towards ensuring that hate motivations are taken into account at the earliest stages of investigations.

57. As regards the statistical monitoring of hate crimes, the Advisory Committee notes that the Ministry of the Interior now includes statistics on racist and xenophobic offences in its annual statistical reports and that the number of racist and xenophobic offences recorded increased from 261 in 2012<sup>35</sup> to 381 in 2013.<sup>36</sup> It further notes with approval that the national network of hate crimes prosecutors is actively seeking to improve the gathering of such statistics and, pending an update to the computer programme used to register criminal offences, is running a manual register to record cases involving racist motivations as an aggravating circumstance, which may otherwise be missed. In parallel, the Ministry of Employment and Social Security and the Ministry of the Interior have developed a Handbook for training security forces in identifying and recording racist or xenophobic incidents,<sup>37</sup> again with the aim of improving the recording of such incidents. The Advisory Committee observes that it is important that this tool now be widely distributed and that effective steps be taken to ensure that it fully serves its purpose in practice.

58. The Advisory Committee welcomes all of the above developments, which it sees as important steps towards improving the institutional response to individual hate crimes when they occur and towards building up a more accurate picture of the prevalence of such offences. It also

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<sup>32</sup> See Third Opinion, para. 90.

<sup>33</sup> *Proyecto de Ley Orgánica por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal*, BOCG-10-A-66-1, currently being examined by the Justice Committee of the Congreso de los Diputados. The relevant amendments have been proposed in the context of transposing into the Spanish legal system Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law.

<sup>34</sup> This initiative follows on from the creation in 2009 of the first Hate Crimes Service (*Servicio de Delitos de Odio y Discriminación*), in Barcelona.

<sup>35</sup> *Anuario Estadístico del Ministerio del Interior*, 2012, pp262-263.

<sup>36</sup> *Informe sobre la evolución de los delitos de odio en España 2013*, p10. Note that an increase in the number of racist and xenophobic incidents recorded may be due to an increase in the actual number of such incidents, to improved reporting methods, or to a combination of the two.

<sup>37</sup> Available at [http://explotacion.mtin.gob.es/oberaxe/inicio\\_descargaFichero?bibliotecaDatoId=218](http://explotacion.mtin.gob.es/oberaxe/inicio_descargaFichero?bibliotecaDatoId=218).

welcomes indications received from civil society that there appears to have been a decrease in recent years in the number of physical attacks leading to serious injury or death committed against persons belonging to national minorities and immigrants. However, racist and xenophobic offences do continue to be committed<sup>38</sup> and, as the authorities have recognised, the number of such incidents that is reported to the authorities is undoubtedly significantly lower than the number that actually occurs.<sup>39</sup>

59. In this context, it is encouraging to note that the national network of hate crimes prosecutors is working with NGOs, including through the newly created Council for Victims of Hate Crimes and Discrimination<sup>40</sup> to help improve the reporting of racist or xenophobic incidents. The Advisory Committee observes that there are many barriers to such reporting, including shame felt by the victim, apprehension about contacts with the police (see further below) and a sense that reporting serves no purpose as the perpetrators will never be punished even if they are identified. The Advisory Committee wishes to emphasise that in the longer term, the success of efforts to raise awareness about and increase the reporting of racist offences will therefore also depend on the success of efforts to improve both the investigation and punishment of such offences and relations between law-enforcement officials and the groups most often targeted by hate crimes.

60. The Advisory Committee is deeply worried by the violent incidents that occurred in July 2014 in Estepa and in August 2014 in Castellar (Jaén), in which, following disputes involving Roma families, non-Roma inhabitants of these towns held public demonstrations against their Roma neighbours lasting several days and arson attacks were committed against the places of residence of a number of Roma families. Further worrying clashes between non-Roma and Roma also occurred in Bujalance in October 2014. It understands that criminal investigations have been opened regarding the events in Estepa and Castellar, and notes with interest that, following a complaint by twelve Roma NGOs and a subsequent referral by the prosecutor, preliminary proceedings concerning a possible offence of incitement to hatred under Article 510 of the Criminal Code have been opened with respect to the events in Castellar. In addition to addressing the alarming societal attitudes that these incidents reveal (see also above), the Advisory Committee stresses that it is vital that any racist and xenophobic motivations underlying the commission of these offences be adequately taken into account from the very earliest stage of investigation. Politicians should also systematically condemn violent physical attacks against individuals and their property as criminal offences that must be punished in accordance with the law, whoever their perpetrators and victims.

### *Recommendations*

61. The Advisory Committee encourages the authorities promptly to enact amendments to Articles 510 and 607 of the Criminal Code in order to broaden the definition of incitement to hatred and enable such offences to be effectively sanctioned.

<sup>38</sup> See for example Movimiento contra la Intolerancia, Informe Raxen, Número 51, “Investigación: Xenofobia, Racismo e Intolerancia en España (Por CC. Autónomas. Enero-Junio, 2012)” and Número 52, “Investigación: Xenofobia, Racismo e Intolerancia en España (Por CC. Autónomas. Julio-Diciembre, 2012)”; for similar information from January 2013 onwards, see [www.informeraxen.es/category/espana](http://www.informeraxen.es/category/espana).

<sup>39</sup> *Informe sobre la evolución de los delitos de odio en España 2013*, pp1-2.

