

An abstract painting with warm, earthy tones of brown, orange, and yellow. There are vertical streaks of green and red, and a prominent red circular spot on the left side. The texture appears to be that of a canvas with visible brushstrokes.

Housing Rights of Roma and Travellers Across Europe

A Special Housing Rights Watch Issue

WINTER 2010



**HOUSING
RIGHTS
WATCH**

Discrimination, Housing Rights and the Roma Population in Spain

By GUILLEM FERNÁNDEZ EVANGELISTA, *Associació ProHabitatge, Spain*

According to a report by the Fundación Secretariado Gitano¹, the Roma population in Spain is a community with a high degree of residential integration. The Roma population living in "standardized" housing rose from 68% in 1991 to 88% in 2007. Moreover, it has reduced the most severe situations of residential exclusion in this community, which accounted for 31% of the cases in 1991 and declined to 12% by 2007. According to a study by the CIS, 49% of the Roma families who had a house in 2006 owned their homes, while 34% rented and 16% were living under a free-lease system. Of those who owned their homes, 38% had yet to repay their mortgages, and a third of them corresponded to officially protected housing. Meanwhile, 80% of those who rented paid rent below market prices owing to the fact that they had longstanding leases under the former law or were living in officially protected rental housing.² In addition, their places of residence are mostly in urban locations (88%), with only about 6% living in segregated settlements³. As a result, Spain is viewed in Europe as one of the most inclusive models at the residential level with respect to the Roma minority⁴. In spite of these major achievements, precarious residential situations like sub-standard housing conditions, overcrowding, creation of slums or factors like residential discrimination that affect the development of housing rights continue to exist among the Roma community in Spain. 11.7% of the Roma population participating in the FSG survey lived in sub-standard housing. This category includes homes in ruinous condition (6.8%), shacks and caves (3.9%), pre-fabricated or temporary housing (0.5%), mobile accommodations (0.3%), and accommodations that were not designed for residential purposes (0.2%). According to the CIS report, 33.6% of the

Roma people surveyed had experienced a situation of discrimination in accessing rental housing, and 22% faced discrimination when buying homes. Therefore, many of the achievements, limits and reversals experienced by the Roma population in modern-day Spain are conditioned by the historical process they have lived⁵, the degree to which the discrimination they traditionally suffer has been overcome, as well as laws and policies developed and applied over the years⁶.

Equality and Housing in the Spanish Constitution

Article 11 of the Spanish Constitution (SC) constitutes a Social State that promotes Equality as a higher value of its legal system, and Article 14 proclaims that all Spaniards are equal before the law *and may not in any way be discriminated against on account of birth, race, sex, religion, opinion or any other condition or personal or social circumstance*. Thus the legal discrimination that has historically existed in Spain against the Roma population disappears⁷, but social discrimination continues to exist⁸, and it falls to the public authorities to *foster the conditions for freedom and equality of individuals and groups in which they are integrated to become real and effective, and to remove the obstacles impeding or hindering them; facilitating the participation of all citizens in political, economic, cultural and social life* (Article 9.25C). Therefore, the constitutional text does not explicitly recognize ethnic minorities, although the Preamble does recognize and protect *all Spaniards and peoples of Spain in the exercise of human rights, of their culture and traditions, languages*

1 Fundación Secretariado Gitano. *Map on Housing and the Roma Community in Spain. 2007*. Other reports can be seen, including *Caritas Diocesana Tur Negro. Asistencia gitana y trashumancia de Vigo 2002*.

2 Study no. 2264. Centro Investigaciones Sociológicas, *Sociological Survey of Roma Population Households. 2006*.

3 Fundación Secretariado Gitano. *Map on Housing and the Roma Community in Spain. 2007*.

4 For good practices, see *Improving Roma housing and eliminating slums, Spain PRA. October 2009*.

5 The sedentarization of the Roma population took place over different stages throughout the more than 500 Pragmatic Sanctions (anti-Roma laws) and the country-to-city migration process between 1660 and 1970. This would explain the different residential situations in which the Roma community now live in Spain, and the virtual disappearance of their itinerant and nomadic lifestyle. However, this phenomenon has been growing in recent years due to the arrival of Roma communities from other countries and immigrants in irregular administrative situations.

6 *Diversidad Residencial de la Comunidad gitana en España. Report on Housing and the Roma Community. 2007*.

