Responding to racism in Spain

european network against racism
red europea contra el racismo
Spanish citizens’ perception of foreigners is becoming negative due to different factors, one of them being how the media deals with the issue. Over the past few years, continuous changes to migration-related laws have been increasingly discriminatory and have promoted a bad image of foreigners. They also have amplified the social exclusion problem of many of them. Ensuring equality for all, regardless of their origin, is becoming increasingly difficult and the number of everyday situations in which foreigners face discrimination (in finding a place to live, for example) is rising. Foreigners now make up more than 10% of the population in many parts of Spain, whereas they only represented 2% of it less than five years ago. Although their presence is now a fact, they are persistently denied the recognition of their rights, including some as important as their political rights.

We also have to keep in mind that Spain is an entry gate to Europe for people coming from the southern part of the world, as it shares borders with Africa. At these borders our African neighbour countries are violating human rights with Spanish and European money, while we remain unconcerned about the rights of the African population. Moroccan citizens’ situation is similar; they die on a daily basis by drowning in the sea because they had the bad luck of being born 12 kilometres away from the much dreamed-of Europe.

Racism against the Gypsy community still persists today although Roma people have lived in our cities since they settled hundreds of years ago. Discrimination has come to be accepted by many of them so that they no longer speak out, which makes putting an end to this kind of situations even harder. As well as Spanish Gypsies, foreign Gypsies are arriving who suffer a double discrimination, both as Roma and as foreigners.
ENAR’s activities in Spain have been somewhat paralysed during these last years. Social organisations have little resources at their disposal for activities. Most of their staff is made up of volunteers who choose to focus on their daily work within the association and are unable to work for the Network. The ones to suffer from this problem the most are immigrant associations recently established in Spain that do not have time for social militancy.

However, the Network’s structure has undergone changes at the end of 2005, and volunteers have been assigned to work for ENAR. In this way we hope to give a good thrust to the fight against racism at this important social and political moment. Our work during this past year has precisely been to press the authorities to act in view of the situation. That is why we have been campaigning with Amnesty International among politicians and authorities for a State plan against racism to deal with this new reality.

ENAR promotes the cause of anti-racism and equal treatment for ethnic minorities and non-EU nationals residing in the European Union.

ENAR is a network of European NGOs working to combat racism in all EU Member States. The NGOs have formed National Coordinations (NCs), which constitute the membership of ENAR and include ethnic minorities, immigrants’ associations, information centres, advocacy groups, trade unions, faith based organisations and many others. Democratically elected representatives of each NC attend the Network’s meetings where they are consulted on policy and statutory issues. One of the representatives of each NC should belong to an ethnic minority.

ENAR is determined to fight racism, xenophobia, anti-Semitism and Islamophobia, to promote equality of treatment between EU citizens and third country nationals, and to link local/regional/national initiatives with European initiatives.
WHO IS EXPERIENCING RACISM: THE SITUATION IN SPAIN

The main victims of racism in Spain are Gypsies and foreigners. Gypsies have been suffering this situation for 500 years now. Stereotypes about them, their nomad life, their inability to integrate, etc., are deeply rooted in our society. For many years they have been discriminated against in a similar way as foreigners are nowadays. For a Roma it is much harder to find a decent place to live than it is for any other citizen. School failure is also much more widespread among Gypsy children. When surveys are conducted in schools and on the streets about what group is the most rejected by society, Gypsies unfortunately are always first on the list.

Today many of the foreigners who come to work and live in Spain are discriminated against in many fields, above all legally. Since 2001 the Immigration Law has been modified three times; each time more discriminatory regulations have been included. For example, during the last legal reform in December 2003, it was established that foreigners’ registration in town halls expires after a two-year period and that they do not enjoy the same rights as a Spanish citizen when going to a public administration office.

The way the media treats this issue is terrible. When an incident happens, if the person who has caused it is a foreigner, the media always report that person’s nationality, thereby stigmatising their whole community. This has created a negative feeling towards foreigners among Spaniards. The latest surveys have shown that the majority of Spaniards consider the arrival of foreigners a necessity but that more than 50% of them consider immigration a problem. The people who suffer from this the most are the sin papeles, people in an irregular legal situation, who have now reached the amount of 600,000.
POLITICAL REALITY: NATIONAL LAWS AGAINST RACISM

In view of this situation the public authorities keep silent and deny the existence of discrimination when it is made public. Most of them turn a blind eye to the situation. This increases the concern of social organisations and aggravates the manifestations of racism in our society. In March 2004 an important political change took place that affected this reality. Unlike the previous ruling party, the current one doesn’t use the rejection of immigration as a political weapon. However, immigration laws are essentially the same. Immigration is still considered a public issue and little is done to achieve social inclusion.

On the southern border, for example, the Spanish authorities are making full use of their good relations with the Moroccan Government to slow down African immigration in exchange for money, while they disregard these people’s human rights. A special regulation process was carried out, but it was insufficient and politically influenced. This caused many people to be turned down and kept in an irregular situation, because their application depended on their employers.