<sup>40</sup> *Consejo de Víctimas de Delitos de Odio y Discriminación* (COVIDOD), created on 23 April 2014 by a number of NGOs working inter alia to improve the status of victims of hate crimes.

62. It strongly encourages the authorities to pursue their efforts to improve the reporting, recording, investigation, prosecution and punishment of hate-motivated offences.

63. It recommends that the authorities pursue, strengthen and expand their efforts to build the confidence of minorities in the police.

### **Conduct of law-enforcement officials**

64. The authorities have taken a series of welcome steps towards eliminating the practice of ethnic profiling by the police and unjustified detentions of persons following identity checks, notably issuing a new circular specifying the criteria and procedures to be followed by members of the national police force in carrying out identity checks.<sup>41</sup> The above-mentioned Handbook for training security forces in identifying and recording racist or xenophobic incidents also includes a section specifically addressing ethnic profiling.<sup>42</sup> The Advisory Committee is moreover pleased to note that the practice of transferring foreign citizens to police stations even when they had produced the requisite identity papers now appears to have stopped.

65. Regrettably, however, the large numbers of complaints that continue to be submitted to the Ombudsman suggest that ethnic profiling still occurs in the form of excessive stops and searches. While some municipal police forces have introduced commendable practices in this respect,<sup>43</sup> and the Ministry of the Interior also decided in April 2013 to make police identification numbers more visible,<sup>44</sup> the Advisory Committee regrets that a number of recommendations addressed by the Ombudsman to the national police have so far not been followed. These included, for example, keeping a record of all stops and systematically reviewing all cases in which individuals complain that they have experienced ethnic profiling.<sup>45</sup>

66. As regards police relations with minority groups, the Advisory Committee notes that the Handbook for training security forces in identifying and recording racist or xenophobic incidents also includes sections on improving support to minority communities, the need for collaboration between the police and civil society, victim assistance and interviews with victims and witnesses. 165 members of the security forces were trained as part of the project in which this handbook was produced and the authorities have indicated that these officers have gone on to train approximately 15 000 members of the various security forces in Spain. The Platform for Police Diversity Management, set up by police and civil society in 2010, has also prepared a Guide to Police Management of Diversity, which was published in June 2013. The Advisory Committee welcomes this initiative and notes that the guide sets out the issues faced by persons belonging to minorities as well as by police in a diverse society, and includes a wide range of good practices which it thus serves to disseminate.

### *Recommendations*

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<sup>41</sup> Circular 2/2012 of 16 May 2012 of the Directorate General of Police, intended to eliminate the scope for misinterpretation of Circular 1/2010 of 25 January 2010.

<sup>42</sup> See section 5.4.E of the Handbook.

<sup>43</sup> See section 6.3 of the Handbook for training security forces in identifying and recording racist or xenophobic incidents.

<sup>44</sup> Resolución de la Dirección General de Policía, of 19 April 2013. The Guardia Civil also introduced changes to the colours used for identification numbers on their uniforms in April 2013, with the aim of making them easier to read. More visible police identification numbers should make it easier for individuals to lodge complaints where they consider they have been wrongly treated by a police officer.

<sup>45</sup> See also Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, following his visit to Spain from 3 to 7 June 2013, CommDH(2013)18, paras. 110 and 111.

67. The Advisory Committee invites the authorities to pursue their efforts to train all members of the police force to work more effectively in a diverse society, in order to improve relations between police and groups at the greatest risk of exposure to hate crimes.

68. It urges the authorities to take decisive steps to put an end to ethnic profiling, notably as regards excessive use of stop and search powers.

## **Article 9 of the Framework Convention**

### **Roma access to the media**

69. The Advisory Committee is pleased to note that a number of regular publications by NGOs, such as *Nevipens Romani* and *Gitanos*, continue to receive support through certain public funding schemes, although it notes with regret that funding to others has been cut (see above, comments on Article 5) and that in all cases, public funding is provided on the basis of short-term grants only, rather than permanent and secure funding. In parallel, the presence of Roma on the Internet has continued to increase through a number of websites, social media networks, blogs and other tools.

70. In general, however, the participation and representation of the Roma in the media, including public media, remains very limited, and little progress appears to have been made in this respect since the adoption of the Advisory Committee's Third Opinion. Furthermore, the representation of Roma and of their identity and culture in mainstream media continues to revolve essentially around stereotypes (see also comments on Article 6 above), a fact which may in part be attributable to a lack of trained Roma journalists.

71. Some positive initiatives regarding Roma access to the media were noted in the Advisory Committee's Third Opinion, and the inclusion since then of lines of action in the National Roma Integration Strategy in Spain 2012-2020 such as the development of training for media professionals and the promotion of media self-regulation plans for the treatment of information about Roma is welcome. The Advisory Committee also notes with interest that the Operational Plan for the Social Inclusion of Roma People 2014-2016 includes welcome actions intended, first, to improve the recording and handling of complaints about the image of Roma women portrayed by the media and second, to promote co-operation agreements aimed at developing a positive image of Roma in the mass media. However, the Advisory Committee has not been informed of any steps taken to implement these plans in practice and emphasises that additional efforts are needed to promote the direct access of Roma to the media, in particular as journalists and presenters.

