Roma rights

diskriminerings ombudsmannen

Discrimination, paths of redress and how the law can improve the situation of Roma

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Preface

Democracy is based on the principle of equal rights and human dignity for all. Legal protection against discrimination has been introduced to give the principle of non-discrimination practical meaning. Every individual is entitled by law to the protection of his or her human rights.

Discrimination against Roma and the marginalisation this has engendered clearly demonstrates the need for action to enhance Roma's prospects of influencing the conditions under which they live. Discrimination means that the principle of equal rights and human dignity for all is not being upheld, and this is a serious democratic problem for society as a whole, not just for the groups or individuals it affects.

The present report describes the Equality Ombudsman's experience of promoting Roma rights, the aim being to determine how far this work has progressed and what further measures need to be taken.

The Equality Ombudsman would particularly like to thank the working group that contributed its expertise in the preparation of this report, namely Angelina Dimiter Taikon, Diana Nyman, Fred Taikon, Ingrid Schiöler, Rosario Taikon and Stefano Kuzhicov.

It is our hope that the report will help to carry forward the work of promoting and upholding Roma rights.

Håkan Sandesjö
Equality Ombudsman

Heidi Pikkarainen
Development Officer

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Background

Roma are being subjected to serious abuses throughout Europe. The discrimination against Roma has been confirmed in numerous reports from international bodies, national authorities and NGOs. Sweden is no exception.[1] Roma are excluded from important areas of Swedish society and are still being denied access to basic human rights such as housing, education, employment, social services and health care. Many Roma have experienced discrimination in the justice system, finding that the principle of equality before the law does not seem to apply to them. Together with discrimination in other areas of society, this has adversely affected Roma's faith in public authorities and other public representatives.

Few of the democratic institutions currently found in Sweden are managing to cope with the complex reality that is the everyday life of Roma. To a great extent, Roma have long remained completely outside society's democratic processes, and this is still the case. Roma have seldom been involved in decisions affecting them. One possible explanation for the relative lack of action taken on behalf of Roma, and the modest progress made towards improving the situation for Roma around Europe, is that Roma themselves have seldom been involved in the formulation of the problems or of the measures needed to alter the situation.

Discrimination legislation has long been flawed and many Roma have viewed the authorities' efforts and willingness to combat discrimination as less than satisfactory. One step in the right direction, towards the realisation of human rights, was the adoption of the European Community directive against ethnic discrimination in 2000[2]. This directive requires European member states to develop legal instruments and take measures that make it easier for individuals to obtain redress when their rights are violated in a manner associated with their ethnicity.

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1 See for instance Swedish Government Report SOU 2010:55, "Romers rätt – en strategi för romer i Sverige" [Roma rights: A strategy for Roma in Sweden].

2 Council of Europe Directive 200/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

Sweden implemented the directive through the Prohibition of Discrimination Act (Swedish Code of Statutes 2003:307).[3] This extended legal protection against discrimination to additional areas, including the supply of goods and services, e.g. housing, social benefits such as social services, and health and medical care. Previous anti-discrimination legislation in Sweden only covered higher education and the relationship between employers and employees. Thus the new law established legal grounds for more effective protection in many of the situations in which Roma are discriminated against, such as when seeking to rent or purchase a home, when out shopping or when visiting a public facility.

In 2006, protection was broadened further by means of the Act Prohibiting Discriminatory and Other Degrading Treatment of Children and Pupils (2006:67.) This law offered protection against discrimination, harassment and other forms of abusive treatment at school and in other educational contexts. It also prescribed that schools were to seek to prevent harassment and other abusive treatment, and required them to actively promote the principle of equal rights for children and pupils.

In 2004, the Ombudsman against Ethnic Discrimination presented a report entitled Discrimination of Roma in Sweden. It described how the Ombudsman in 2002-2003 had gone about discharging a special government mandate to prevent and combat discrimination against Roma (also known as the Roma Project). Based on what had been learned in the course of the Roma Project, the report noted the existence of considerable knowledge gaps regarding the causes of the Roma's situation in Sweden. Ignorance of the Swedish state's historical role in this connection and of how historical actions and perceptions have impacted on the widespread and complex discrimination directed at Roma today was described in the report as one of the principal reasons for the marginalised position of Roma in contemporary Swedish society.

3 Government Bill 2002/03:65, "Ett utvidgat skydd mot diskriminering" [Extended protection against discrimination].

The report noted the need for more actors to develop approaches that would enable anti-discrimination legislation to be used as an instrument in the task of changing discriminatory structures that prevent Roma from enjoying their human rights to the full. It stressed the importance both of developing a greater awareness of the link between individual abuses and discriminatory structures and taking action to raise awareness of the protection against discrimination offered by the law. The report further emphasised the need to mobilise Roma representatives. The serious situation revealed by the report, it was felt, warranted special measures to ensure that Roma as a group caught up with the majority population instead of remaining in an unequal position in the community.

The approaches outlined in the report came to serve as a basis for continued efforts to prevent and combat the discrimination of Roma. An open dialogue and cooperation between the Roma and the Ombudsman against Ethnic Discrimination, both locally and nationally, had a dual effect: the Ombudsman acquired a closer understanding of the Roma's situation and the Roma themselves learned more about the protection against discrimination and paths of redress.. The dialogue with Roma and the rights-based educational courses that the Ombudsman's staff participated in raised the agency's awareness of the conditions under which Roma live. The new approach is one of several reasons why Roma have contacted the Ombudsman to assert their rights by for instance submitting complaints about discrimination, and this in turn has given the agency greater opportunity to launch legal proceedings that make clear the existence of discrimination against Roma and contribute to Roma obtaining redress.

Protection against discrimination has been further strengthened in Sweden by the creation of a single, integrated authority through adoption of the Act concerning the Equality Ombudsman (2008:568) and the all-inclusive Discrimination Act (2008:567), both of which entered into force in January 2009. With the advent of an integrated ombudsman authority, the chances of broadening the fight against discrimination and making it more effective have increased. The new cohesive Discrimination Act provides a broader scope for a more

in-depth approach to the task of combating the discrimination of Roma.

The general purpose of the Act is to combat discrimination and promote equal rights and opportunities regardless of sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age.[4]

The law prohibiting discrimination applies to employers, educational activities, labour market policy activities and employment services, the starting or operation of a business, membership in certain organisations, the supply of goods, services and housing, meetings and public events, health and medical care and social services, the social insurance system, unemployment insurance and financial aid for studies, national military service and civilian service, and public employment.

The Equality Ombudsman has taken the work of the Ombudsman against Ethnic Discrimination a step further in seeking to prevent and combat the discrimination of Roma. The approaches formulated in the Roma Project, and continuously refined since, have been included and strengthened in the strategic plan adopted by the Equality Ombudsman that serves as a basis for how the agency pursues its anti-discrimination mandate and the various activities involved.

The Equality Ombudsman's primary legal tool is the Discrimination Act (2008:567). Other important tools available to the Ombudsman in the fight against discrimination are the various international conventions, e.g. the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The Discrimination Act and the international conventions are crucial tools in upholding the principle of equal rights and human dignity

4 Section 1 of the Discrimination Act (2008:567).

for all. They serve as tools both for individual redress and for drawing attention to the discriminatory structures that prevent people from enjoying their rights.

According to the Government Bill presenting the Discrimination Act, the goals of participation and equality are of considerable importance to people in a vulnerable positions in society.[5]

The special rights accorded to minorities under international law and national legislation should be regarded as ways of ensuring that in practice minorities such as the Roma are guaranteed the same rights and opportunities as the majority population.[6] In view of this, and given its mandate, the Equality Ombudsman is a key actor in the securing and strengthening of Roma's right to non-discrimination. And this plays an important role in the endeavours to realise their human rights.

Aims and structure

The efforts of the Equality Ombudsman to combat discrimination of Roma proceeds from an understanding that human rights acquire practical meaning through a broad awareness of how discrimination can be combated and how rights can be achieved and asserted. By the same token, it is crucial to raise awareness of how serious abuses and discriminatory structures help to maintain the marginalisation of a group such as the Roma.

In order to strengthen and develop the work of the Equality Ombudsman, the relevance of anti-discrimination legislation must be analysed as to its effectiveness and its chances of hastening

5 Government Bill 2007/08:95, "Ett starkare skydd mot diskriminering" [Stronger protection against discrimination], page 79.

6 Key conventions here are the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the UN Convention on the Elimination of All Forms of Racial Discrimination (CERD), the European Social Charter, the Framework Convention for the Protection of National Minorities (1995) and the European Charter for Regional or Minority Languages. See also report by the Swedish Ombudsman against Ethnic Discrimination (2008), "Diskriminering av nationella minoriteter inom utbildningsväsendet" [Discrimination of national minorities in the education system].

the kind of social change that ensures respect for the principle of equal rights and human dignity for all. Another important task is to highlight the link between individual abuses and discriminatory structures, with a view to raising awareness in society.

The present report is based both on complaints from Roma received by the Ombudsman against Ethnic Discrimination and the Equality Ombudsman between 1 January 2004 and 31 December 2010 and on the legal proceedings, judgments and settlements that have resulted from the targeted work of these agencies. The complaints and the legal proceedings have served as a basis for analysis of how discrimination against Roma is manifested and also of the effectiveness of legal instruments in ensuring non-discrimination concerning this group.

The aim of the report, therefore, is to examine what actions can be taken using legal tools to help individuals obtain redress, and to combat the discriminatory structures that prevent Roma's access to human rights and help perpetuate their unequal place in society.

The report is in three parts: The first part contains a review of complaints, judgments and settlements relating to discrimination of Roma. The aim is both to examine the Roma's willingness to report abuses and to determine which approaches and initiatives improve their access to human rights and their awareness of the protection against discrimination available to them. Similarly, the report reviews levels of damages, issues relating to proof, and the scope of current legislation. This presentation is followed by an analysis of how the law in its various aspects can help individuals obtain redress and also hasten the kind of social change that ensures access to human rights. The analysis in the first part identifies potential areas of improvement in the legal realm.

The second part of the report contains an analysis of individual abuses and discriminatory structures identified in dialogue with Roma, an analysis of complaints and legal cases concerning discrimination against Roma, and research and international findings. The second part concludes with a discussion of the importance of embarking on a long-term, systematic effort to create a situation in

the public sphere in which decisions are guided by an awareness of the link between individual abuses and discriminatory structures. This includes a discussion on the importance of participation and of awareness of the role of history and its constant presence in the fight against discrimination.

The third and final part of the report is a summary of the previous parts. It includes a discussion on the work of the Equality Ombudsman and other key actors in pursuit of Roma rights, and also sets out the Ombudsman's conclusions.

Key terms

In accordance with the Council of Europe's convention on national minorities, the Swedish Equality Ombudsman uses a definition of the term national minority based on the precept that all individuals who identify themselves as belonging to one or the other of the national minorities qualify for protection under the convention. Roma in Sweden are one of the five recognised national minorities, and Swedish policy on minorities applies to all who identify themselves as Roma.[7] Antiziganism is defined in Sweden as negative perceptions or attitudes or abusive behaviour directed at Roma.[8]

The term marginalisation aims to define the processes that contribute to the Roma's circumstances in life from a perspective based on the notion that there is a link between the widespread discrimination found in various areas of society and the social and cultural situation of the Roma, both historically and today.[9]

The protection against discrimination afforded by Swedish anti-discrimination legislation covers both direct and indirect

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7 See Article 3 of the Framework Convention for the Protection of National Minorities, which states: "Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice."

8 See report by the Swedish Ombudsman against Ethnic Discrimination (2004), "Diskriminering av romer i Sverige" [Discrimination of Roma in Sweden].

9 Ibid, p 5.

discrimination. Direct discrimination refers to someone who is disadvantaged by being treated less favourably than someone else is treated, has been treated or would have been treated in a comparable situation, if this disadvantaging is associated with sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age.

Indirect discrimination refers tosomeone who is disadvantaged by the application of a provision, a criterion or a procedure that appears neutral but that may put people of a certain sex, a certain transgender identity or expression, a certain ethnicity, a certain religion or other belief, a certain disability, a certain sexual orientation or a certain age at a particular disadvantage, unless the provision, criterion or procedure has a legitimate purpose and the means that are used are appropriate and necessary to achieve that purpose.