The current socialist government shows a degree of cowardice in immigration-related matters that it does not show in other fields. This is reflected in the weakness of its fight against racism. Since coming to power it hasn’t developed any specific legislation. In December 2003, the law concerning the transposition of European directives 43/00 and 78/00 was passed, known as Law 62/2003, as was the law concerning the proposed national budgets where both directives were inserted. Since then, neither the previous government nor the present one have done anything to develop them. Many promises were made, but to this day we are lacking bodies specialised in combating racism, and important measures need to be taken.
Part of civil society has organised itself to combat racism and xenophobia. It is not as big in number as in other countries, but it makes up an important structure. However, most organisations, especially the important ones, receive most of their funding from the public authorities and are not independent enough to be able to criticise, especially when one of the biggest agents of discrimination is the public administration itself.

Another problem in the fight against racism in Spain is that few organisations take it into account in their daily work. Over the last few years the immigrant population has multiplied. Many organisations have sprung to life to address these people’s need for social and legal assistance, but they have concentrated on managing documentation and services, not on gathering data on discrimination. Their mostly heavy workload is focused on daily goals. They don’t systematise the information they obtain because, since Spain is one of Europe’s southern frontiers, dramatic scenes take place on its borders that make the organised collection of data, which cold be helpful in the fight against racism, difficult.

Gypsy people are organised in large associations but these, with a few exceptions, do not work to combat racism either. Foreigners’ organisations are more numerous everyday but, being first generation migrants, they have little resources at their disposal. Those with resources aim for more cultural objectives and those who act against racism don’t have time for big activities due to their economic and social situation. We hope that this landscape will change for the better in the future, and that second generation migrants will be more established and will take part in activities such as the II World Forum on Migrations to be held in Madrid in June 2006.
Many anti-racist NGOs have not traditionally engaged in legal processes, often this is for the simple reason that there was little law for them to refer to. However the adoption of the EU Race Directive (see section ‘EU and anti-racism’) and the development of national law, means that now more than ever litigation has the potential to lead to real change for those who are vulnerable to racism and discrimination.

As anti-discrimination is a relatively new field of law, NGOs have a role to play in raising awareness regarding its potential. Consequently the strategic litigation has come to the fore as a useful advocacy technique. NGOs can both directly engage in strategic litigation and support others to do so by gathering data, assessing victims and engaging in advocacy.

“Strategic or impact litigation uses the court system to attempt to create broad social change”

The primary focus of strategic litigation is law or policy change rather than redress for an individual, though these two objectives are not mutually exclusive. Strategic litigation intends to reach beyond an individual case or victim, to create a context of enhanced protection for everyone who is vulnerable to discrimination. By changing law or setting precedents an individual case can have a ripple effect leading to change on a much broader level.

The concept of strategic litigation encompasses the selection of cases, case planning and management, as well as ensuring that favourable outcomes are implemented.

Not every NGO has the mandate or skills to engage in litigation, nor will litigation necessarily be the right strategy in many cases. Nonetheless, it is essential for all anti-racism actors to recognise the importance of strategic litigation as a tool for generating change.
Gypsy people have associations in most Spanish cities that aim to unite them but that do not usually address discrimination situations. In those cases they contact local anti-racism or human rights organisations to obtain information and file complaints. The main organisations representing the Roma population are: Unión Romání (“Romani Union”), Presencia Gitana (“Gypsy Presence”) and the Fundación Secretariado Gitano (“Gypsy Secretariat Foundation”). The latter is the only one to have a department for racism-related complaints and legal assistance.

As regards services for immigrants, it has already been said that foreigner associations do not directly combat racism but mainly provide social and legal assistance, as many social and trade union organisations do. Different public administration services, local and autonomous, also provide specialised social, legal and employment counselling to foreigners. Of these associations some are specialised in attending to refugees (CEAR—the Spanish Commission for Refugees; ACCEM—“Spanish Catholic Immigration Commission Association”). Although many of them do have projects to raise public awareness of racism few provide legal assistance to victims of discrimination.

Organisations that do provide specific services of assistance to victims of racism are SOS Racismo (“SOS Racism”) and Movimiento contra la Intolerancia (“Movement against Intolerance”). The first one is a federation with associations in various Spanish cities, though not in all, with a department for complaints of racism. The public authorities only have a Municipal department for claims in Barcelona, and in Madrid the Town Hall is putting into place a legal advice service for cases of racism, through an agreement with the provincial Bar Association.
National NGOs working on anti-racism are already seriously overburdened in their work to confront racism and discrimination. Why then should they also be concerned with what is going on in other European countries, and in the institutions of the European Union itself?

Developing an understanding of racism in Europe is essential for two key reasons. Firstly, to promote learning and knowledge about what racism is and how to combat it and secondly to generate common tools across the European Union to combat racism. Experience over the last ten years has demonstrated that national governments can be convinced to take action at a European level, where they may not have been prepared to move forward alone.