72. Bearing in mind the positive role that can be played by the media in fostering intercultural dialogue and understanding more broadly, the Advisory Committee considers that similar efforts would also be useful with respect to promoting both programming about and the employment of journalists and presenters belonging to other minority groups.

### *Recommendation*

73. The Advisory Committee calls on the authorities to provide adequate support to promoting the access of Roma to the media, including by supporting the training of Roma journalists. Public broadcasters could also be reminded of their duty adequately to reflect the cultural diversity of society.

## Article 12 of the Framework Convention

### Equal access to education

74. As noted in the Advisory Committee's Third Opinion, there has been important and welcome progress regarding the access of Roma children to education in Spain over the past several decades. Moreover, Roma overwhelmingly recognise education as an important factor in achieving success.<sup>46</sup> Nonetheless, the Advisory Committee notes with concern that significant gaps remain between the rates of access to education and the educational achievements of Roma and non-Roma pupils. Thus, 64% of Roma children do not complete compulsory secondary education, whereas for the population as a whole, this figure is 13%; only 55% of Roma children are still enrolled in school at age 16, compared with 93.5% of the rest of the population; the great majority of Roma children who are still in school at the age of 15-16 years are in vocational training; and, while the enrolment rate of Roma children in primary school is now close to 100%, more than one in five Roma children still fail to complete primary school successfully.<sup>47</sup> Illiteracy rates remain approximately five times higher among Roma than among the general population, and the percentage of Roma who attend university reportedly remains very low.

75. The Advisory Committee also remains deeply concerned by the persisting issue of school segregation. It notes that the authorities have at times taken the position that high concentrations of Roma in certain schools do not result from deliberate segregation but arise due partly to residential segregation and partly to school admission criteria that for example favour the enrolment of children who already have a brother or sister attending the same school. The Advisory Committee is concerned that certain schools nonetheless include far higher concentrations of Roma pupils than the overall percentage of Roma in the local population, or that in some schools, Roma pupils in need of additional support receive such instruction in separate classrooms.<sup>48</sup> The Advisory Committee underlines moreover that segregation in schools is frequently associated with higher rates of absenteeism and lower educational outcomes for the pupils concerned. It notes with interest that in response to a complaint lodged with the Ombudsman on school segregation affecting Roma, the latter has requested detailed responses from the relevant educational authorities, which are currently awaited.

76. The Advisory Committee welcomes the fact that the authorities at central level as well as at the level of the Autonomous Communities<sup>49</sup> have continued to develop, implement and support a wide range of programmes, actions and campaigns (often implemented in practice by NGOs) aimed at improving access to education, some of which expressly target Roma and others of which may include Roma as part of a broader ambit. These include for example a Unión Romaní programme to support pupils at high risk of absenteeism during the transition from primary to compulsory secondary education; the Promociona programme currently run in 13 Autonomous Communities by the Fundación Secretariado Gitano, which works with

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<sup>46</sup> For example, the participation rate of Roma in pre-school education rose from 59% in 1994 to 74% in 2001 and to 81% in 2009; 95% of the Roma population considers education to be very or fairly important in achieving success. See Fundación Secretariado Gitano, Executive Summary, Roma students in secondary education in Spain: A comparative study, Madrid, 2013, pp8 and 12, and sources cited therein.

<sup>47</sup> Ibid. On the latter point, the percentage of Roma children who failed to complete primary education dropped from 57% in 1994 to 31% in 2001 and 22.5% in 2009. While this progress is highly welcome, academic success has not automatically followed from higher enrolment rates.

<sup>48</sup> See Kamira and Fundación Mario Maya, School segregation of Romani students in Spain: Research report of a study conducted in four selected locations, May 2012.

<sup>49</sup> Different Autonomous Communities have assumed competencies in the field of education to varying extents.

individual Roma pupils and their families to promote the completion of compulsory education; a project on community learning in Córdoba and several other provinces in Andalusia, run in co-operation with the University of Córdoba, Instituto CREA and Federación Kamira; and the Siklavipen Savorença programme run by the Pere Closa Foundation in the province of Barcelona. Thanks to Spain's participation in the "Roma families get involved" project, co-funded by the European Union, a Guide for working with Roma families towards achieving the success of their children in school, aimed at education professionals, was also published in April 2013. With support from the government, NGO campaigns run in recent years to promote education amongst Roma pupils include a campaign launched in 2012, "*Gitanos con estudios, gitanos con futuro*", to combat school drop-out, and another launched in 2013 and aimed at encouraging Roma pupils who begin compulsory secondary schooling to see it through to completion, "*Con estudios, tus sueños se cumplen*".

77. The Advisory Committee further notes with interest that the National Roma Integration Strategy 2012-2020 includes a series of strategic lines of action aimed at increasing the schooling rates of the Roma population in infant education, ensuring universal access to schooling as well as increased success of Roma pupils at primary level, increasing the rates of successful completion of compulsory secondary education and increasing the education level of the adult Roma population. The Advisory Committee also welcomes the inclusion in the Strategy of a specific line of action dedicated to developing measures to avoid the concentration of Roma pupils in certain schools or classrooms. However, it regrets that this does not appear to have been followed by the inclusion of specific measures in this respect as part of the Operational Plan for the Social Inclusion of Roma People 2014-2016.