The work of the Equality Ombudsman is based on the assumption that there is a need to raise awareness in society of the link between individual abuses and discriminatory structures. Individual abuses come to the attention of the Ombudsman primarily through complaints describing a person's experience of how discrimination is manifested. Through analysis of these complaints, and through the application of available knowledge and dialogue with Roma, the discriminatory structures underlying the individual abuses can be identified. Awareness of how Antiziganism, laws, regulations and established norms limit individual opportunity is crucial to a proper understanding of discrimination. This helps to make clear how the principle that people are equal in rights and dignity is not being respected, how different factors in society interact and are mutually reinforcing, and how these factors prevent individuals from claiming their human rights. Discrimination is a serious democratic problem for society as a whole and not just for the groups exposed to it.

Sweden has ratified many of the international conventions on human rights. By becoming a party to these conventions, Sweden has committed itself to ensuring that individuals enjoy the rights agreed upon in the documents. A common feature of many of the rights laid down in the conventions, relevant parts of which are presented in the

chapter on individual abuses and discriminatory structures, is that they are not precisely specified. These rights imply that states must comply with certain requirements when introducing legislation or other measures. One such requirement is that rights must be available to all persons living in the state concerned, without discrimination, and that convention states must ensure every individual's right to effective protection and effective legal remedies in the face of discriminatory acts.

Many of the rights prescribed in the conventions are deemed to be closely associated with other human rights. The right to education is one example in that it may be regarded as a first step towards realisation of the right of employment, and both these rights are considered crucial to people's empowerment and to their chances of influencing the conditions under which they live. For the Equality Ombudsman's part, building knowledge in this context means showing how discrimination in a given area of society is manifested, but it also means raising awareness about how discrimination in one area contributes to discrimination or a lack of rights in other areas.

States that have signed international conventions are required to submit regular reports to international bodies such as the Council of Europe and the UN describing the extent to which they have implemented the convention provisions. The monitoring committees of the Council of Europe and the UN scrutinise these reports and make recommendations to each state on the basis of what the reports show and of other monitoring activities. This monitoring process helps determine whether a ratifying state has taken adequate steps and established organisational structures with a view to realising the rights prescribed in the conventions.

The law as a tool

An important task for the Equality Ombudsman is to regularly analyse the effectiveness of anti-discrimination legislation and its chances of hastening a societal change process that ensures respect for the principle of equal rights and human dignity for all. Analysis both of the opportunities afforded by the legal tools and of their limitations is vital in this connection.

The analysis in this chapter is based on the methods and procedures developed for the purpose of increasing the access of Roma to their rights by making them more aware of the protection against discrimination available to them and by strengthening their trust in the Ombudsman. The material chiefly comprises the 230 or so complaints of discrimination submitted by Roma between 2004 and 2010.[10] In order to discover the answer to the question of what opportunities and shortcomings are associated with the use of the lawnt, the analysis of Roma complaints is linked to an analysis of the judgments and settlements reached in cases involving the discrimination of Roma. To show how anti-discrimination work can move matters forward, the chapter ends with a discussion of potential areas of improvement in which the law needs to become more effective in the fight against discrimination.

Access to rights

Down through the years, Roma have in one way or another been restricted, controlled and shut out by the rules and norms of the majority society. Their history in Sweden and other parts of Europe is marked by racism, persecution, marginalisation, forced

10 The exact figure cannot be determined since neither the Swedish Ombudsman against Ethnic Discrimination nor the Swedish Equality Ombudsman register complaints on the basis of ethnicity. The complaints that provide the basis for this report are ones where the person who reports the matter claims that discrimination has occurred and that it is associated with his/her Roma ethnicity.

assimilation and invisibilisation.[11] Accordingly, it is not difficult to see why Roma have displayed and still display a considerable lack of trust in the authorities or why Roma so seldom report discrimination to those bodies responsible for preventing and combating it.

Access to rights is also affected by the fact that many Roma are unaware of the protection against discrimination or for human rights. This is serious, since awareness of human rights, of how discrimination can be combated and of how rights can be claimed and asserted are important prerequisites for anyone wishing to play a full part in Swedish society.

The previous Ombudsman against Ethnic Discrimination developed approaches aimed at enhancing Roma's awareness of the protection available to them and increasing their trust both in the agency and in the law as an instrument of redress. The agency realised that pursuing such a policy was essential if the Ombudsman was to be thought credible in its efforts to alter structures that were impeding access to Roma rights.

The approaches were based on the need for greater awareness on both sides (mutual knowledge-building), as specified in the special Roma Project undertaken by the Ombudsman against Ethnic Discrimination in 2002–2004. The basic idea was that an agency charged with combating discrimination must adopt an active approach if Roma are to seek redress by reporting discrimination and if an ombudsman institution is to gain a closer understanding of how such discrimination is manifested.

The Ombudsman against Ethnic Discrimination concluded that Roma cannot be expected to report discrimination unless they are aware of their rights and trust the agency.

The Roma Project led the Ombudsman against Ethnic Discrimination

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11 See for instance Montesino Parra, Norma (2002), "Zigenarfrågan – Intervention och romantik" [The gypsy question – Intervention and romanticism], and Liegois, Jean-Pierre (2007), "Roma in Europe".

to identify a number of structural obstacles that were contributing to the disadvantaged position of the Roma vis-à-vis the majority population and which were prolonging the marginalisation of Roma as a group. Of particular concern was the Roma's lack of access to fundamental rights such as housing and education, and these were described as areas in which a closer understanding of the link between individual abuses and discriminatory structures was required. Consequently, once the Roma Project had been completed, the Ombudsman against Ethnic Discrimination launched initiatives focusing on discrimination in these areas of society.[12]

The goal of mutual knowledge-building was further enhanced by the projects on discrimination in the housing market and the education system. The Ombudsman against Ethnic Discrimination embarked on a dialogue with Roma – one of the minorities with which it was collaborating closely – so as to mobilise this group on the issue of the discrimination that was part of their everyday lives. With equal rights and opportunities as the overall objective, and proceeding from the notion that Roma participation is crucial to the process of social change, the Ombudsman sought to collaborate with Roma on active efforts to combat discrimination.

Rights-based education

To help Roma become more aware of the protection against discrimination available to all individuals, and to establish trust between Roma and the Ombudsman against Ethnic Discrimination, a number of rights-based educational courses were provided. These targeted Roma youth, Roma in segregated housing areas and Roma women in particular. They were provided in several locations around the country in cooperation with Roma organisations. Representatives

12 The work was undertaken in project form and the outcome was described in the reports "Diskriminering på den svenska bostadsmarknaden. En rapport från DO:s särskilda arbete åren 2006-2009 kring diskriminering på bostadsmarknaden" [Discrimination in the Swedish housing market: A report from the Swedish Equality Ombudsman's special study in 2006-2009 of discrimination in the housing market] and "Diskriminering av nationella minoriteter inom utbildningsväsendet"[Discrimination of national minorities in the education system].

of other groups exposed to discrimination also took part, along with representatives from county administrative boards, local anti-discrimination bureaus, tenant associations and municipalities. The courses were based on the participants' own experience of discrimination and on the relevant legal instruments, both national and international.

The core idea was that the educational content would connect with the everyday situation of the Roma and the activities of the Ombudsman. The rights-based courses were conducted in dialogue form and often concerned the types of discrimination the Ombudsman investigated. The courses also focused on the question of which complaints had been dealt with through court judgments or settlements.

Discussion centred on what was needed to ensure that legal protection was an effective tool capable of preventing discrimination and combating the discriminatory structures that hinder access for Roma to housing and education.

Reference groups

Another method used in the knowledge-building process involved cooperating with reference groups in identifying problems and measures that show the existence of discrimination, and also identifying the actors responsible for combating human rights abuses. Between 2005 and 2010, various reference groups have been assembled to exchange knowledge and discuss solutions based on these actors' connection and familiarity with topical issues. The reference group dealing with discrimination in the education system comprised representatives of the national minorities, while the group dealing with discrimination in the housing market included representatives of housing companies, landlords, tenant associations, municipalities, the research community, ethnic minorities and the Government. These reference groups provided a platform for dialogue between representatives of the groups exposed to discrimination and the actors specifically responsible for ensuring access to fundamental rights such as housing and education.

Rights-based education, reference groups, active efforts to combat discrimination, and both national and international reports were all of key importance in the process of implementing the special measures targeting Roma. The development of a shared awareness among Roma and agency staff alike of how discrimination against Roma is actually manifested was deemed essential. Without such a confidence-building method, it was thought, the Ombudsman was unlikely to reach Roma in the first place and Roma were therefore unlikely to gain better access to protection against discrimination. The Equality Ombudsman has found that the approaches described above afford opportunities for participation, strengthen minorities and facilitate the adoption of a long-term perspective in the work of the agency. The Institute for the Study of Human Rights at Gothenburg University analysed the work carried out by the Ombudsman against Ethnic Discrimination targeting groups particularly exposed to discrimination, and evaluated the methods and procedures adopted in pursuit of mutual knowledge-building. One of the institute's conclusions was that dialogue with minorities is a strategic way of reaching out with scarce resources and ensuring that more people access protection against discrimination. The researchers stated that the approach had had the desired effect and had been "positive and crucial to achievement of the agency's goals, and also shows that the human rights perspective occupies a key place in its work".[13]

Reports/Complaints

Studies by the EU's Fundamental Rights Agency (FRA) show that the willingness to report discrimination to the authorities is low, which means that the number of unreported cases of discrimination is high. Few incidents are reported to the authorities charged with combating human rights abuses. Regarding unreported cases and willingness to report, the conclusions of the FRA are well in line with knowledge gathered by the Equality

13 Gustafsson, Josefine (2007), "Extern utvärdering – Effekterna av informationsinsatser riktade till grupper särskilt utsatta för diskriminering" [External evaluation: The impact of informational measures targeting groups particularly exposed to discrimination], page 67.

Ombudsman concerning Roma's experience of both serious violations and discriminatory structures in Sweden.[14]

It is clear, however, that as a result of the new agency approach, based on the principle of mutual knowledge-building, Roma are now asserting their right to non-discrimination by reporting abuses to the authorities to a greater extent than before. Prior to the launch of the Roma Project in 2001, the Ombudsman against Ethnic Discrimination received just two or three complaints per year from Roma. Following completion of the project, the number of complaints has constantly been 30–40 per year. Of the complaints received, some 30 have been resolved by a court judgment or by the parties settling out of court.

In a relatively large proportion of cases, Roma have obtained redress, due in part to the fact that the new work approaches have facilitated the development of new methods and procedures when the Ombudsman investigates individual complaints. The complaints, which often involve complex situations, have increasingly been investigated on the basis of the agency's closer understanding of the Roma's situation. One important change in procedure has been that the need for oral contact has been addressed at each step in the investigation, the purpose being both to secure satisfactory results and to increase trust in the complaints body as a means of obtaining redress.[15]

An inventory of complaints lodged by Roma shows that of the 230 or so submitted to the Ombudsman during the period 2004–2010 almost 70 per cent were from Roma women. The majority of these complaints, almost a hundred, concern Roma women reportedly being discriminated against and harassed in shops when buying food or clothing. Roma women also report discrimination in connection with visits to hotels or restaurants.

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14 See for instance European Union Agency for Fundamental Rights (2009),"Data in Focus Report 1: The Roma", European Union Minorities and Discrimination Survey (EU- MIDIS).

15 Kawesa, Victoria (2009), "En utvärdering av DO:s bemötande och kontakt med romska anmälare" [An assessment of the Swedish Equality Ombudsman's treatment of and communication with Roma complainants], Linköping University.

Some 45 complaints from Roma – about 20 per cent of the total – concern discrimination in the housing market. In such cases, Roma feel they have been screened out in the selection process for rented accommodation or refused permission to purchase tenant-owned housing on the grounds of their ethnicity. Other cases concern discriminatory behaviour and harassment on the part of landlords or neighbours. Overcrowding, poor housing standards and inadequate sanitary conditions are further aspects of discrimination in the housing market cited by Roma.

Roughly the same number of complaints concern what Roma experience as discrimination in the way their cases are dealt with and the way they are treated by the social services. A growing number of complaints from Roma concern situations in which schools or health care authorities have reported that conditions in a given Roma family need investigating. Other complaints involve Roma parents reporting discrimination in connection with cases where their children have been taken into care under the Care of Young Persons (Special Provisions) Act (1990:52) and also where their children have been placed in non-Roma environments.