7 Moreover, given the history of persecution, Article 195C referring to the freedom of movement and of choosing one's place of residence in the Spanish territory was also important for the Roma community.

8 See *National Analytical Study on Housing. Roma Focal Point for Spain. 2008*.

and institutions, and the Roma population could be counted among them. According to Alejandro Martínez⁹ Spanish case law has defined that the principle of equality of all citizens before the law translates into the need for all to receive the same treatment in identical situations¹⁰, that is, equality encompasses the prohibition to discriminate¹¹. In this light, the principle of equality would grant citizens a subjective right consisting of being treated equally to other citizens in *de facto* identical situations¹², forbidding any differences in treatment that are not justified and finding a limit in the principle of legality¹³. In addition, the prohibition of discrimination enshrined in Article 145C includes not only direct but also indirect discrimination¹⁴.

In the Spanish State, 6 out of every 10 people acknowledge that they do not know their rights in case they suffer from discrimination¹⁵, which is a crime under Organic Law 10/1995, dated 23 November, of the Spanish Criminal Code, in its articles 22.4 (as an aggravating factor in criminal liability), 314 (severe discrimination in the workplace), 510 (those provoking discrimination), 511 (refusal of service by public officials by reason of discrimination) and 512 (discrimination in private professional activities). It should be noted that Spain signed the 1965 Convention on the Elimination of All Forms of Racial Discrimination, and at the European level, is subject to Directive 2000/43/EC relative to the application of the principle of equal treatment of persons regardless of their racial or ethnic origin. Spain has signed and ratified several international treaties relating to the fundamental rights that pursuant to articles 10.25C and 935C have become part of the internal legal system. Therefore, it transposes all the international mechanisms in place containing housing provisions¹⁶, as well as provisions on equality and non-discrimination. The transposition of the European anti-discrimination directive

to the state law system gave birth to Law 62/2003, dated 30 December, on tax, administrative and social measures that link discrimination and housing in Article 29 by *establishing measures to ensure the principle of equal treatment and non-discrimination by reason of racial or ethnic origin of a person is real and effective in education, health care, social entitlements and services, housing, and in general, the supply of, and access to, any goods and services.*

Among these measures, Article 30 contemplates positive action in relation to racial or ethnic origin to ensure full equality in practice, without preventing *specific measures to be maintained or adopted in favor of specific groups aimed at preventing or compensating for any disadvantages affecting them by reason of their racial or ethnic origin.* In fact, rulings handed down by the Constitutional Court (nos. 216/1991, dated 14 November, and 269/1994, dated 3 October), have accepted affirmative action under Article 9.25C, as mentioned earlier, specifically in situations stemming from gender and disability. Therefore, positive action in relation to vulnerable groups in terms of housing are not only possible, but it may also be a constitutional requirement to ensure equal rights¹⁷ and other related rights, like the right to housing (Article 475C), which must be abided by, protected, promoted and guaranteed by the public authorities¹⁸. Thus, if public housing policies are not carried out, are insignificant or hamper one's ability to exercise one's right to housing and end up denying a realistic opportunity¹⁹ to exercise them, one can resort to jurisdiction for effective judicial protection connecting Articles 145C on equality and 53.25C, which among other alternatives, provides for appeals for legal protection by the Constitutional Court.

9. Martínez, A. *La evaluación social y jurídica de los gitanos en la legislación histórica española*. Doctoral Thesis 2007. Faculty of Law, University of Granada

10. Spanish Supreme Court Ruling (STS) 31.05.1994 and Constitutional Court Ruling (STC) 10.07.1981

11. STS 30.11.1993

12. STS 13.05.1994

13. STS 34.02.1994

14. SSTC 13/2001 29 January and 253/2004 22 December

15. <http://www.ipsocial.com/discriminacion-ha-si-da-cada-10-espanoles-olmo-no-conocer-sus-derechos-en-caso-de-sufrir-discriminacion/> (Revision 26.11.2010)

16. Like Article 251 of the UN Universal Declaration, Article 11.1 of the International Covenant of Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (arts.13 and 14.2), the Convention on the Rights of the Child (Art. 27.2) or the International Convention on the Elimination of All Forms of Racial Discrimination (art. 5.e). In the Council of Europe, Spain has also ratified various instruments like the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (ratified in 1979) and the European Social Charter of 1961. However, it must be said that the successive national governments failed to ratify the Revised European Social Charter in 1996, nor did they sign and ratify the Additional Protocol of 1995 establishing a class-action system making it possible to take before a court any State that has not made enough of an effort to scrupulously comply with Article 31 of the Revised Charter, which refers to housing rights.