78. The Advisory Committee also notes with concern that budget cuts made as part of austerity measures adopted in the face of the economic crisis have adversely impacted a number of programmes in place to improve access to education, including measures specifically designed to support children belonging to disadvantaged groups or from disadvantaged areas or to combat school absenteeism, such as the Educa3 Plan to promote access to infant education for 0- to 3-year-olds, the PROA plan to support schools in socially disadvantaged areas with the aim of reducing academic failure and the Educación Compensatoria programme.<sup>50</sup> It is concerned that such measures may undo the progress made in recent years towards achieving equality in education for Roma. In addition, it is concerned about changes introduced in December 2013 by the Law on Improving the Quality of Education (LOMCE), in particular as regards new selection processes that may accentuate inequalities faced by Roma children and earlier streaming of children into general or vocational education. In this respect it draws attention in particular to the possible impact on equal access to education of Roma children of the introduction of new tests at various levels of schooling. While the authorities have emphasised that such tests are intended to assist each pupil in choosing the education path best suited to them, the Advisory Committee is concerned that in practice, they may result in the exclusion of socio-economically disadvantaged children, including Roma, from the higher education streams. It is also concerned that impact of such tests may be particularly negative for Roma girls, who already have a significantly higher school drop-out rate than their male peers.

79. The Advisory Committee stresses the importance of building on the progress made in the past years and decades towards achieving equal access to education for Roma children and equal

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<sup>50</sup> See Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, following his visit to Spain from 3 to 7 June 2013, CommDH(2013)18, paras. 30 to 34.

education outcomes for them, and cautions strongly against taking measures that may compromise continued progress or even go backwards.

### *Recommendations*

80. The Advisory Committee strongly encourages the authorities to pursue their efforts to improve the integration and achievements of Roma pupils in school. Continuity beyond primary education, successful completion of secondary education and reducing absenteeism, as well as increased access of Roma to university education, should remain key objectives for the authorities at all levels and the efforts made in this field should be regularly monitored to ensure that the outcomes achieved match these objectives.

81. It calls on the authorities to assess the impact of budget cuts in the field of education on the equal access to education of Roma, and emphasises in this context that austerity measures should not have the effect of depriving these children of equal access to quality education or directly or indirectly reducing their chances of completing school.

82. It again urges the authorities to investigate the reasons for the persisting concentration of Roma pupils in schools located in disadvantaged areas and with lower educational outcomes, in order to eliminate such practices. In so doing, the authorities at all levels should ensure that admission criteria and performance assessment are not implemented in a manner that discriminates against Roma pupils or leads to their concentration in some schools or classes.

### **Intercultural education**

83. As the Advisory Committee noted in its Third Opinion, bearing in mind that limited progress had yet been achieved in including Roma in textbooks and teaching materials, in 2010 the Institute of Roma Culture published a manual designed to improve the teaching of Roma culture as part of the upper-level primary school curriculum, increase the knowledge and awareness of all primary school children regarding Roma culture, and counteract stereotypes.<sup>51</sup> The Advisory Committee welcomed this publication and emphasised the importance of ensuring the dissemination of adequate information on the Roma identity and culture in Spain's education system.<sup>52</sup>

84. The Advisory Committee notes with interest that the Operational Plan for the Social Inclusion of Roma People 2014-2016 includes lines of action to promote the inclusion of specific training on Roma culture in teacher training courses, to ensure that Roma culture and history are included in textbooks, to support schools in promoting cultural diversity and including Roma culture in their curricula and to support the inclusion in university curricula of subjects covering cultural diversity. However, it regrets that few specific actions appear to have been identified at this stage that could serve to give effect to these goals. The Advisory Committee nonetheless notes with interest that some new materials have been added to the CREADE virtual resource centre for cultural diversity in education since 2012 and that the "Roma in Spain: History and Culture" subject continues to be offered at the University of Alcalá de Henares (see above, comments on Article 5). In Barcelona, a pilot programme to promote education on equality and non-discrimination is being run in fifteen schools in the 2014/15 and 2015/16 school years.

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<sup>51</sup> *Cultura gitana: su inserción en el diseño curricular del tercer ciclo de primaria / Los colores en la escuela*. Instituto de Cultura Gitana, Madrid, 2010.

<sup>52</sup> On the intercultural dimension of education generally, see Thematic Commentary No. 1, Education under the Framework Convention for the Protection of National Minorities, ACFC/25DOC(2006)002, Chapters 1.4 and 2.1.

85. Despite these steps, Roma representatives stress that at present, and in contrast with the teaching that school students receive about the origins of nations recognised in the Spanish Constitution, Roma culture remains largely absent from textbooks and school curricula, and Roma are insufficiently involved in designing materials including information on their culture. As a result, Roma culture is scarcely visible as a part of Spanish culture as taught in schools. They also point to a general lack of teachers adequately trained in this field, meaning that the materials that do exist are not used effectively. The Advisory Committee is also concerned that the suppression of the compulsory subjects Education for Citizenship and Human Rights at primary level and Civic and Ethical Education at secondary level, in favour of the mainstreaming of these questions in the general school curriculum, will in practice lead to the disappearance of human rights education from schools.<sup>53</sup>

86. The Advisory Committee again underlines the importance of progressing rapidly in this area, as the promotion of mutual respect and understanding as well as a sense of a common cultural heritage at the earliest ages is key to combating prejudice and racism in society. It moreover emphasises that seeing themselves reflected on an equal footing and as an integral part of Spanish society in textbooks could indirectly contribute to the fight against the disproportionate dropout rate of Roma children from school.