Racism has a distinctly European dynamic. Europe’s colonial history underlines its role in fostering both historical and contemporary forms of racism; and the 20th century does not cast a positive light on the European legacy. Despite this long history Europe began to take racism seriously relatively recently. Europe has a responsibility both to the people living within its borders, as well as internationally to take a leading role in promoting a vision of a world free from racism.

In 1997, Article 13 of the Amsterdam Treaty gave the European Union a legal base on which to develop ‘appropriate measures to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation’. Using these powers the European Union adopted the Race Equality Directive in June 2000 (and later that year the Employment Equality Directive).

While the Race Directive was due to be fully implemented by July 2003, at the beginning of 2006 some Member States have failed to implement it. This reality raises questions about the continuing commitment of EU Member States to combat racism and discrimination. However
the Directive does have direct effect, which means that individuals can assert it before national courts, even where it has not been implemented.

The Race Directive gives protection against discrimination in employment and access to a range of good and services, including social protection, health, social security and education. It puts forward a number of important definitions including: direct and indirect discrimination, harassment, and victimisation. Other significant aspects of the Directive are that it allows for positive action measures, the sharing of the burden of proof, and the establishment of equality bodies.

The principles enshrined in the Race Directive need to become core elements of anti-discrimination law and practice across the European Union. Strategic litigation is a tool to ensure that this happens. To this end, it expressly allows for NGOs to engage in proceedings in support of or on behalf of victims.

While Article 13 of the Amsterdam Treaty provided the context for developments in the field of anti-discrimination, Article 29 of the Treaty on European Union included reference to preventing and combating racism. While the European Commission proposed a Framework Decision against racism and xenophobia (racism as a crime) in 2001, developments in this policy area have been disappointing; the Council has failed to adopt the Framework Decision. In addition the European Union has competence in other policy areas that either directly or indirectly impact on the fight against racism, including: social inclusion, migration and asylum, and education.

The European Union is also involved in a range of other activities, including awareness raising (through the ‘For Diversity. Against Discrimination’ campaign) and funding of anti-racism projects. In 1997 the EU Monitoring Centre on Racism and Xenophobia (EUMC) was established. While the Centre is likely to be expanded to become a Fundamental Rights Agency in 2007, it will continue to focus on the problem of racism in Europe.
Here under are the contact details of the above-mentioned organisations. These are key links for getting to know the situation of discrimination in the Spanish State.

For Roma People:
Fundación Secretariado Gitano, in Madrid:
Antolina Merino, 10, 28025 Madrid, Tel: 00 34 91 422 09 60
E-mail: fsg@gitanos.org, Website: www.gitanos.org

For victims of racism in general:
SOS Racismo, in Madrid:
Campomanes 13- 2º Izda, 28013 Madrid, Tel: 00 34 91 559 29 06
E-mail: sosracismomad@hotmail.com, Website: www.sosracismomadrid.org

SAJ (Colegio de Abogados de Madrid),
C/ Serrano nº 11, 2ª Planta, 28001 Madrid, Tel: 91 435 78 10 Extensión 815
E-mail: saj.racismo@icam.es

Here are more key links where you can find further information, especially on the situation of migrant people in Spain:
On the situation of refugees: www.cear.es
On legal information for foreigners: www.reicaz.es
For information from Public Institutions: www.mtas.es
For general Information about racism: www.mugak.org, www.indymedia.org

KEY LINKS AND SOURCES OF FURTHER INFORMATION AT EUROPEAN LEVEL

EU Monitoring Centre on Racism and Xenophobia: www.eumc.eu.int
European Commission - anti-discrimination and relations with civil society:
www.europa.eu.int/comm/employment_social/fundamental_rights/index_en.htm
European Network Against Racism (ENAR): www.enar-eu.org
European Roma Information Office: www.erionet.org
European Union: www.europa.eu.int
‘For Diversity. Against Discrimination’: www.stop-discrimination.info
Strategic Litigation of Race Discrimination in Europe: from Principles to Practice:
www.migpolgroup.com/documents/2498.html
Strategies on Litigation Tackling Discrimination in EU Countries: www.solid-eu.org
ENAR – Spain
CEAR Madrid
Noviciado 5 – Izda., 28015 Madrid
Tel.: 00 34 91 555 06 98
Fax: 00 34 91 555 54 16
Email: servjuridmad@cear.es
Contact: Isabel Alvarez, Javier Carneros

This leaflet was prepared on behalf of ENAR in Spain and by the ENAR European Secretariat. The leaflet may be downloaded from the following link:

ENAR
43, Rue de la Charité • B-1210 Brussels • Belgium
Tel.: +32 (0)2 229 3570 • Fax: +32 (0)2 229 3575
Email: info@enar-eu.org • Web: www.enar-eu.org

This report is funded by the European Commission,
Directorate-general Employment Social Affairs and Equal Opportunities.