17. Ponce, J. (2005): *Urbanismo, vivienda i cohesió social* (City Planning, Housing and Social Cohesion). Barcelona Metropolitan Strategic Plan. Collection: Strategy N°4

18. Ponce, J & Sibina, D (2008): *El Derecho de la vivienda en el siglo XXI*. Marcial Pons.

19. Ponce uses the concept of "realistic opportunity" based on the American ruling in the *Mont Laurel* case and State Supreme Court decision handed down in March of 1975

In this regard, Royal Decree 2066/2008, dated 12 December, which regulates the 2009-2012 State Housing and Rehabilitation Plan (SHRP), does not specifically cite the Roma community as beneficiaries of the Plan's aid. However, people affected by slum eradication operations and other groups subjected to social exclusion or at risk thereof are deemed (among others) to have preferential protection rights, contemplating measures like the Slum Eradication Aid Program (Art. 54-56) and the Protected Housing Program for Specially Vulnerable Groups and Other Groups (Art. 35-37). Specifically, the Housing Plan's goals in relation to eradicating slum-dwelling call for 4,000 specific actions over the four years. In Spain the Roma community lives in different residential situations, which also means that some Roma people may have access to other measures contemplated by the Plan like the program providing aid to tenants or the aid program for the integral restoration of historic areas, city centers, deteriorated neighborhoods and rural townships. The 2010-2012 Action Plan for the development of the Roma population has an area targeting housing whose goals are to maintain an information system on housing and the Roma community, promote access to standard quality housing for the Roma population, address measures aimed at eradicating slum-dwelling, and lead a housing policy that focuses on integration of the Roma community. In this regard it should be noted that article 4.b of Royal Decree 2/2008 concerning the land law, establishes that all citizens are entitled to decent, adequate, and available housing and to not suffer from any discrimination concerning the use of public and collective facilities. As Juli Ponce²⁰ notes, one of the fundamental building blocks of the integration housing policy is for Spanish municipalities to develop appropriate administrative behavior not just to avoid unnecessary restrictions to affordable housing but to promote it actively. In this sense, planning procedures play a key role in guiding local discretions towards meeting the needs of poor people, assessing their needs and providing sufficient land. Here we can find an important link between urban planning and housing rights. This establishes reservations for protected housing on consolidated urban land, both for new developments and for major renovations to existing buildings, totally or partially

allocated for protected housing. The legislator can provide policy direction for this discretion directly, to favor social mix and social cohesion. A good example of this can be found in Art. 10.1 A of the 2002 act, Urban Planning in Andalusia, which outlines the need to ensure "a balanced distribution of this type of affordable housing" in local planning, and Art. 80.4 of the 2006 Basque act, which sets out to "guarantee a balanced distribution of land reserves to avoid the risks of sociospatial segregation".

The most important decision by Supreme Court in relation to the housing situation of Roma ruled against the City Council of Madrid, which had opened a ditch measuring about three meters wide and one deep, in addition to a parapet that isolated some 400 housing units – inhabited by some 3,000 Roma – from their immediate surroundings, allegedly for crime prevention reasons. The Supreme Court argued that a number of interventions (police control, etc.) that had violated the principle of equality recognized by the SC, since they had subjected all the inhabitants in the area to such discrimination, enclosure and control that no other neighborhood has ever experienced, and that these interventions had been guided solely by prejudice against the Roma.²¹

The Roma in Spain are for the most part settled communities, and are distributed unevenly throughout the entire Spanish territory. There are different state, regional and municipal plans aimed at guiding policies in relation with the Roma community, like the Integral Plan for Cohabitation and Social Development of Galicia, the Integral Plan for the Roma Community in Andalusia, the Basque Plan for the Integral Promotion and Social Participation of the Roma People. In this regard we will specifically address the Catalan case.