#### *Recommendations*

87. The Advisory Committee strongly recommends that better use be made of existing materials aimed at increasing the knowledge and awareness of all children about Roma identity and culture as an integral part of Spanish culture. It recommends that the authorities continue to support, with effective Roma participation, the development of further such materials and their effective use in practice. The authorities at all levels should intensify their efforts to promote respect for as well as effective management of diversity in early education.

88. It further recommends that human rights education again be specifically included in the school curriculum.

### **Article 14 of the Framework Convention**

#### **Teaching in and of officially recognised or minority languages**

89. Following the publication in 2011 of the beginner-level Romani language learning method *Sar san?*, designed for use both in the classroom and by self-taught students, the Advisory Committee welcomes the continuing work towards developing higher-level modules of this programme. It observes that the availability of such teaching materials will certainly facilitate the provision of teaching in these languages where such a demand exists. Regrettably, however, it remains the case that there is currently no teaching of the Romani and *caló* languages in the school system. While it acknowledges that demand amongst Roma for such language-learning possibilities may at present not be high, the Advisory Committee underlines that interest in such possibilities has been repeatedly expressed by Roma representatives. The level of demand for such teaching now needs to be assessed and followed up as needed.

90. The Advisory Committee has also been approached by speakers of languages other than Spanish (Castilian) and that are officially recognised in parts of Spain regarding a recent

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<sup>53</sup> See also Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, following his visit to Spain from 3 to 7 June 2013, CommDH(2013)18, paras. 35 to 37.

decrease in the use of those languages as the medium of instruction in schools. In Galicia, for example, the possibility of providing teaching in Galician has dropped since the adoption of the Decree on Multilingualism in 2010.<sup>54</sup> As regards teaching in Catalan, the Advisory Committee has been informed that linguistic immersion programmes have been negatively affected by the enactment of the LOMCE, which stipulates that where an Autonomous Community cannot provide a reasonable proportion of teaching in Spanish, it must cover the costs of education in private schools for families who wish their children to receive a higher proportion of teaching in Spanish. The Advisory Committee further understands that there is little provision of instruction in languages other than Spanish (Castilian) that are officially recognised in Spain outside the Autonomous Communities where these languages have official or protected status, although a demand for such teaching may exist.

### *Recommendations*

91. The Advisory Committee calls on the authorities to identify the needs and demands of the Roma with regard to studying the Romani and *caló* languages in the school system and to endeavour to provide such teaching in consequence.

92. It invites the relevant authorities to engage in dialogue with the speakers of regional or minority languages regarding possibilities for promoting teaching and learning in such languages, including outside the Autonomous Communities where they have official or protected status, where such a demand exists.

## **Article 15 of the Framework Convention**

### **Participation of Roma in public affairs**

93. Elections were held in the Autonomous Communities of Andalusia and Catalonia in 2012 and in the Basque Country and Galicia in 2013. Otherwise, no elections have been held at any level in Spain since the Advisory Committee's previous Opinion, and it remains the case that Roma are largely under-represented in political life. According to the information available to the Advisory Committee, there are no Roma members of the national parliament or of the parliaments of the various Autonomous Communities. Furthermore, despite the inclusion of Roma candidates on some electoral tickets, very few Roma are elected at local level, even in regions where Roma reside in substantial numbers such as Andalusia.

94. The authorities rely extensively on Roma NGOs to propose and implement programmes designed to improve the situation of Roma, and continue to provide considerable support to such programmes. While this driving role given to Roma organisations is commendable, the Advisory Committee notes that the considerable extent to which this model is applied also carries with it some negative side-effects, not least because few NGOs are able to carry out programmes throughout Spain, meaning that it is more difficult for issues to be addressed systematically across the country and for locally successful projects to be transferred elsewhere. The extensive mobilisation of politically active Roma to work on projects and programmes aimed essentially at improving the situation of Roma also tends to confine them to the role of defending and promoting the rights of this minority and to perpetuate the lack of effective participation of Roma in public affairs more generally. In addition, the tendency to turn frequently to the same organisations in this context is a source of tensions within the Roma community.

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<sup>54</sup> Decree No. 79/2010 of 20 May 2010, which repealed Decree 124/2007 of 28 June 2007, reduced the amount of teaching that can be provided using Galician as the language of instruction from half to one-third.

95. The Advisory Committee notes with interest that the State Council for the Roma People continues to function as an advisory body composed of equal numbers of Roma representatives and of representatives of the State administration, having as its main purpose to foster the participation of Roma civil society in policy development and in the promotion of equal opportunities for and equal treatment of Roma. Its terms of reference allow it *inter alia* to provide advice on policies, projects and legislation affecting Roma, to propose measures to improve the situation and to make suggestions as to the use of funds in this field.<sup>55</sup> A standing committee and working groups on education, employment, health, housing, culture and (in a single working group) social action, equality and non-discrimination and the European agenda have been set up. The Advisory Committee welcomes these mechanisms, in particular as they are intended to facilitate the participation of Roma in the design of programmes of direct interest to them. However, it regrets that the Council and its working groups rarely meet,<sup>56</sup> making opportunities for meaningful dialogue scarce, and that consultations on key policy documents such as the Operational Plan for the Social Inclusion of Roma People 2014-2016 were conducted essentially in writing, on the basis of proposals drawn up by the government. The Advisory Committee notes that these weaknesses in the functioning of the Council and its working groups limit their effectiveness as consultation mechanisms and in particular limit their capacity to influence policy-making.