Few complaints from Roma concern the situation of Roma children in school. Similarly, few Roma report discrimination in working life, the health or medical care services or the justice system.

Willingness to report

Recurring themes in the Equality Ombudsman's dialogue with Roma are complaints, willingness to report and paths of redress. As before, a limited willingness to report would appear to reflect a lack of confidence among Roma that a complaint will have any effect on the unequal conditions under which they live from day to day. The small number of complaints noted in relation to the education system, therefore, should be seen in the light of Roma's lack of confidence in the authorities and their fear that by reporting a school for discrimination they may be placing their child in an even more vulnerable position. Also of relevance here is the way Roma feel their children have been treated by the school as an institution in

the past.[16] By the same token, the relative lack of Roma complaints citing discrimination in working life may be seen in the light of the marginalisation that the Roma community has experienced in the labour market.

An additional factor affecting Roma's willingness to report discrimination is that many in this group have little faith in the Equality Ombudsman's ability to influence the situation with the aid of anti-discrimination legislation. Roma complaints tend to relate to urgent problems and the Equality Ombudsman's case investigations may be considered too slow and cumbersome. Moreover, discrimination is a part of everyday life for many Roma, which affects their potential for action, their energy and strength and their willingness to believe that a complaint can have any effect on their situation.

Grounds for closing of cases

The majority of investigations following complaints from Roma have been closed without further action being taken. Many of these were closed on the grounds that the complaints were either deficient or incomplete, which was often due to difficulty in establishing contact with the complainant for the purpose of supplementing the information provided. Many cases have also been closed on the grounds of lack of evidence or a failure to establish in the course of the investigation that the matter reported to the Ombudsman related to any of the grounds of discrimination. Also, on occasion, the person concerned has withdrawn the complaint. In addition, some cases have been closed on the grounds that the alleged abuse is not covered by Swedish anti-discrimination legislation.

16 See report by the Swedish Ombudsman against Ethnic Discrimination(2008), "Diskriminering av nationella minoriteter inom utbildningsväsendet" [Discrimination of national minorities in the education system], and Rodell Olgaç, Christina (2005) "Den romska minoriteten i majoritetssamhällets skola – Från hot till möjlighet" [The Roma minority in the majority society's school system: From threat to opportunity], which describes how openly racist attitudes have affected many Roma children's experience of school attendance and contributed to Roma's aversion to school as an institution.

Even when complaints fail to reach the courts, they constitute a significant part of the Equality Ombudsman's anti-discrimination effort. The complaints often reflect complicated situations and provide the agency with both an important source of information and a starting point for its dialogue with Roma and other actors. Also, the agency draws on these reports of discrimination in its discussions with other government agencies, for instance. Thus the complaints help call attention to the Roma's experience of abuses.

Furthermore, an investigation launched as the result of a complaint sometimes helps to draw the attention of the opposing party to the problem at hand; in some cases, in fact, the investigation has led to a rights-based dialogue between the complainant and the person or persons who are the subject of the complaint. This appears to have been the case in a number of instances where the investigation has been closed as a result of the complainant withdrawing the accusation or stating that the situation had been resolved.

After investigating the 230-odd complaints submitted to them, the Ombudsman against Ethnic Discrimination and the Equality Ombudsman have decided that discrimination was present in about 30 cases. Some of these cases have been tried in court or are scheduled for trial, while others have ended in a settlement between the person complained against and the Ombudsman and the complainant.

Judgments

Judgments have been issued in seven of the cases brought to court by the Ombudsman against Ethnic Discrimination or the Equality Ombudsman. Two of these cases concerned discrimination in the housing market, four concerned discrimination in the supply of goods and services, and one was about discrimination in education.

In one of the cases involving the housing market, a Roma man reported as follows. He and his wife wanted to find a home. To this end, he had replied to an advertisement for a vacant flat and after viewing the flat informed the landlord that he wished to rent it. He told the landlord he was studying and that he had defaulted on payments in the past but that his stepfather was prepared to act

as a guarantor. The landlord stated that he did not consider this a problem and was given the stepfather's telephone number. Over the telephone, the two agreed on a date on which to meet and sign the contract. When they met in person, however, the landlord reacted immediately and asked whether the man was "a gypsy". The man confirmed his ethnicity, as did his stepparents, who stated that they did not live "traditionally". The landlord stated that he felt deceived and dared not rent out the flat to the man for fear of how the other tenants would react.

The Borås District Court acquitted the landlord on the grounds that the man's assertions and the testimony of the parents carried less weight than the landlord's statement that he did not wish to rent out a flat to someone in debt. The district court also noted that the stepparents were deeply involved in the matter. The Ombudsman against Ethnic Discrimination appealed the decision to a higher court.

The Court of Appeal for Western Sweden took a different view, concluding that the stepparents had supplied detailed accounts that corresponded with each other and were essentially credible and which supported the man's description of events. There was no reason to suppose, on the basis of the stepparents' close involvement and their relationship to the man, that the clear and detailed account they had given was not to be believed. The court found it proven that the landlord had not wanted to have the man as a tenant because of his Roma ethnicity and that he was afraid of how the other tenants would react.

The Ombudsman had thus demonstrated circumstances indicating that the landlord had probably discriminated against the man. In the court's opinion, it had also been shown that a hypothetical tenant of a different ethnicity but with a record of payment defaults and a solid guarantor standing surety would not have been denied the flat. The landlord was unable to show that the man had lost the contract for any other reason than his Roma ethnicity. Damages were set at SEK 40 000, and the court of appeal expressed the view that the right to rent accommodation is "a highly important aspect of life". In setting the amount of damages, the court took into account the

fact that the discrimination was intentional and occurred after the landlord had had time for reflection. It also took into account his behaviour at the meeting where the contract was to be signed, describing it as clearly degrading.[17]

In the other case involving discrimination in the housing market, a Roma woman had reported as follows. After replying to an advertisement for a vacant flat and having viewed it, she informed the private landlord that she wished to rent it. The contract was signed and the woman moved in the same day. After having been away for a couple of days, she and her family returned to find that that the landlord had changed the lock. The landlord accused her of lying about her ethnicity. According to the landlord, she had claimed to be from Thailand. The landlord stated that other tenants did not want to have "gypsies" in the building, and forced the family to move out. Later, the landlord claimed that the reason he had not allowed the family to remain in the flat was that they had not paid the rent in advance.

The Lidköping District Court found that the facts of the case suggested both that the woman had been discriminated against and that the discrimination was associated with her Roma ethnicity. The court felt that the landlord's explanation to the effect that the rent had not been paid in advance as required was a rationalisation after the fact. It described the matter as deliberate discrimination of a serious nature since the woman had been shut out of her home and forced to move. The court awarded her SEK 50 000 in damages. The landlord appealed the case to a higher court but before the main hearing began a settlement was reached. The woman received SEK 50 000.[18]

Four of the cases tried in court concerned discrimination of Roma in connection with the supply of goods and services. One of these concerned a Roma couple who were discriminated against when

17 Judgment by the Court of Appeal for Western Sweden, 2009-01-15, Case No. T 3501-08

18 Judgment by the Lidköping District Court, 2008-05-20, Case No. T 1596-06.

seeking to visit a swimming pool at a hotel together with their son. They reported the following to the Ombudsman against Ethnic Discrimination. The woman had telephoned the hotel to ask whether the swimming pool was open to the public and was told it was. When she arrived at the hotel with her husband and son they were met by an employee who told them that the manager had instructed her not to let Roma into the hotel's pool facility. The woman then asked to speak to the manager, who explained that the hotel had previously experienced problems with Roma visiting the facility. The manager asked the family to leave the hotel.

The Ombudsman against Ethnic Discrimination investigated the matter and sued the hotel for discrimination. A settlement was reached during the processing of the case at the district court. Part of the settlement was a side agreement under which the man and woman agreed not to pass on information about the settlement reached between the parties.

Since the hotel felt that the couple had failed to live up to this commitment, it refused to abide by its part of the agreement, i.e. it refused to pay the damages. Instead, the matter was decided by the Eskilstuna District Court, which determined that the hotel had been guilty of discrimination. The woman and the man were each awarded SEK 25 000 in damages. In deciding the amount of damages, the district court cited NJA 2006, page 170, in which the Supreme Court states that the sum can vary depending on the nature and extent of the abuse and on other circumstances. The fact that the couple's son was present when the couple were discriminated against was to be regarded as an aggravating circumstance that needed to be reflected in the amount of damages awarded. The fact that it also took place in the presence of the hotel's guests was a further circumstance that had to be taken into account when deciding the sum. Finally, the district court took into account the fact that the discrimination was intentional. The hotel took the matter to the Svea Court of Appeal. This court agreed with the district court's assessment of the case as regards both the

presence of discrimination and the amount of damages awarded.[19]

In another case concerning discrimination in the provision of goods and services, a Roma woman reported the following. She had taken part in a conference at a hotel in Norrköping. During her visit to the hotel, her presence was questioned by the hotel staff. On several occasions, the staff pointed out to her that the coffee was only meant for the hotel's guests. The hotel stated, in seeking to justify its behaviour, that it had previously had trouble with Roma. After investigating the matter, the Ombudsman decided that the woman had been subjected to discrimination, arguing that she had been treated less favourably than other hotel guests in that she had been viewed with suspicion and challenged due to her ethnicity. The agency sued the hotel at the Norrköping District Court. The court ruled that by their actions the hotel staff had discriminated against the woman. She was awarded damages of SEK 8 000. The hotel appealed the decision but the Göta Court of Appeal confirmed the opinion of the district court.[20] The hotel has subsequently appealed the decision to the Supreme Court.

The third case concerning discrimination in the supply of goods and services concerned four Roma women who were not allowed to enter a fur shop.. In their complaint, the four women stated that they had been stopped at the door by the owner, who shouted at them and said he was closing for lunch. There was a sign on the door showing the shop's opening hours and nothing was stated there about lunchtime closing. The owner told the women to "come back another day in your folk costumes". When the women returned a quarter of an hour later, the shop was open. After investigating the matter, the Ombudsman concluded that discrimination had occurred and sued the company operating the shop at the Örebro District Court.

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19 Judgment by the Eskilstuna District Court, 2006-11-10, Case No. T 2535-04, and judgment by the Svea Court of Appeal, 2008-10-17, Case No. T 9702-06.

20 Judgment by the Norrköping District Court, 2009-10-27, Case No. T 3730-08 , and judgment by the Göta Court of Appeal,
2010-05-19, Case No. T 3065-09

The district court ruled that the women had been subjected to direct discrimination connected with their ethnicity and that they had also been harassed, since the shop owner had commented on their clothing in a disdainful manner. The four women were each awarded SEK 20 000 in damages. The company appealed the case to the Göta Court of Appeal, which reached a different conclusion. It argued that there was no reason to suppose that the shop owner would have behaved differently had the customers not been Roma, and therefore the women could not be said to have been disadvantaged. In addition, it noted that there was disagreement on what had been said about the women's clothing. In the appeals court's view, therefore, the shop owner could not be said to have harassed the women, either.[21] The Equality Ombudsman has appealed the decision to the Supreme Court.

The fourth case involving discrimination in the supply of goods and services concerned two Roma women who, accompanied by their children, were turned away from a restaurant.. The women stated in their complaint that the reason given by the restaurant for not allowing them in was that it had previously had Roma customers who had caused trouble and had therefore decided not to allow "gypsies" to eat there. The women and the children were forced to leave the restaurant.

After investigating the matter, the Ombudsman against Ethnic Discrimination decided to pursue it and sued the restaurant for discrimination at the Gävle District Court. The court ruled both that the Ombudsman had shown that discrimination had probably occurred and that the restaurant had been unable to provide sufficient evidence to the contrary. It awarded each of the women SEK 15 000 in damages.[22]

The court case relating to discrimination in education concerned

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21 Judgment by the Örebro District Court, 2009-11-18, Case No. T 4710-08, and judgment by the Göta Court of Appeal, 2010-10-05, Case No. T 3330-09.