The Catalan experience

Organic Law 6/2006 reforming the Statute of Autonomy of Catalonia²² (SAC), requires the Autonomous Government of Catalonia to *guarantee the recognition of the Roma people's culture to safeguard the historic reality of this people as reflected in Article 42.7 SAC*. Another very important event for the Roma community was the Cata-

20 Ponce, J. 'Housing discrimination and minorities in European cities: The Catalan Right to Housing Act 2007. International Journal of Law in the Built Environment Vol.2, n°2. 2010

21 STS 78/1988 (17.01.1988) Spain. RAXBN National Focal Point. Thematic Study: Housing Conditions of Roma and Travellers. March 2009

22 Article 147.1 CE contemplates that the State will recognize the Statutes of Autonomy and protect them as an integral part of its legal system.

lonian Parliament's declaration in 2007 recognizing the persecution and genocide of the Roma people²³. In relation to the residential situation of the Roma community in Catalonia, a 2006 study concluded that 64.7% of housing owned by the Roma population were protected housing, and 42% assured they had problems trying to buy a house in the open market.²⁴ The SAC also recognizes the right to housing as a guiding principle of economic and social policy, and in the area of rights and duties (Articles 26 and 47SAC²⁵). Catalonia approved the Right to Housing Law 18/2007 (CRHL), the first law in this area that specifies that *all people should have access to housing and be able to occupy it, provided that the legal and contractual requirements applicable to any legal relationship, without suffering discrimination, whether direct or indirect or harassment*.²⁶ Therefore, considering housing harassment, for instance, as discrimination allows housing to be connected to human dignity, the right to equal treatment and the right to physical and moral integrity. As for the "reasonable adjustments" to ensure housing rights, Article 46CRHL establishes protective measures on the part of the Government that are based on positive action measures and other measures aimed at addressing the unique needs of specific persons to facilitate their social inclusion and their right to enjoy housing in equal conditions to other persons. Article 47CRHL recognizes the burden of proof, where the accused party must be required to provide an objective and reasonable justification sufficiently proving that the right to equality has not been violated as a result of its action or inaction. Finally, the Catalan housing law specifi-

cally categorizes discrimination and housing harassment, by act or omission, as a very serious administrative violation (Article 123.2.aCRHL) with fines that can reach 900,000 euros (Article 118.1CRHL). With regard to the Criminal Code, of note is Ruling 428/2008 handed down by Criminal Court 13 of Barcelona, which sentenced property owners who had cut water and electric power supply and even tried, on three separate occasions, to rip out the facility's utility wiring, to 1 year in prison²⁷.

The CRHL contains different technical-legal contributions that are of great interest in developing a social housing policy that benefits the Roma community. The CRHL²⁸ has opened the door to the so-called 'Social Housing Programs', of which we highlight Insertion Housing, which is housing run by the various levels of government or by not-for-profit organizations, and are aimed at attending to people requiring special attention (Art.3i CRHL), and it has included new instruments targeting vulnerable groups like Urban Solidarity and the Special Contingencies Reserve as a means of fostering social cohesion. Urban Solidarity (Art. 73CRHL) requires municipalities with over 5,000 inhabitants to implement a minimum-sized social-policy housing pool equaling 15% of the total existing primary housing within a period of 20 years. The Special Reserve Contingencies in public-initiative developments cannot be lower than 10% of the total housing within the development, as stipulated by Art. 99.4 CRHL. This article defines people with reduced mobility, people at risk of social exclusion and women victims of gender violence as priority groups

23. Where the Parliament declares and recognizes that Roma that live in Spain, and specifically in Catalonia, have been the victim of historical and continued genocide, deplores the racist and anti-Roma laws that Catalan institutions have passed and backed and all the situations that have produced ill-treatment, discrimination and the vulnerability of the Roma community throughout history, commits to work for the application of inclusive, effective and determined policies with the objective of achieving equality of opportunities for the members of the Roma community in Catalonia and the recognition and maintenance of their signs of culture and identity.

24. Workshop on the Social Function of Housing. Final report. Autonomous Government of Catalonia 2006.

25. Article 26. Rights in the field of housing. Those individuals who lack sufficient resources have the right to a decent housing, and public authorities shall, therefore, establish by law a system of measures to guarantee this right, within the terms determined by law.

Article 47. Housing. The public authorities shall facilitate access to housing by means of the provision of land and the promotion of public and subsidized housing, with special attention to young people and groups with the greatest needs.

26. - Direct discrimination, which occurs when a person receives, in any aspect relating to housing, treatment that is different from that received by another person in an analogous situation, provided that such difference in treatment does not have legitimate ends that objectively and reasonably justify it, and the means used to achieve such ends are adequate and necessary.