96. The Advisory Committee recalls the questions of principle raised in its Third Opinion regarding the selection procedure for non-governmental members of the Council: despite a transparent procedure involving public calls for tender from NGOs and clear selection criteria, it is the State administration, rather than Roma themselves, that decides which Roma organisations may sit on the Council.<sup>57</sup> In essence, this means that the government can choose the Roma organisations with which it wishes to work in this context. The Advisory Committee regrets that the appointments procedure in place does not preserve the appearance of independence of the Council, which may in the long term weaken its credibility *vis-à-vis* the Roma community. In addition, it is important that the authorities maintain contact with a broad range of Roma NGOs, including associations that are not members of the Council.

97. The Advisory Committee notes with interest the creation of a regional Roma Council in Castile-La Mancha,<sup>58</sup> in addition to similar bodies already existing at regional level in the Autonomous Communities of the Basque Country, Catalonia and Extremadura and at municipal level in Barcelona. It again emphasises the important role that such bodies can play, in particular bearing in mind that in Spain many competencies that have a direct impact on the situation of the Roma (for example competencies in key fields such as education, housing and health) are attributed to authorities at regional or local level.

### *Recommendations*

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<sup>55</sup> The establishment and functioning of the State Council for the Roma People are governed by the provisions of Royal Decree 891/2005 of 22 July 2005.

<sup>56</sup> The Council is required to meet only twice a year, and certain working groups meet even less regularly. At the time of the Advisory Committee's visit in July 2014, the employment working group had for example not met since March 2013.

<sup>57</sup> See Article 7(4)(b) of Royal Decree 891/2005 of 22 July 2005, and, for the current composition of the Council, Ministry of Health, Social Policies and Equality Order SPI/2329/2011 of 24 August 2011 and Ministry of Health, Social Services and Equality Order SSI/1604/2012 of 9 July 2012.

<sup>58</sup> Created by order of the Castile-La Mancha Department of Health and Social Welfare on 9 July 2013, replacing the previous Order of 11 April 2011.

98. In addition to promoting the participation of Roma in appointed bodies, the Advisory Committee again calls on the authorities actively to promote the effective participation of Roma in elected bodies at all levels, for example by promoting the reflection of the diversity of society in the lists of candidates of political parties.

99. The Advisory Committee invites the authorities to continue supporting the work of the State Council for the Roma People and to strengthen this support as necessary in order to increase the effectiveness of this body. In particular, the authorities should ensure that the Council and its working groups meet regularly and that they are regularly and effectively consulted on all matters of concern to the Roma. At the same time, the authorities should ensure that the diversity of the Roma movement in Spain is fully reflected in the Council and that communication is maintained with organisations that are not part of the Council.

100. The Advisory Committee recommends that the authorities promote wherever appropriate the establishment of effective consultative bodies between the authorities at local and regional levels and the Roma, in order to ensure that Roma are able to participate meaningfully in decision-making on issues of concern to them at all relevant levels.

### **Participation of Roma in socio-economic life: employment**

101. The Advisory Committee welcomes the continued implementation of long-term programmes to improve access of persons belonging to disadvantaged groups, including the Roma, to the labour market. It welcomes in particular the success of programmes such as the *Acceder* 2007-2013 programme, co-funded by the European Social Fund and numerous national and regional public administrations, and implemented by the Fundación Secretariado Gitano in 14 Autonomous Communities. Cited as an example of best practice in Europe, this programme, which aims to assist mainly unemployed and unskilled Roma in receiving professional training in line with the demands of the labour market and gaining entry into the labour market, has benefited over 50 000 beneficiaries, thousands of whom received employment contracts in the relevant period. The Advisory Committee notes with interest that there has been a gradual increase in the proportion of Roma women participating in this programme, showing both increased interest from Roma women in accessing the labour market and that positive measures may usefully support this process.<sup>59</sup> The programme also works to encourage employers to employ Roma in their workforce. The Advisory Committee strongly hopes that the conclusion in October 2014 of a new partnership agreement between the European Social Fund and Spain for the 2014-2020 period will enable such successes to be consolidated, and emphasises the importance of ensuring not only initial access to employment but also durability of employment. It welcomes the conclusion of the National Youth Guarantee System, designed to promote youth employment, in July 2014, and notes that this may be of particular relevance to Roma, among whom the youth unemployment rate is very high (see below).<sup>60</sup> It also notes with interest the relevance to Roma women of programmes such as the CLARA programme, aimed at increasing the employability of women at risk of social exclusion, and the SARA programme, run by the Spanish Red Cross and CEPAIM, aimed at assisting migrant women (including migrant Roma women) to participate and integrate fully in Spanish society, including the labour market.

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<sup>59</sup> See Fundación Secretariado Gitano, *Políticas de inclusión social y población gitana en España*, Bucharest, 2012, pp197-198.

<sup>60</sup> In the context of the European Union's Youth Guarantee scheme, aiming to tackle unemployment of young people under the age of 25.