22 Judgment by the Gävle District Court, 2006-06-16, Case No. T 2285-05.

two Roma children who reported that they had been subjected to repeated harassment and discrimination by other pupils at a school.. They argued that the school had not done enough to investigate and prevent the harassment. Nor had the school drawn up the equal treatment plan that all schools are required to have by law. Also, the head teacher and another teacher had had a progress meeting with the youngest child without the custodian being present. Finally, the children had not been given the mother tongue teaching in Romany Chib or Finnish to which they were entitled. The Ombudsman against Ethnic Discrimination concluded that there was a case to be pursued- and sued the municipality responsible for the school, claiming SEK 100 000 in damages for each of the two children.

The Eksjö District Court ruled that there was insufficient evidence to show that the children had been subjected to harassment. The court also found that the school had done enough to investigate and take action when the teachers learned about the harassment and abuses that had occurred, and also found that the school had an officially approved equal treatment plan. Nor did the court feel that the progress meeting held with the unaccompanied child amounted to discrimination, or that the school had failed to offer the children mother-tongue teaching in Romani Chib or Finnish.[23]

Regarding the school's duty to investigate and take action, and also regarding the children's right to receive mother-tongue tuition, the Equality Ombudsman has appealed the court's decisions to the Göta Court of Appeal.

Rule of proof and the amount of damages

If the law is to help individuals obtain redress and to expose discriminatory structures, enforcement of the rule of proof as required by anti-discrimination legislation is of crucial importance. Analysis of this rule should proceed from a study of how the courts have applied it in practice.

The rule concerning burden of proof was originally introduced

23 Judgment by the Eksjö District Court, 2010-10-21, Case No. T 1395-09.

for the purpose of implementing certain EC directives.[24] It was formulated in such a way as to ease the pressure on plaintiffs to prove their claims, the aim being to ensure that the prohibitions on discrimination could be upheld in practice as well. Specifically, the rule means that if a plaintiff demontrates circumstances that give reason to suppose that he or she has been discriminated against, discrimination is assumed to have occurred and it is up to the defendant to show that the person concerned has not been disadvantaged in any way associated with one or other of the grounds of discrimination cited in the case.[25]

In the case brought against the hotel with the swimming pool, the evidence consisted of the statements made by the Roma woman and man under oath. The court found that their account of how they had been barred from entering the pool facility exclusively because of their ethnicity had shown circumstances that gave reason to suppose they been discriminated against. It also found that the opposite party had failed to present any kind of investigative evidence to suggest that the Roma woman and her family had been denied access for any reason other than their ethnicity.

There was also a lack of written evidence in the case brought against the private landlord who had argued that the reason he had refused a Roma man permission to rent a flat was that the man had a record of payment defaults. The Borås District Court did not consider that the evidence presented – mainly consisting of the statements given by the complainant and his stepparents – was enough to corroborate the claim that the man's ethnicity had influenced the landlord's decision. The court found the landlord's argument that despite the offer of surety he did not wish to rent out the flat to someone in debt

24 Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex. Corresponding rules are found in Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, and in Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

25 Government Bill 2007/08:95, "Ett starkare skydd mot diskriminering" [Stronger protection against discrimination].

reasonable and credible. The district court thus took the view that the Ombudsman against Ethnic Discrimination had failed to present circumstances showing that discrimination could reasonably be assumed to have occurred.

When the case came before the Court of Appeal for Western Sweden, however, the judges decided that the accounts given by the man and his stepparents were credible and that these should serve as a basis for the court's consideration of the matter. The court subsequently found that the Ombudsman against Ethnic Discrimination had shown circumstances that gave reason to suppose discrimination had in fact taken place, observing that the landlord had failed to show that another tenant in the same situation would not have been awarded the contract, either.

There was also a lack of written evidence in the case of the Roma woman and her children who were shut out of their home by their landlord despite having a valid contract. The evidence consisted of the Roma woman's statement and of testimony both from a head of section at the local municipality and from an ex-director of a housing company. The Lidköping District Court decided the evidence showed circumstances that gave reason to suppose that discrimination had taken place, noting that the landlord had changed the lock and shut the woman out of the flat. The court felt the landlord had failed to show that discrimination had not occurred, and also considered that his statement to the effect that the reason for his action was the woman's rent arrears was a rationalisation after the fact.

The overall impression is that the rule concerning the burden of proof in the above cases has been applied appropriately and, as intended, has eased the pressure on plaintiffs to prove their claims. This improves Roma's chances of obtaining redress when their rights are violated. Court decisions have turned on the judges' conclusion that the accounts given by the Roma complainants have been reliable and credible. Surprisingly, defendants have often chosen to question the complainants' credibility based on their Roma ethnicity, rather than seeking to prove that discrimination did not occur.

The damages awarded in these cases amounted to between

SEK 8 000 and 50 000. In the Equality Ombudsman's view, these levels do not meet the dual aims of the legislators, which are to compensate the victims of discrimination and to deter others from engaging in discriminatory practices. One of the potentially more important features of the new Discrimination Act, therefore, is the introduction of a new penal sanction: compensation for discrimination (diskrimineringsersättning). The purpose of this new sanction is to raise the amount of damages awarded in discrimination cases to levels that constitute a very serious deterrent. In the bill proposing the law, the Government observed that "discrimination must be costly", e.g. when abuses are explicitly racist in character.[26] This should make it possible to raise the levels of compensation in cases concerning discrimination of Roma, and the higher levels could thus be expected to have the desired impact as a preventive mechanism.

Settlements

Settlements were reached in 18 cases after the Ombudsman had investigated the matter and decided on litigation. Two of these concerned discrimination in working life, three concerned discrimination in the housing market and 13 concerned discrimination in connection with the supply of other goods and services.

In one of the cases concerning discrimination in working life, a settlement was reached that involved a Roma woman receiving SEK 40 000 from her employer, a municipality.

The woman, a municipal employee who had been working in the home help service for some time, lodged the complaint because she felt harassed by her fellow-workers, who spoke disparagingly about Roma in her presence. The woman had complained about the harassment to her employer, who had failed to take action.

A local anti-discrimination office helped the woman to report the employer for failure to act and for reprisals. When the union to

26 Ibid, p 390.

which the woman belonged refrained from pursuing the case, the Ombudsman against Ethnic Discrimination sued the municipality in the Labour Court. It claimed damages for a breach of the Act on Measures against Discrimination in Working Life on Grounds of Ethnic Origin, Religion or Other Belief (Swedish Code of Statutes 1999:130). When the settlement was reached, the Ombudsman against Ethnic Discrimination withdrew its court action.

The second settlement in connection with working life concerned a woman who was working as a trainee in a shop. The traineeship then became a temporary job (fixed-term employment). The woman stated in her complaint that she had asked the site manager before starting her job whether she could wear a skirt during working hours and that he had said she could. Later, a new manager was recruited who took the view that wearing a skirt during working hours conflicted with the shop's dress policy. The woman's employment was terminated. The Equality Ombudsman's investigation of the matter showed that the woman had been subjected to discrimination associated with her ethnicity. The shop did not share this view. The parties arrived at an agreement, however, that involved the woman receiving SEK 75 000.

One of the settlements relating to discrimination in the housing market involved a Roma woman being given SEK 60 000 in compensation by a property company. The woman had reported the following. She had contacted a property manager and stated her interest in a flat. In the course of the conversation, she explained that she had a disability pension and owed money to the Swedish Enforcement Authority but that the social services were prepared to take responsibility for the contract. The property manager agreed to this arrangement and a date was fixed for the woman to view the flat. The landlord signed a contract with the municipality but only agreed to a month's tenancy. In addition, the property manager presented the woman with rules of conduct under which she was not allowed to receive visits from other Roma. The landlord refused to extend the contract on the grounds that disturbances had been heard from the woman's flat. The Ombudsman's investigation showed that the property company had failed to follow its own procedures in dealing

with disturbances on the part of tenants, and that the woman had been refused further tenancy on improper grounds. The evidence was not tried in court. Instead, a settlement was reached.

The other settlement involving discrimination in the housing market concerned a woman who reported that she had been refused a flat on the grounds of her husband's Roma ethnicity. The woman had signed a contract with a private housing company. Later the same day, the landlord contacted the woman and said she could not rent the flat since neighbours had threatened to move out. According to the landlord, the neighbours had previously experienced problems with Roma on the estate. After investigating the matter, the Ombudsman concluded that the woman had been subjected to discrimination, a view not shared by the landlord. However, a settlement was reached under which the woman received SEK 40 000 in compensation.

In the third settlement concerning discrimination in the housing market, a Roma family received SEK 100 000 from a housing cooperative. The family had reported that after being shown a flat in the cooperative they had agreed on a purchase price with the seller. Also, the seller had agreed to sort out all the paperwork to ensure that the buyer was approved by the cooperative. Shortly afterwards, the seller informed the buyer that the cooperative did not allow Roma to become members. The woman in the family then telephoned the deputy chair of the cooperative who confirmed the seller's statement, saying the cooperative did not accept "gypsies". After investigating the matter, the Equality Ombudsman concluded that there was reason to assume the woman and her three children had been subjected to discrimination connected with their Roma ethnicity. The evidence was not tried in court. Instead, the parties concerned arrived at a settlement.

Thirteen of the 18 settlements concerned reports of discrimination in connection with the supply of goods and services. One of these concerned a group of 27 adults and children who were refused permission to rent space on a campsite on the grounds that the site was full. A number of other caravans were admitted, however, during the time the complainants were talking to the campsite's owners. The group received a total of SEK 200 000 in compensation under the settlement subsequently reached.

Seven settlements concerned cases where Roma woman had reported being discriminated against in shops. One such case concerned a Roma woman who reported the following. She had entered a shop together with her two-year-old son to buy food. While walking around gathering the articles she wished to buy, she was followed by a cashier, who asked her about a bag of sweets that according to the cashier had previously been lying in the son's trolley. When the woman placed the articles on the moving belt at the cashpoint, her son was holding a roll of chocolates in his hand. The cashier repeatedly asked the woman to put the chocolates on the belt although the woman observed that she had yet to finish placing her goods there. The cashier then made disparaging remarks alluding to the woman's Roma ethnicity. The Ombudsman investigated the matter and found probable cause that discrimination had occurred. Under the settlement, the woman received SEK 65 000, but the legal document clearly stated that the shop did not admit discrimination.

The six other settlements involving alleged discrimination in shops concerned Roma women who had been refused admittance or harassed by staff in similar ways. The opposing parties have argued in connection with investigations of the complaints that their behaviour was motivated by their previous experience of Roma. Under the settlements, the Roma women received between SEK 10 000 and 50 000 each.

One settlement was reached in the case of a Roma man who reported the following. He had tried to buy a training card at a spa and health centre. When he asked if he could pay via autogiro he was told to pay up on the spot. The explanation given was that the centre had previously had problems with "certain groups" that had failed to pay and had therefore been barred. Following its investigation, the Ombudsman against Ethnic Discrimination sued the municipality and the company operating the centre, claiming damages. During the oral preliminaries in district court, however, a settlement was reached and the Roma man received SEK 17 000.

Four of the settlements concerned Roma who were refused admittance to a hotel, a restaurant and a hotel dance. One of the complainants received SEK 100 000 in compensation, two received

SEK 30 000 and a fourth received SEK 3 000.

The voluntary agreements that the Ombudsman against Ethnic Discrimination and the Equality Ombudsman have concluded with the parties reported to them have brought the complainants between SEK 3 000 and SEK 100 000 per person in compensation, and have directly involved over 50 adults and children.

The question of whether discrimination has occurred cannot usually be discerned from the settlement documents, and the seriousness of the offence is not necessarily reflected in the amount of damages agreed on. It would seem, however, that the complainants whose cases have been settled by such agreements feel they have obtained redress. In one evaluation study, several Roma complainants state that the complaint process in itself feels like a path to redress, while the agreement to settle out of court is taken as an acknowledgement that abuse has occurred.[27]

Opportunities for moving the case law forward and establishing precedents are limited, however, since cases are not considered in court when settlements are reached. There may be reason to consider the the use of settlements as a legal tool, particularly in view of the Ombudsman's mandate to promote social change and prevent and combat serious abuses and discriminatory structures. At the same time, however, the option of settling out of court means that more people can obtain redress through the Ombudsman. Also, the way cases are dealt with follows standard practice in civil law litigation.