- Indirect discrimination, which occurs when a regulation, covenant or contract clause, individual agreement, unilateral decision, criterion or apparently neutral practices cause a particular disadvantage to a person with regard to others in exercising that person's housing rights. Indirect discrimination does not exist when the action has legitimate ends that objectively and reasonably justify it, and the means used to achieve such ends are adequate and necessary.

- Housing harassment, understood as any action or omission involving abuse of the law that seeks to disrupt the harassed person's right to the peaceful use of a dwelling and create a hostile environment for that person, either in material, personal or social aspects, with the ultimate goal of forcing the person to make an unwanted decision on his or her right to occupy the dwelling. Under the present law, housing harassment constitutes discrimination. Any unjustified refusal by the owners of the dwelling to accept payment of rent is a sign of housing harassment.

27. Fernández, G. (2010): *Igualdad en el acceso y la ocupación de la vivienda. Guía práctica*. (Equality in Housing Access and Occupation. A Practical Guide.) Colección Transformaciones. Conoce tus derechos. University of Barcelona Publications and Editions

28. considers the supply of housing for social policy purposes as a 'general-interest service' (Art. 4-CRHL) and facilitates the creation of an affordable housing pool.

for the Special Reserve Contingencies. In this regard, we can see how the Catalan Law of the Right to Housing does not specifically cite the Roma community but in Catalonia there is an Integrated Plan for the Roma People since 2005 which includes Housing and Town Planning. The main actions regarding housing are: to give priority to rehousing in rehabilitated neighbourhoods, avoiding over-concentration; quotas of occupation (in the urbanism and construction sectors, in the neighbourhoods where the Roma population lives); to promote actions for the right to housing among Roma young people and understand that the transformation should be subject to the initiative for the eradication of ghettoized neighbourhoods and the potential participation of all of those involved, including Roma people, in both the design and the construction.

Another interesting instrument that could have implications for the Roma community in Catalonia is that of housing aimed at enforcing the right to relocation developed in Decree 80/2009 of 19 May, which, pursuant to Article 78.12

of the CRHL, establishes the basic conditions for access to relocation housing for people who, merely by living in a dwelling that is affected by town or city planning action, are required to abandon the affected building after meeting the applicable legal requirements. In this way, the goal is for people affected by town and city planning projects, unlike what happened until now, will no longer have to add or collect any extra amount of money to obtain equivalent housing to that which he/she in effect had. Some three hundred neighbors of La Mina (a neighborhood in Barcelona with a strong presence of the Roma community) who own officially protected housing are currently suffering from this problem. Their houses will be torn down to complete the transformation plan of La Mina, and they are being asked to pay between 30,000 and 40,000 euros to be relocated to other flats with the same characteristics. The neighbors want the new Decree 80/2009 for people affected by town and city planning operations to be applied to their case.

Limits and New Challenges

Housing exclusion in the Spanish Roma community is manifested not only through the persistence of slum-dwelling and sub-standard housing, but also in the difficulties the youngest Roma families face in gaining access to housing in the sale or rental market, in housing discrimination situations, in overcrowding housing, in residential segregation and in the physical as well as economic difficulties of maintaining housing, which in some cases affect officially protected housing, both for sale and for rent. At times, attempts have been made to resolve the difficulties of families in a highly precarious situation by facilitating public economic aid or the simple access to owned or rented housing, as if this were a formula for ensuring social integration, without taking into account the necessary social accompaniment. This has demonstrated that in many cases it is not enough to focus on fostering aid for buying houses, land, or subsidizing rent and developing officially protected housing and rehabilitation; rather, it requires social accompaniment in order to develop the rights and duties involved in living in standard housing, and in this respect it is necessary to approach the problem in a way that overcomes administrative compartmentalization and goes beyond access to, and occupation of, a dwelling. This is a chance, at European level, to give real substance to the Housing Assistance concept of Article 34.3 of the Charter of Fundamental Rights of the European Union and give it a broader content that goes beyond just economic aid. Although clearly the challenges that lie ahead include finding new solutions for undocumented people and travelling communities. For example, breaking the Spanish tradition, the Programa Cominante, run by the Vitoria-Gasteiz City Council, which mainly (but not exclusively) targets the Romanian Roma living in mobile homes in Vitoria-Gasteiz.²⁹

29 Spain. RAXEN National focal Point. Thematic Study: Housing Conditions of Roma and Travellers. March 2009.