102. The Advisory Committee is concerned that in spite of these efforts, unemployment remains very high among Roma. According to 2011 figures, only 38.6% of Roma were in salaried employment (conferring labour rights and the right to social protection), compared with 83.6% of the majority population. Prejudice and discrimination on the part of employers result also in numerous cases in which Roma are refused access to employment on the grounds of their ethnicity. As a result, a disproportionate number of Roma are employed in a family business (26%, compared with 0.8% of the population as a whole). The low level of initial qualifications of many Roma makes them particularly vulnerable as regards both access to the labour market and the risk of loss of job. The economic crisis has hit hard across the Spanish population as a whole, tripling the overall unemployment rate; nonetheless, the unemployment rate of Roma remains disproportionately high, at 42% – 17% higher than that of the majority population.<sup>61</sup> As regards the access to employment of young Roma, the Advisory Committee notes with deep concern that 43.3% of Roma aged between 15 and 19 years and 48.5% of Roma between 20 and 24 neither study nor work.<sup>62</sup>

103. Against this overall background, many previously salaried Roma workers have been forced back into “traditional” jobs such as scrap and metal collecting and itinerant trade – in the latter case, an area to which many other workers having lost their jobs are also increasingly turning, resulting in heightened competition in this market. In parallel, moreover, increasingly strict regulations introduced to transpose EU directives in these areas make it more and more difficult for Roma both to fulfil the legal requirements for these activities and to make an adequate living from them. The Advisory Committee is concerned that the implementation of these regulations will aggravate the already precarious position of Roma in the labour market and may result in many Roma families losing their source of income.

#### *Recommendations*

104. The Advisory Committee invites the authorities to continue and strengthen their policies to promote the equal access of Roma to the labour market, and to include such policies as a high priority in the implementation of the 2014-2020 partnership agreement between the European Social Fund and Spain. Such policies should be based on a thorough evaluation of policies already implemented and should also include measures designed to ensure the sustainability of employment.

105. It strongly encourages the authorities to ensure that measures taken as part of the National Youth Guarantee System are available and accessible to young Roma and to monitor continuously the implementation of these measures in order to adapt them as necessary to ensure that they achieve the aim of reducing unemployment among young Roma.

106. The Advisory Committee calls on the authorities to ensure that the manner in which EU directives on itinerant trade and waste collection are implemented does not result in Roma families losing their source of income. The authorities should ensure in particular that effective measures to accompany the workers affected by the transition and to assist them to comply with the new regulations are in place and accessible to Roma.

<sup>61</sup> Decade of Roma Inclusion, Updated Civil Society Monitoring Report, 17. For some examples of discrimination in access to employment, see FSG Annual report 2013: Discrimination and the Roma Community, pp31-32.

<sup>62</sup> For the overall population, 12.8% of young people aged between 15 and 19 years and 27.4% of young people between 20 and 24 neither study nor work, figures which are already alarmingly high. See FSG, Executive Summary, Roma students in secondary education in Spain: A comparative study, Madrid, 2013, p14.

### **Participation of Roma in socio-economic life: housing**

107. The Advisory Committee welcomes the fact that the percentage of Roma living in substandard housing has significantly dropped over the past decades, from 31% in 1991 to approximately 12% in 2007.<sup>63</sup> However, as these figures show and despite the considerable progress made, a large number of Roma continue to be faced with inadequate housing conditions. The Advisory Committee welcomes the fact that the improvement of housing conditions of Roma is one of the priority areas tackled in the National Roma Integration Strategy. It notes that complementary priorities are being pursued in this field: the eradication of slums and access to quality housing and accommodation.<sup>64</sup>

108. The Advisory Committee welcomes the holistic approach taken in resettlement projects such as the IRIS rehousing project in the Autonomous Community of Madrid, seeking to ensure not only that an adequate home is provided, but also family and residential community support.<sup>65</sup> It also welcomes the continuing co-operation between the authorities of Andalusia and Sevilla and a wide range of NGOs in order to improve the living conditions in the notoriously run-down Polígono Sur district of Seville, including the part of this district mostly inhabited by Roma (“*las 3000 viviendas*”).<sup>66</sup> Bearing in mind that the Spanish Constitution attributes competence in housing matters to the Autonomous Communities, the Advisory Committee underlines the particular importance of sharing good practices in this field.

109. The Advisory Committee is concerned that cuts made to housing support payments, notably in response to the economic crisis, have reduced the access of Roma to such support. It is also concerned at reports that families whose income is generated essentially in the informal employment sector – a reality that concerns increasing numbers of Roma families due to spiralling unemployment rates (see above) – face particular difficulties in accessing social housing, since they are generally unable to demonstrate that they have the minimum income required to apply. As regards access to private-sector housing, the Advisory Committee has again received reports of discrimination against Roma in this field, especially against non-Spanish Roma (see also above, comments with respect to Article 4).<sup>67</sup> Moreover, it is concerned at reports that Roma are increasingly facing evictions. In the light of these developments, the Advisory Committee considers that up-to-date data on the situation of Roma with regard to housing is needed, and welcomes information that work on an up-to-date map of access to housing is currently being carried out.