Development areas

A study of complaints, judgments and settlements shows that there have been a number of favourable developments concerning Roma's access to their rights. An important condition for further improvement in this area is the presence of ongoing, strategic efforts to raise Roma's awareness of the legal protection available to them

27 Kawesa, Victoria (2009), "En utvärdering av DO:s bemötande och kontakt med romska anmälare" [An assessment of the Swedish Equality Ombudsman's treatment of and communication with Roma complainants], Linköping University.

and of their prospects of combating discrimination.

The study also reveals a number of weaknesses, however. For example, none of the complaints from Roma concerning the kind of public sector activity in which protection against discrimination is more fully available – including the social services, the social insurance system and the health and medical care services – has led to redress through the courts or a settlement. Such complaints tend to be complex from an investigative viewpoint, and it is often difficult to determine whether discrimination has occurred.

If the Equality Ombudsman is to be fully capable of investigating whether discrimination has been present in individual cases, the agency needs to develop methods for investigating complex matters. This presupposes a closer understanding of the Roma's historical and social situation and of Antiziganism in society.

Investigative and evidence-gathering methods based on skills acquired in the course of rights promotion work need to be developed to facilitate strategic investigation of the complaints received. Systematic analyses of complaints can in turn help the Equality Ombudsman improve its promotional work. As part of this effort, the Ombudsman needs to develop investigative and evidence-gathering techniques based for instance on statistics.

Another weak point is that it is difficult to effect changes to official decisions on the basis of the Discrimination Act. One way of remedying this might be to empower the Equality Ombudsman to intervene or act on behalf of a party in a legal action seeking to overturn such a decision.

Nor has the Equality Ombudsman taken a position in certain cases involving Roma complaints directed at the justice system. Previously, this type of case has fallen outside the realm of anti-discrimination legislation. In the new Discrimination Act from 2009, however, protection has been extended to apply to all public employees assisting the general public with information, guidance, advice or other such help, or having other types of contact with the public in the course of their employment. This prohibition covers for instance

how employees behave and what kind of language they use. It also covers what may have occurred during the processing of a matter by a public body. The prohibition does not however cover the way a provision is to be interpreted or applied, and nor does it cover actual decisions taken. The National Council for Crime Prevention shows in its report "Diskriminering i rättsprocessen" [Discrimination in the judicial process] how discrimination of Roma in the justice system is sometimes manifested.

The Equality Ombudsman considers it an extremely serious matter if discrimination is practised in the justice system, thereby prejudicing the chances of Roma and others in the judicial process. The presence of discrimination raises serious questions about lack of compliance with fundamental principles such as equality before the law and ultimately about legitimacy and the rule of law itself. The European Commission against Racism and Intolerance (ECRI) has issued a recommendation to member states to the effect that justice systems should be brought within the scope of anti-discrimination legislation under civil law.[28]

In light of this, the Equality Ombudsman believes there may be reason to discuss whether current legislation is equal to the task of combating discrimination in the justice system.

To move matters forward in the legal sphere, and to ensure that the legal instruments are effective in helping to realise the principle of equal rights and human dignity for all, more reported cases of discrimination need to be tried in court. For this to occur, additional actors should be given the means to pursue such litigation.

A new feature of the Discrimination Act is that it empowers a number of stakeholder organisations besides the Equality Ombudsman to take legal action on behalf of individual citizens. Thus the legal grounds for litigating with the aid of a representative or via a stakeholder organisation are now present, but opportunities

28 European Commission against Racism and Intolerance (ECRI), (2003), "ECRI General Policy Recommendation No. 7 on National Legislation to Combat Racism and Racial Discrimination". Adopted on 13 December 2002, Council of Europe, Strasbourg.

for doing so are nonetheless limited due to the court costs associated with such actions. Here, greater financial resources should be made available to those wishing to exercise the right to sue.

People can only determine whether they have been subjected to discrimination if they have access to relevant information on such matters. This means they must be familiar with how decisions of various kinds are reached. One problem in the housing market, for instance, is that flats are allocated without the need for any public reporting as to who is given the tenancy and on what grounds. For individuals, the absence of any requirement to provide information means it is impossible to determine whether discrimination is present. There is reason, therefore, to consider whether the liability to provide information currently imposed on employers should be extended to other actors, such as those supplying goods and services.

The substantial number of complaints received from Roma that have not been dealt with in the courts illustrates the need to develop other appropriate courses of action besides litigation. The Equality Ombudsman for its part needs to review and consider new methods and procedures that in time will enable more people to obtain redress. The basis for this can be found in the Act concerning the Equality Ombudsman (2008:568) which states that the Ombudsman "shall work to ensure that discrimination (...) does not occur in any areas of the life of society" and "shall also work in other respects to promote equal rights and opportunities".

The analysis in the report notes the need for additional actors to pursue more systematic efforts to identify discrimination and human rights abuses. If the relevant actors are to assume their share of the responsibility for helping to ensure Roma rights, an important task for the Equality Ombudsman is to provide support and advice on the legal and informational prerequisites in this connection.

The Equality Ombudsman intends to operate at a general level by acting as a driving force and as an information base for other agencies combating discrimination and promoting access to human rights in their respective areas of activity. This approach falls within the broader framework outlined in the Act concerning the Equality Ombudsman (2008:586).

Individual abuses and discriminatory structures

Efforts to actively counter the processes in society that contribute to the marginalisation of Roma help the Equality Ombudsman attain its vision and goal of social change in pursuit of equal rights and human dignity for all.

A review of the law as a tool for change, necessitates an analysis of underlying obstacles and how these structures relate to the discrimination of Roma. Such an analysis would help make clear the serious abuses to which Roma are subjected and which jeopardise their chances of asserting and enjoying their human rights. In other words, the task ahead is to expose and analyse how the principle of equal rights and human dignity for all is violated by the ongoing discrimination of Roma.

The 230-odd complaints from Roma submitted to the Ombudsman against Ethnic Discrimination and the Equality Ombudsman during the period 2004–2010 represent an important source of information on the link between individual abuses and discriminatory structures. The experiences of the Roma, recounted in dialogues with agencies over the years, have offered a further source of information. The knowledge accumulated from research and international findings is also important in this connection and helps to deepen understanding of the link between individual abuses and discriminatory structures. Together, these sources provide a sound basis for analysing both the conditions under which Roma live in Sweden and the structural obstacles that exist which prevent them from accessing their human rights.

The reports of discrimination from Roma concern everyday events such as shopping for food, visiting a restaurant or travelling by bus. As the previous chapter showed, the majority of complaints are received from Roma women who report discrimination in connection with the supply of goods and services.

Roma also report discrimination in the housing market. These complaints deal with access to housing and the terms and conditions

of accommodation. Roma's reception and treatment by the social services is another area of complaint. A not insignificant number of complaints concern cases where children are taken into care under the Care of Young Persons (Special Provisions) Act (1990:52).

While only a limited number of complaints have concerned discrimination in the education system and the employment sector, those cases that have come up – along with what has been learned from the agency's dialogues with Roma – provide a basis for the identification of individual abuses and discriminatory structures.

Public places

The UN Convention on the Elimination of All Forms of Racial Discrimination (ICERD) establishes the right to freedom of movement in public environments and contexts. Articles 5 lays down the right of access of all persons, without distinction as to ethnic origin, to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafes, theatres and parks.

The Swedish Discrimination Act (2008:567) prohibits discrimination in connection with the supply of goods and services. This means that, in principle, it is forbidden to establish conditions that are associated in some way with one or other of the grounds of discrimination.

It is also forbidden to treat someone unfairly on such grounds or to impose less favourable conditions on those entering public premises such as restaurants, shops or places of entertainment.

About 100 complaints, the four judgments and the 13 settlements relating to discrimination in connection with the supply of goods and services show in particular how Roma women are victimised in their everyday lives. They also show in what kinds of circumstances Roma women feel that their freedom of movement in public places is restricted.

Sweden has been criticised by the UN for the fact that Roma are still being subjected to discrimination in public places, and the world body has urged the Swedish authorities to strengthen their efforts to

tackle the widespread discrimination of Roma.[29]

The abuses to which Roma are exposed in public places is a recurrent theme both in the complaints dealt with by the Equality Ombudsman and in the agency's dialogue with Roma Many Roma state that they are kept under supervision, harassed and refused permission to makes purchases in shops, often due to negative perceptions of Roma as a group. Roma are subjected to gibes, invective and abusive behaviour in front of other customers.

General bans on bulky clothes or skirts, for instance, typically affect Roma women and represent one type of situation in which the two grounds of discrimination gender and ethnicity coexist. Roma are also denied entry to restaurants, hotels and campsites, or refused service there. Roma further experience discrimination when wishing to travel by public transport. It is clear that abuse in public places is a part of everyday life for the Roma, particularly Roma women.

The Equality Ombudsman has found that what for the majority population is a fairly straightforward undertaking, like buying food in a shop, would seem to involve mental strain for many Roma women and children. The various complaints, judgments and settlements show that Roma children are often present and able to observe when their mothers are subjected to this type of abuse. The possibility cannot be ruled out that such abuse affects both the way Roma children view their Roma identity and their willingness to assert it. It is also possible that Roma children's trust in the society in which they live is adversely affected by the abuse Roma suffer in public places.

Abuse of Roma in public places reflects an historical continuity in the way Roma are perceived by those around them. Throughout history, the state and the majority society have displayed negative perceptions of and attitudes towards Roma, and these have in turn given rise to persistent stereotypes about Roma as a group. Discriminatory

29 Concluding observations of the Committee on the Elimination of Racial Discrimination (CERD), (2008), "Consideration of reports submitted by States Parties under Article 9 of the Convention, Point 18", 73rd meeting, 28-15 August 2008. CERD/C/SWE/CO/18.

legislation directed at Roma is no longer found in Sweden, but negative perceptions and attitudes – known as Antiziganism – still affect the Roma's situation in life.

The discrimination of Roma commonly practised in public places in connection with the supply of goods and services is a manifestation of widespread Antiziganism, and such abuses affect not only the way Roma view the majority society but also their chances of developing and asserting their Roma identity.

In its 2008 statistics on hate crime, the Crime Prevention Council provided separate figures for the first time regarding offences directed at Roma. In 2008, some 180 complaints were deemed to concern a major crime incorporating an "anti-Roma" motive. In 2009, the corresponding figure was 120, i.e. 60 less than the previous year. In 2009, 44 per cent of all the hate crimes directed at Roma concerned unlawful threats or molestation. Crimes of violence (10 per cent) and defamation (12 per cent) were the next most common categories. According to the Crime Prevention Council, a typical hate crime targeting Roma is unlawful discrimination (19 per cent).[30] The categories agitation against a national or ethnic group (5 per cent), other offences (2 per cent) and malicious damage (3 per cent) are less common hate crime motives.

Compared with the previous year, the categories unlawful discrimination and agitation against a national or ethnic group showed an increase (from 11 to 19 per cent and from 5 to 10 per cent respectively). According to the Crime Prevention Council, the bulk of racist crimes directed at Roma tend to occur in public places, ranging from shops to laundry rooms. One hate crime in four is committed close to the victim's home, which according to the Council is a high rate compared with other hate crime motives.

The Council's statistics on hate crimes targeting Roma are not disaggregated by sex, which means no conclusions can be reached

30 The provision on unlawful discrimination is set out in Chapter 16, Section 9 of the Swedish Penal Code. It prohibits certain forms of discrimination in the course of a business activity etc.

concerning the relative exposure of Roma women and men.[31]

The Antiziganism that Roma encounter in public settings highlights the question of whether Sweden has made sufficient effort to provide effective protection against discriminatory behaviour as required by many international conventions.[32]

A recurrent theme in the Equality Ombudsman's dialogue with Roma concerns the need for them to develop strategies for how to survive in hostile surroundings and how to deal with the abuse they encounter in public places.

Many Roma have focused in particular on the meaning of parenthood in a society in which discrimination is a part of everyday life. It appears that the persistent, widespread Antiziganism or open discrimination that abuse in public places represents necessitates conscious choices and strategies that are not always easy for individual parents or children to deal with. In this connection, there is reason to call attention to Article 2 of the Convention on the Rights of the Child which requires states to take all appropriate measures to ensure that children are protected against all forms of discrimination or punishment on the basis of their parents' status, activities, expressed opinions or beliefs.