#### *Recommendations*

110. The Advisory Committee encourages the authorities to pursue their efforts to eradicate slums and promote the integration of the Roma families concerned in mainstream, non-segregated housing. It encourages them in particular to encourage the sharing of good practices

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<sup>63</sup> 3.9% in shanty towns and 7.8% in severely damaged or otherwise substandard housing. Fundación Secretariado Gitano, Políticas de inclusión social y población gitana en España, Bucharest, 2012, pp201-206. According to information provided by the authorities, in 1991, 10% of Roma houses were shanties or shacks and 21.4% otherwise substandard.

<sup>64</sup> See for example section 3.2.3 of the National Roma Integration Strategy in Spain 2012-2020.

<sup>65</sup> “Madrid: IRIS’s Rehousing Project” in Council of Europe, Database of good policies and practices, Newsletter No. 1, October 2013.

<sup>66</sup> See Plan Integral del Polígono Sur, Sevilla.

<sup>67</sup> For some examples, see Fundación Secretariado Gitano, Discrimination and the Roma Community: Annual Report FSG 2013, Madrid, 2014, pp33-34.

between Autonomous Communities and ensure that long-term, comprehensive social support is provided to families affected by resettlements.

111. The authorities should also review the changes made to public housing support mechanisms in the light of their impact on the most vulnerable groups in this field, with a view to ensuring that those persons most exposed to poverty, including some Roma, are not deprived of access to adequate housing.

#### **Participation of Roma in socio-economic life: health**

112. The Advisory Committee notes with concern that foreign Roma are amongst the groups most affected in Spanish society by poverty and, in part as a consequence of this, most exposed to risk factors for health. The Advisory Committee is deeply concerned that health reforms rolled out in the context of austerity measures, reducing access to the public health system and excluding undocumented migrants from access to free primary health care, have had a particularly negative effect on the access to health care and the health status of foreign Roma, even though many local authorities and health professionals reportedly continue to provide health care in practice. It welcomes the fact that some Autonomous Communities have decided not to apply these reforms but to maintain universal health care.

#### *Recommendation*

113. The Advisory Committee urges the authorities to ensure that health care reforms are not implemented in such a way as to have a disproportionate effect on vulnerable groups, including foreign Roma.

### III. CONCLUSIONS

The Advisory Committee considers that the present concluding remarks and recommendations could serve as the basis for the resolution to be adopted by the Committee of Ministers with respect to the implementation of the Framework Convention by Spain.

The authorities are invited to take account of the detailed observations and recommendations contained in Sections I and II of the Advisory Committee's Fourth Opinion.<sup>68</sup> In particular, they should take the following measures to improve further the implementation of the Framework Convention:

#### **Recommendations for immediate action<sup>69</sup>**

- **ensure that programmes to promote the full and effective equality of Roma include clear targets and well-defined actions and benefit from adequate, earmarked funding, and ensure that the impact of such programmes is effectively monitored, in consultation with representatives of the Roma;**
- **step up efforts to combat all forms of racism and intolerance; ensure that all alleged cases of hate speech, including those committed on the internet and in the print and audiovisual media, are effectively investigated, prosecuted and sanctioned;**
- **ensure that austerity measures taken in the context of the economic crisis, including in the fields of education, housing and health, do not disproportionately impact, directly or indirectly, on Roma and take resolute measures to redress problems of this nature that have already been identified;**

#### Further recommendations<sup>70</sup>

- enact comprehensive anti-discrimination legislation and promptly enact amendments to Articles 510 and 607 of the Criminal Code in order to broaden the definition of incitement to hatred and enable such offences to be effectively sanctioned;
- in the absence of a fully-fledged equality body, strengthen the status and independence of the Council for the Promotion of Equal Treatment of all Persons without Discrimination on Grounds of Ethnic or Racial Origin, appoint a President of this Council as a matter of urgency, continue funding and supporting the Network of Assistance to Victims of Discrimination and, in the absence of alternative dispute resolution mechanisms, ensure that legal aid is available to victims of discrimination;
- step up efforts to raise awareness among groups most frequently targeted by discrimination and hate crimes of the avenues of redress available to them;
- continue to provide support to the Institute of Roma Culture as well as to other

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<sup>68</sup> A link to the Opinion is to be inserted in the draft resolution before submission to the GR-H.

<sup>69</sup> The recommendations below are listed in the order of the corresponding articles of the Framework Convention.

<sup>70</sup> The recommendations below are listed in the order of the corresponding articles of the Framework Convention

projects and programmes aimed at preserving and promoting Roma culture, including the Romani and caló languages, to the extent that demand for this exists;

- put an end to ethnic profiling and pursue efforts to train all members of the police force to work more effectively in a diverse society;
- pursue efforts to improve the integration and achievements of Roma pupils in schools and investigate the reasons for the continuing concentration of Roma pupils in schools located in disadvantaged areas and with lower educational outcomes, in order to eliminate such practices;
- take effective steps within the education system to increase the knowledge and awareness of all children about Roma identity and culture as an integral part of Spanish culture;
- engage in dialogue with the relevant stakeholders about possibilities for promoting teaching and learning in regional or minority languages, where such a demand exists;
- continue supporting and take measures to increase the effectiveness of the State Council for the Roma People, engage in meaningful dialogue and promote wherever appropriate the establishment of effective consultative bodies between the authorities at local and regional levels and the Roma.