The discriminatory structure that Antiziganism continues to represent affects the everyday lives of Roma and their chances of living as Roma themselves would wish. AntiziganismAntiziganism limits their access to rights in areas of public life such as housing, social services and education.

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31 Report from the Swedish Crime Prevention Council (2009), "Hatbrott 2009 – Statistik över polisanmälningar där det i motivbilden ingår etnisk bakgrund, religiös tro, sexuell läggning eller könsöverskridande identitet eller uttryck" [Hate Crimes 2009: Statistics on cases reported to the police where the motives include ethnicity, religious belief, sexual orientation or transgender identity or expression], Report 2010:12, p 40 ff.

32 See Article 6 of the UN Convention on the Elimination of All Forms of Racial Discrimination (1965), Article 26 of the UN Convention on Civil and Political Rights (1966), Article 2 of the UN Convention on the Elimination of All Forms of Discrimination against Women (1979) and Article 2 of the UN Convention on the Rights of the Child (1989).

The housing market

Discrimination in the housing market is a substantial and complex problem for many Roma. The fact that Roma are often directed to segregated and socially deprived residential areas and have very little chance of choosing their housing themselves was noted several years ago, in the report "Diskriminering av romer i Sverige" [Discrimination of Roma in Sweden] (2004). As cases involving discrimination of Roma in the housing market have shown, landlords tend to blame the special treatment they accord Roma on the negative perceptions held by other tenants, who it is claimed consider Roma undesirable as tenants and neighbours.

Thus anti-Ziganistic attitudes towards and discrimination of Roma in public places in connection with the supply of goods and social services are also to be found in the housing market. This shows how AntiziganismAntiziganism fuelled by racist attitudes is still a part of many Roma's everyday lives. There is reason to reflect on whether Sweden has been sufficiently active in combating discrimination in the housing market and thus ensuring Roma of the right to a home.

The Discrimination Act (2008:567) guarantees the right of the individual to housing without discrimination. This protection is specifically linked to the individual, and if a person is discriminated against, he or she can seek compensation. The term housing applies to all categories, including rented accommodations, sublet accommodations, tenant-owned homes and owner-occupied homes. The ban on discrimination applies to situations and issues affecting both home occupants and home seekers.

The right to housing is enshrined in a number of international conventions to which Sweden is a party, including the UN Covenant on Economic, Social and Cultural Rights, and the European Social Charter. A common theme in these documents is that the housing provided must be of a suitable type. This means not just having a roof over one's head but having accommodation that is safe, decent and appropriate. It also includes having a certain security of tenure and not running the risk of being arbitrarily evicted.

States are required to take steps to combat harassment and to prevent the occupants of homes from being subjected to threats of any other kind. Also, homes are to be equipped with basic amenities, the housing cost is to be reasonable in comparison with the general income level in the country, and states should have systems for providing economic assistance to persons who are unable to pay their housing costs.[33]

The UN committee charged with monitoring compliance with the Covenant on Economic, Social and Cultural Rights has appealed to states to take swift action to combat discrimination against Roma in the housing market. States are urged to join Roma representatives in developing policies and projects aimed at countering the segregation of Roma in this market. The committee also underlines the importance of taking action against municipal and private property owners practising discrimination.[34]

The European Committee of Social Rights (ECSR), which monitors compliance with the European Social Charter, has made similar statements, emphasising that special attention should be focused on vulnerable groups. The committee has also noted that a state failing to take targeted measures to guarantee that all persons, including Roma, have equal access to their rights in the housing market is infringing the ban on discrimination expressed in the charter.[35]

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33 See in particular Article 11 of the UN Covenant on Economic, Social and Cultural Rights (1966) and how this article is to be interpreted in Committee on Economic, Social and Cultural Rights (CESCR), (1991),"The right to adequate housing (Article 11 (1))", General Comment No. 4, 13 December 1991; Article 5 in the UN Convention on the Elimination of Racial Discrimination(1965) and for how this article is to be interpreted, see Committee on the Elimination of Racial Discrimination (CERD), (2000), "Discrimination against Roma", General recommendation No. 27, 16 August 2000, and Article 13 in the revised European Social Charter and European Committee for Social Rights, decision of 18 October 2006 re Complaint No. 31/2005, European Roma Rights Center against Bulgaria.

34 Committee on the Elimination of Racial Discrimination (CERD), (2000), "Discrimination against Roma", General recommendation No. 27, 16 August 2000.

35 European Committee of Social Rights, decision of 18 October 2006 on Complaint No. 31/2005, European Roma Rights Center, against Bulgaria, para 40-42.

The 45 complaints, the two judgments and the three settlements reached concerning discrimination in the housing market in Sweden show that Roma have little opportunity to find a home on the same terms as others or to choose a home on the basis of their own needs. Moreover, many Roma live in a socially deprived situation, which means for instance that they may have difficulty meeting landlords' criteria for renting accommodation. Their socioeconomic situation is one of the reasons why they frequently have to rely on the municipal social services to sign housing contracts on their behalf or to assist them in finding a home by some other means. This affects their security of tenure, and also their chances of climbing the housing ladder.

Thus the housing situation of Roma in Sweden is determined by a range of factors at both individual and structural level. Taken together, these factors mean Roma cannot be said to have access to the right of housing on equal terms. Obstacles preventing such access are bound up with discriminatory structures in other areas of society – such as the education system and the labour market – that are part of the underlying cause of the Roma's social situation. More knowledge about the processes that sustain the Roma's disadvantaged position in the housing market is clearly required.

The various complaints, judgments and settlements also show that if Roma wish to enjoy their right to housing and avoid landlords' negative attitudes and perceptions, they must hide or tone down their Roma identity.[36] As the previous section showed, survival strategies for escaping discrimination and Antiziganism are a recurrent theme in the dialogue with Roma.

Roma's experience of housing discrimination and their sense of living in a hostile environment adversely affects their Roma identity and their willingness to be open about their ethnicity. Complaints from Roma reveal unsatisfactory conditions such as insecurity in the home and the gathering of petitions by neighbours seeking to prevent

36 See for instance judgment by the Appeals Court for Western Sweden, 2009-01-16, in Case No. T 3501-08.

Roma families from moving into an area or in response to perceived disturbances. The complaints also describe overcrowding, low living standards and poor sanitary conditions in rented housing.

In its report, "Diskriminering på den svenska bostadsmarknaden" [Discrimination in the Swedish housing market], the Ombudsman against Ethnic Discrimination observed that the Roma were one of the minorities that found it difficult to gain a foothold in the Swedish housing market, and also that a feature of the segregated housing areas in Sweden was that many Roma lived there. The report's review of the literature confirms that discrimination is a widespread problem in the housing market and that discrimination is helping to create and maintain segregation in Sweden. The housing market's system of housing allocation and its rental criteria were both identified as important factors in the correlation between, on the one hand, individual abuses and discriminatory structures, and, on the other, the role of discrimination in maintaining segregation.[37]

According to the report, the rental criteria and allocation systems found in the housing market are clear examples of discriminatory structures that affect the right to housing. One of the conclusions of the report is that both the way the systems are designed and their lack of clarity and transparency contribute to segregation in the housing market in that this facilitates arbitrary decisions and discrimination.

Examination of complaints relating to the discrimination of Roma in the housing market shows that both municipal and private actors are involved.

While the situation is not as clear-cut in such areas as tenant-owned and owner-occupied housing, it is nevertheless worth noting that where the buying or selling of such properties is concerned, there

37 Report by the Swedish Ombudsman against Ethnic Discrimination (2008), "Diskriminering på den svenska bostadsmarknaden – en rapport från DO:s särskilda arbete under åren 2006-2008 kring diskriminering på bostadsmarknaden" [Discrimination in the Swedish housing market – a report on the Ombudsman's special study of discrimination in the housing market, 2006-2008), page 49.

are structural obstacles that adversely affect Roma's chances of climbing the housing ladder. One such obstacle is discrimination in connection with applications to join a tenant-owner association. Many Roma also point to the difficulty of obtaining bank loans as an obstacle in this connection.

Discriminatory practices in connection with the purchase of tenant-owned flats are also described in some complaints, and such discrimination is confirmed by a study conducted by the Institute for Housing and Urban Research at Uppsala University. After carrying out tests to determine how estate agents treated clients in practice, the study concluded that Roma are systematically discriminated against when properties are to be viewed.[38]

Sweden has been subjected to international criticism from bodies such as the Council of Europe and the ECRI for failing to take sufficient steps to ensure Roma's right to housing.[39] Overall, the housing situation for the Roma community looks serious, and there is reason to reflect on whether Sweden has acted vigorously enough to ensure that the right to housing applies to all without discrimination.

International conventions in this field clearly establish that the absence of corrective measures may also be interpreted as discrimination, and that an important prerequisite if protection against discrimination is to be fully realised is that those who are exposed to discrimination are brought into the housing policy development process.[40]

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38 Irene Molina et al (2010), "Uthyrares och fastighetsmäklares bemötande av kunder ur ett diskrimineringsperspektiv" [Lessor and estate agent treatment of customers from a discrimination viewpoint], Uppsala

39 Gil-Robles, Alvaro (2004), "Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to Sweden 21-23 April 2004", Strasbourg 2004; European Commission against Racism and Intolerance (2005), "Third Report on Sweden", Adopted on 17 December 2004, Strasbourg.

40 Committee on Economic, Social and Cultural Rights (CESCR), (1991),"The right to adequate housing (Article 11 (1))", General Comment No. 4, 13 December 1991; Committee on the Elimination of Racial Discrimination (CERD), (2000), "Discrimination against Roma", General recommendation No. 27, 16 August 2000; European Committee of Social Rights, decision 7 December 2005 on Complaint No. 15/2003, European Roma Rights Center against Greece, para 29.

The Equality Ombudsman concludes that discrimination of Roma in the housing market is a complex matter and affects Roma's chances of taking part in community life on equal terms. This is serious, since without a permanent home or security of tenancy it is either difficult or impossible for people to take control of their own lives. Discrimination in the housing market may also make it more difficult for Roma children to attend school on a regular basis, thereby damaging Roma's educational prospects. The relationship between rights such as housing and education is a clear example of how chain reactions caused by structural discrimination develop and contribute to a situation in which many Roma find themselves on the margins of society.

Discrimination of Roma in the housing market should be seen in an historical perspective. Frequently over the years, through legislation and the way it applies the laws, the state has prevented Roma from establishing permanent residency in Sweden or made it difficult for them to do so.

Roma's current experience of discrimination shows that this historical attitude has its counterpart in modern society. Clearly, issues concerning the right to housing remain complex and an historical continuity is evident in terms of structural obstacles to this right. In combination, these are limiting Roma's right to housing on equal terms and thereby sustaining the marginalisation of Roma as a group.

Social services

Some 45 complaints from Roma – about 20 per cent of the total – concern discrimination in the social services. This matches the share of complaints relating to discrimination in the housing market. In Sweden, there are considerable knowledge gaps where discrimination in the social services is concerned since there is a lack of research in this field. The following analysis focusing on the link between individual abuses and discriminatory structures, therefore, is

necessarily more tentative than is the case for the other sections.[41]

Roma complaints about discrimination in the social services concern their treatment and the way their cases are dealt with when they apply for housing assistance or maintenance support. Other complaints refer to the imposition of conditions by the social services that are described as difficult to meet or simply irrelevant to the assessment of applications for economic assistance. In one case, the social service is said to have required the complainant to undergo a drug test and present a copy of his criminal record if he wished to be granted economic assistance.

A growing number of complaints from Roma concern the practice of taking of children into care under the Care of Young Persons (Special Provisions) Act (1990:52) and placing them in non-Roma environments. One complaint concerned a municipality that ordered an IQ test as part of its assessment of whether to take a Roma child into care under the above law. Another complaint concerned a Roma family that felt it had not received adequate support from the social service in its housing situation and reported that social service staff had threatened to take the child into care unless the family's housing situation improved. A further problem raised in the complaints concerned schools and health care services urging the social services to investigate conditions in individual Roma families. One complainant reported that a municipality had a separate Roma unit to which Roma were directed when for instance applying for economic assistance or housing support.

The Discrimination Act (2008:567) prohibits discrimination in connection with social services activities. The ban covers decision-making and all formal and informal types of case processing, including information provision, counselling and outreach activities. In addition, it covers both failure to act and the unwarranted delaying of decisions or measures, and a specific action or harassing treatment

41 Eliassi, Barzoo (2006), "Diskriminerande föreställningar inom socialtjänsten" [Discriminatory perceptions in the social services] in "Den segregerande integrationen. Om social sammanhållning och dess hinder" [Segregating integration. On social cohesion and its obstacles], ed. Massoud Kamali, pp 215-294.

of any kind. The ban on discrimination further encompasses unwarranted differences in support provision or other measures.

To date, no complaint concerning discrimination of Roma in the social services has been tried in court. Such complaints have primarily been closed due to insufficient proof of a link between the incident in question and the ethnicity of the person concerned. About a dozen complaints concerning the social services are currently under investigation.

Examination of the complaints, however, reveals structures within the social services that may help explain why Roma are denied access to such services on the same terms as the majority population. Evidently, there is little awareness or understanding within the social services of the fact that Roma are a marginalised group and are still discriminated against in many areas of society.

International conventions in this field require states to support their inhabitants with advice and economic assistance and with other basic requirements such as housing.[42] These accords emphasise that the individuals who are dependent on the welfare services in question are to be a party to decisions that concern them. They also make clear that measures such as taking children into care must be a last resort that should only be adopted when all other means have been exhausted, and also that such a measure should proceed from the best interests of the child.

As regards children being taken into care, the European Court of Human Rights stresses that such a course should only be pursued when there are strong grounds for doing so and the situation cannot be resolved by other means.

Another important conclusion is that the entire procedure must have a basis in law, be free from discrimination and be deemed essential from the point of view of what is best for the child. Under the

42 See for example Articles 14, 16 and 17 of the revised Social Charter, European Committee of Social Rights (ECSR), (2008), "Digest of the Case Law of the European Committee of Social rights 1 September 2008", comments on Articles 14, 16 and 17; see also the UN's "General Comment No. 18. /E/C.12/GC/18 February 2006", Point 1.

conventions, children taken into care and placed outside the family have the right to their own culture, identity and language.

Taking children into care is to be seen as a temporary measure and the care order is to be withdrawn as soon as circumstances permit. The long-term goal is reunification of the family. The chances of achieving such a reunion may be significantly reduced if the child is not allowed to meet his or her parents or is placed far from the parents' home.[43]

The issue of Roma children being taken into care has been raised by Roma organisations in a number of European countries. Many Roma in Sweden have long expressed concern about Roma children being singled out more often than other children and being placed in non-Roma environments, which it is felt does not encourage the development of their Roma identity.

A study by the European Roma Rights Center (ERRC) illustrates the importance of analysing the link between individual abuses and discriminatory structures in the case of Roma children taken into state care in Hungary. The ERRC notes that Roma children are over-represented among children confined to institutional care. The study found that 58 per cent of the children placed in state institutional care homes were Roma. There are no reliable statistics on the number of Roma living in Hungary but there are estimates showing that Roma children comprise about 13 per cent of the child population. The study notes that one of the decisive grounds for committing the children to care is the Roma's socioeconomic situation in Hungarian society. According to the ERRC, the social services had done little to improve the financial position of Roma families or to improve the children's situation.[44]

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43 See the judgment of the European Court, 2006-10-26, in the case of Wallowa and Walla versus the Czech Republic. The Czech Republic was found to be in breach of Article 8 of the European Convention, the right to respect for private and family life; and the European Court judgment of 1998-03-14 in the case of Olsson versus Sweden. Sweden was found to be in breach of the same article.

44 European Roma Rights Center (2007), "Dis-Interest of the Child. Romani Children in the Hungarian Child Protection System".

In Sweden, the Council on Roma Issues, an advisory body to the Government, discussed the issue of discrimination in the social services. Roma members of the council expressed concern at the fact that the number of cases of children being taken into care had increased and that Roma children were being committed more than other children. In 2006, therefore, the National Board of Health and Welfare undertook a study of the situation. One of its conclusions was that no real evidence had been found of any increase in the number of cases of Roma children being taken into care. The board pointed out that the basic data was too limited and the period of investigation too short. It had found, however, that Roma children appeared to be over-represented among those taken into care. The board took the view that the basic data was too unreliable to permit any firm conclusions.

One of the points that the study made was that there is too little awareness within the social services of the fact that Roma in Sweden are a recognised national minority or of what this means.

The Roma reference group attached to the study withheld support of the results, arguing that the report was written from a non-Roma perspective and that the findings did not reflect Roma's own experience in this matter. The group argued that many cases went unreported, that social services took action on incorrect grounds and that the unsatisfactory situation for Roma families had their basis in negative perceptions of the Roma community. In addition, the reference group emphasised that Roma lack the opportunity to influence matters and are not brought into the processes leading to children being committed. One of the group's main objections to the report from the National Board of Health and Welfare was that the lack of a Roma perspective had influenced its conclusions.[45]

When in contact with public authorities such as the social services, people are always in a relationship of dependence, and this is particularly evident when power is being exercised in one way or

45 National Board of Health and Welfare (2006), "Omhändertagen av romska barn" [Taking Roma children into care].

another. The relationship is further influenced by the inequality that always exists between majority and minority. Roma complaints of discrimination on the part of the social services show that in Roma's experience the services' negative attitudes and discriminatory application of the rules and procedures form the basis of this relationship, and that opportunities for participation are limited.

The history of legally sanctioned abuse that many Roma have suffered, such as sterilisation and the compulsory care of Roma children, affects the way Roma view the social services. Abuses under the sterilisation laws and issues relating to the compulsory care of Roma children should be viewed in the light of the assimilation policies adopted towards the lifestyles, culture and language of the country's minorities.

From the work undertaken by the Equality Ombudsman, it is clear that these historical abuses are affecting access for Roma to rights in the modern world. In time, a closer understanding of the complexity of the issues, and of how various factors contribute to and help sustain the marginalisation of Roma, can help bring about change.

Education

The UN's Universal Declaration of Human Rights states that all people are entitled to an education, and several international conventions in this field view the right to education as an important step towards the realisation of other human rights.[46] The UN Committee on Economic, Social and Cultural Rights expresses this view by emphasising that the right to an education is both a right in itself and an essential prerequisite if other rights are to be implemented and be given real substance. According to the UN committee, education is the primary vehicle by which economically and socially marginalised adults and children can

46 See Article 13 of the UN Convention on Economic, Social and Cultural Rights, Articles 28 and 29 in the UN Convention on the Rights of the Child, Articles 1 and 17 of the European Social Charter, Article 15 of the Council of Europe's Framework Convention for the Protection of National Minorities, and Article 7 of the European Charter for Regional or Minority Languages .

lift themselves out of poverty and obtain the means to participate fully in their communities.[47] International law is clear on the point that it is only when people are aware of their rights and are able to support themselves that the principles of empowerment and self-determination acquire true meaning.

Both the UN and the Council of Europe view discrimination in the education system as such a serious obstacle to the realisation of human rights that they have drawn up special provisions banning unequal treatment in education.[48]

The basic right to education has been given added weight in the Council of Europe's minorities conventions, the aim being to further strengthen the prospects for establishing equality between those who belong to national minorities and those who belong to the majority.[49] These include provisions requiring states to take measures in the fields of education and research to foster knowledge of the history, traditions, language and culture of their national minorities, and establishing that every person belonging to a national minority has the right to learn his or her minority language. Further, states are to recognise that national minorities have the right to set up and manage their own private educational and training establishments, and are also to provide adequate opportunities for teacher training both on the subject of and in the minority language.

The Discrimination Act (2008:567) prescribes that anyone conducting activities referred to in the Education Act (1985:1100) or other educational activities (an education provider) may not discriminate against any child, pupil or student participating in or applying for the activities. Education providers are also required to actively promote the

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47 Committee on Economic, Social and Cultural Rights (CESCR), (1999), The right to education (Art 13), General Comment No. 13, 8 December 1999. Committee on Economic, Social and Cultural Rights, General Comment No. 13.

48 See for instance the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and UNESCO's Convention on the Prohibition of Discrimination in Education (1960).

49 The Council of Europe's Framework Convention for the Protection of National Minorities, and the European Charter for Regional or Minority Languages.

equal rights of all pupils and students and to prevent harassment.

The number of complaints from Roma alleging discrimination in the education sector is small. This means no firm conclusions can be drawn as to the prevalence of discrimination in compulsory schools, for example. One complaint that the Ombudsman against Ethnic Discrimination investigated, and decided to pursue in court, shows how discrimination of Roma can be manifested in the education system.

Both the UN and the Council of Europe have criticised the Swedish state for failing to take adequate steps to ensure the right to education. It is evident that there is a considerable need of change in the education sector. In addition, prompt steps must be taken to eliminate obstacles – at both individual and structural level – that prevent Roma from accessing education on equal terms. The international monitoring committees have called for the introduction of rapid and concrete measures that significantly improve conditions for Roma children at school.

Partly because of the discrimination and exclusion from the school system to which they have been exposed throughout their history, many Roma now find themselves in a socially vulnerable situation. Their lack of equality in both the employment and the education sectors is a factor in this. The situation of Roma children in the education system in Sweden is reflected elsewhere in Europe, and one case that has attracted considerable attention is that of D.H. et al versus the Czech Republic. The European Court ruled that the Czech Republic was guilty of indirect discrimination of Roma children. The court found it proven that Roma were given an inferior education compared to the rest of the population, and that a disproportionately large number of Roma children had been placed in schools for pupils with learning disabilities.[50]

50 Judgment by the European Court, 2007-11-13, in the case of D.H. et al versus the Czech Republic.

A dissertation[51] has examined how the relationship between the Roma minority and the Swedish majority has developed since the mid-20th century in terms of the Roma's school situation. The study is based on interviews with Roma about their school education and shows that openly racist perceptions of the Roma community were a feature of their schooling and contributed to their aversion to school as an institution. Various lines of development are identified in the relationship between Roma and the education system, including for instance how schools blamed Roma parents and Roma culture for Roma children's relative lack of school attendance. One of the findings of the study is that the discrimination to which Roma were exposed has had a lasting effect and that this has contributed to their continued marginalisation.

The Roma's situation in the education system has long been and often still is regarded as a school attendance issue. The children's absence from school has been attributed by the majority society to cultural conditions in the Roma community. One-sided emphasis on compulsory school attendance as a means of combating discriminatory structures in education should instead be seen as a reflection of mainstream society's lack of awareness and unwillingness to recognise the linkage between such structures and individual abuses.

To ensure the right to education, systematic efforts are needed to expose and counter the discrimination of Roma in each and every educational situation. Responsible actors must also initiate general measures aimed at halting the processes within the education system that adversely affect the situation of Roma and their chances of enjoying such a right. This presupposes a scrutiny of school textbooks and other school materials to ascertain that they are not communicating stereotype and degrading texts or images about minorities and the way they live.

It is equally important to combat discrimination in regular classroom settings and to ensure that the education provided gives the requisite

51 Rodell Olgaç, Christina (2005), "Den romska minoriteten i majoritetssamhällets skola – Från hot till möjlighet" [The Roma minority in the majority society's school system: From threat to opportunity].

prominence to the culture, history and language of the country's minorities. In other words, it is a case of the education system ensuring the right of children to develop to their full potential. This means that children must have an unconditional right to education in all subjects, that the education encourages critical thinking, and that it also promotes respect for the principle of equal rights and human dignity for all.

Knowledge-building

The analysis shows that action is needed to move the fight against discrimination forward. It is vitally important to heighten awareness of the link between individual abuses and discriminatory structures, of the role of discrimination in impeding access to human rights, and of the processes in society that prevent Roma from participating in community life on equal terms.

Throughout history, rules and norms have imposed restrictions on Roma in one way or another and have prevented Roma from enjoying their human rights. Discrimination is affecting Roma daily lives and is still being practised today without being seriously called into question. The discrimination and structural obstacles that AntiziganismAntiziganism represents in one area of society have an impact on rights in other areas and thus have consequences for society as a whole. Discrimination of Roma in the housing market is affecting Roma children's chances of uninterrupted school attendance, which also affects their chances of an education on equal terms. This in turn affects their chances of entering the labour market. Furthermore, Roma face discrimination in both the education and employment sectors. The discrimination of Roma is having an adverse effect on their trust and faith in society and their willingness to assert their rights.

It is clear that Antiziganism must be linked to underlying structures in everyday life, to the kind of commonly practised discrimination that many Roma have to live with on a regular basis. Denial of the historical dimensions of discrimination and of how it hampers access to rights, and the failure of responsible actors to take action against it, are all major reasons why Roma continue to be marginalised as a group.

Discrimination affects Roma's self-esteem, their willingness to assert their rights and their chances of playing an equal part in decision-making processes in the various areas of Swedish life. It also affects their chances of taking part in public life on equal terms and consequently their chances of living on the same terms as the majority population. Awareness of the conditions under which Roma live is clearly lacking and is therefore not reflected either in how society views the Roma community or when official action is to be taken. There is still a considerable need to raise awareness in society and build knowledge with a rights perspective as a guide to future strategies.

Summary and conclusions

Since 2003, Sweden has had legislation in place prohibiting ethnic discrimination across a broad front and affording those subjected to such behaviour the opportunity to assert their right to non-discrimination. Thus the law offers the kind of protection that can counteract the discrimination of Roma.

The Equality Ombudsman and its predecessor, the Ombudsman against Ethnic Discrimination, have pursued systematic efforts to promote Roma rights. The dual aim has been to raise awareness among Roma of the protection against discrimination available to them and to further understanding both within the agency itself and in society at large of the ways in which discrimination is manifested.

For the main part, this work has involved providing educational courses designed to improve Roma's understanding of the protection available to them, drawing on Roma's experience of discrimination to enable the Ombudsman both to provide Roma with relevant educational courses and to investigate complaints and pursue strategically important litigation, applying the Discrimination Act extensively to test whether it can provide individual victims with redress, using case-law to make society more aware of the Roma's situation and to draw attention to Antiziganism.

This report analyses both what the Equality Ombudsman has learned in the course of its work and the available data concerning Roma's access to rights on equal terms. It is important to reflect both on the limitations of current legal tools and on the opportunities they afford, and also to discuss which supplementary measures will be necessary in the coming years. Below, we discuss the measures that will be required if the law is to be even more effective in ensuring Roma rights.

As a result of the methods and procedures adopted by the Ombudsman in pursuit of mutual knowledge-building and better access for Roma to human rights, Roma are now asserting their right to non-discrimination by reporting abuses to the authorities to a greater extent than before. The complaints, which are often

both an expression and a description of complex situations, have increasingly been investigated on the basis of the Ombudsman's more informed understanding of the Roma's circumstances. Of the 230 complaints received since 2004, thirty or so have been resolved by a court judgment or by the parties settling out of court. In all, some 50 people have obtained redress through the intervention of the Equality Ombudsman.

Viewed in an historical perspective, the opportunities for redress now available mark the beginning of a new chapter in the history of Roma in Sweden. The fact that individual Roma have won cases in court in itself represents a challenge to many of the discriminatory structures that hinder their access to human rights. This is not to say that anti-discrimination legislation alone can bring about a change in the situation of Roma as a group. Political will and rapid, concrete measures in the educational field will also be required if Roma are to be ensured of their rights and of a position in society on the same terms as the majority population. Children's school results are crucial to their chances of further study, which in turn affects their chances of entering the labour market.

Many of the complaints received by the Ombudsman expose the openness with which Roma are discriminated against. Frequently, the complaints concern discrimination against women and their children in everyday situations involving the supply of goods and services, including housing. Some describe complex situations in which Antiziganism is manifested but where discrimination is hard to prove. These may for instance involve meetings with the social services or the situation of Roma children in school.

The Roma's historically vulnerable position as a group is reflected in the lack of complaints concerning working life and the health care service.

Discrimination in the housing market is affecting Roma's living conditions and keeping Roma in the kind of downward spiral that has distinguished their situation for centuries. Constant changes of residence are undermining their chances of finding employment and taking an active part in community life. Such changes also affect

children's chances of attending school on a continuous basis, which means the pattern of marginalisation is preserved. In addition, many Roma still fear unwarranted intervention on the part of the authorities in situations where, as a citizen, one should be able to count on protection and support, e.g. in the social services and the justice system.

The sense of abuse does not necessarily vary in these differing situations but may be expressed in different ways, and people's willingness to lodge complaints may also vary. This in turn affects the Equality Ombudsman's chances of hastening social change through litigation.

Future efforts to promote Roma rights

While litigation is important for obtaining redress in individual cases, it is equally important in a long-term, structural perspective. The various judgments and settlements serve to highlight and confirm the existence of discrimination against Roma, but also represent confirmation that the majority society demands accountability when Roma's rights are violated. Legal proceedings make Roma more aware of their rights and of the fact that reporting discrimination can be a path to redress and thereby a means of strengthening Roma rights.

Rights-based education for Roma aimed at improving both their understanding of anti-discrimination legislation and their ability to claim their rights represent one kind of strategically important initiative against discrimination. Such an approach is essential as a means of boosting Roma's willingness to report and of combating the structures that are denying them access to their human rights. The aim of this type of activity is to activate both individuals and groups and encourage them to view themselves as a resource for change.

The analysis in the report shows that much remains to be done to secure access for Roma to human rights. The Equality Ombudsman intends, therefore, to develop methods and procedures that will facilitate dialogue between Roma and actors responsible for securing and upholding rights. Roma's own experience of discrimination is an important source of knowledge in this connection, since they are

closely familiar with the ways in which the procedures, organisation and activities of public authorities can hinder their access to rights.

Acknowledging Roma's experience of discrimination and letting what is revealed in complaints, court proceedings and dialogues provide a basis for Roma's discussions with key actors are vital ingredients in any endeavour to change the discriminatory structures that are preventing Roma from accessing their human rights. In the following, we present four key actors with whom the Equality Ombudsman intends to enter into dialogue together with Roma.

The National Council for Crime Prevention has worked on issues relating both to discrimination in the education system and to racist hate crimes directed at Roma. The National Council and the Equality Ombudsman have many points in common. There is therefore reason, in consultation with Roma, to exchange information and experience concerning both how discrimination is manifested in connection with the supply of goods and services, including housing, and what steps should be taken to combat discrimination. This development work should reflect and build on the efforts under way at European level, for instance within the OSCE.

Two other government agencies that the Equality Ombudsman considers important in the present context are the National Board of Health and Welfare and the Schools Inspectorate. These two bodies are charged with supervising the social services and school education respectively. In seeking to promote a uniform supervisory approach that ensures the various activities they monitor do not engage in discrimination but instead facilitate access to rights, the Equality Ombudsman takes the view that closer interagency cooperation is essential.

The aim of such a joint endeavour would be to develop carefully planned, long-term supervision focusing on discrimination and access to rights and eventually to secure respect for human rights in the social services and the education system. This would make it easier to fulfil the intentions of the legislator in terms of improving people's access to rights.

Roma's experience of discrimination in Sweden and their lack of access to rights both have their counterparts in other countries around Europe. Accordingly, successful efforts to promote Roma rights in Sweden must include an international perspective and collaboration. Developments in Sweden are dependent on developments in Europe as a whole, both as regards Roma's situation in life and the measures that need to be taken to facilitate effective implementation of human rights.

There is reason, therefore, for the Equality Ombudsman to commit more fully to the work being undertaken in Equinet, the European Network for the Specialised Equality Bodies. This would involve seeking, in consultation with national and international Roma organisations, to follow up both the implementation of the Council's anti-discrimination directive (Directive 2000/43/EC) and the development of measures promoting Roma rights.

Conclusions of the Equality Ombudsman

The analysis in the report makes clear that the discrimination of Roma is a complex issue. Consequently, there are no single or straightforward ways of countering it. A whole range of measures is needed, based on a human rights perspective and an understanding of the complexity and consequences of discrimination.

The Equality Ombudsman takes the view that effective anti-discrimination work requires not only strong institutional actors but also civil society actors representing those who are exposed to discrimination and who can help formulate demands and measures.

One new feature of the new Discrimination Act is that it grants not only the Equality Ombudsman but also NGOs the right to litigate on behalf of private individuals reporting discrimination. In the bill proposing the Discrimination Act, the Government asserted that the extension of this right would strengthen the law's impact.[52] In practice, however, it is primarily the Equality Ombudsman

52 Government Bill 2007/08:95, "Ett starkare skydd mot diskriminering" [Stronger protection against discrimination].

that is financially capable of taking legal action. But not even the Ombudsman possesses the resources that would enable it to continue pursuing all the individual cases that come to its attention.

An important prerequisite, if the extended right to litigate is to be effective in practice, is the availability of economic assistance for the pursuit of discrimination cases in court. Accordingly, the Equality Ombudsman considers that resources should be set aside – in a fund or elsewhere – for which NGOs needing such assistance could apply.

The report's conclusions regarding access for Roma to human rights makes clear the need for additional actors to work with the Roma community in formulating strategies for change. The Equality Ombudsman takes the view that public authorities at local, regional and national level should to a greater extent establish equal terms and conditions for participation and influence, open the way for civil society actors to act, and challenge and change the current order that is contributing both to the discrimination of Roma and to the denial of their rights.

In this connection, public funding must be made available to civil society actors to enable them to join the fight against discrimination. Accordingly, the Equality Ombudsman considers that the organisational support provided to Roma stakeholders – in both economic and knowledge terms – should be increased so as to make it easier for them to influence decisions that concern Roma as a group.

Many Roma lack awareness of their human rights and of the protection against discrimination available to them, and this makes it difficult for them to claim their rights. The new methods and procedures developed by the Equality Ombudsman, featuring rights-based education as a key component, are an important means of ensuring that Roma view the law as an instrument of redress they can trust when their rights are violated.

It is clear, however, that additional actors should, in consultation with Roma, pursue efforts to enhance Roma's understanding of their rights and paths of redress. The Equality Ombudsman therefore finds good reason to let the National Board for Youth Affairs, in consultation

with the Ombudsman, the adult education movement and Roma representatives, establish a structure for rights-based education provision and other measures aimed at mobilising Roma in pursuit of their rights.

One problem cited in the report is that lack of information affects people's chances of determining whether or not they have actually been exposed to discrimination. This applies in particular to situations where Roma are seeking a place to live. It is often impossible for private individuals to know whether they are being discriminated against when they have no clear information on which housing allocation principles apply and no insight into what the selection and allocation process involves. The Equality Ombudsman therefore believes it is worth considering whether the duty to provide information currently incumbent upon employers might not also be extended to actors supplying goods and services.

Given the limitations that requirements of proof etc impose on individuals seeking redress via the courts, it is clear to the Equality Ombudsman that the current legal framework is not always an adequate means for dealing with the situations described in the complaints. Nevertheless, a reported incident may need to be dealt with so that it does not develop into a drawn-out conflict that puts Roma in an even more vulnerable position. One alternative to judicial proceedings is mediation. This, however, is a complex process that necessitates a special brand of expertise. A self-evident actor in this connection is civil society.

Mediation in disputes over discrimination presupposes clear, carefully defined rules concerning when and under what circumstances such a procedure can be embarked upon and be meaningful. The Equality Ombudsman believes there is reason to consider whether the National Mediation Office might profitably be given a role in the discrimination sphere.

The Equality Ombudsman regrets the lack of available qualitative studies at an aggregate level on how the EU Racial Equality Directive (2000/43/EC) has been implemented in member states. This makes it difficult to follow up and compare effective measures for dealing

with the discrimination of Roma as well as making it difficult to determine how the law can be used as an tool to improve the situation of Roma in Europe. The Ombudsman would like to see measures that improve the level of knowledge on how this Council Directive is being implemented.

The analysis in the report identifies a number of major knowledge gaps regarding the true extent of discrimination, its complex manifestations and its impact on access to rights. The Equality Ombudsman would welcome knowledge-enhancing efforts in this respect, since such information could help change society.

One measure that could facilitate change would be for the research community to focus more specifically on strategies that help combat discrimination and promote equal rights and opportunities.

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The Equality Ombudsman (DO) seeks to promote and uphold the rights of all people and to combat discrimination related to a person's sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age.

DO
www.do.se
Box 3686
103 59 Stockholm
Visitors: Torsgatan 11
Tel +46 8 120 20 700
Text tel +46 8 120 20 820

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