

ANTIGYPSYISM IN PUBLIC DISCOURSES AND ELECTION CAMPAIGNS

Central Council of German Sinti and Roma
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LEGAL PROHIBITION OF DISCRIMINATORY ELECTION CAMPAIGNING PRACTICES

1. INTRODUCTION¹

Above all, the documentation below aims to analyse and set forth in detail the legal and political debate about the sustained, discriminatory smear campaign of the NPD. It also seeks to evaluate the previous failures of the courts, which justified the right-wing extremist campaign, applying absurd arguments, despite a variety of initiatives from public authorities, policy-makers and society, thus leaving the affected minority defenceless.

A position is also taken with regard to the extent to which the provisions of criminal law and the anti-discrimination clauses in administrative law, as well as the International Convention on the Elimination of All Forms of Racial Discrimination, have been observed that demand intervention against discriminatory practices. The demand for legal steps to clarify the ban of racial discriminatory election practices is explained.

In spite of the many criminal reports that were filed, only a few public authorities intervened against the inflammatory posters. Mostly, there was uncertainty and helplessness regarding the legal options available to prohibit the public display of the discriminatory posters or effect their removal. In Hesse, Hamburg and other federal states, there were cases of physical abuse by right-wing extremists against Sinti who protested against the posters.

2. LEGAL ASSESSMENT

a) Incitement to hatred against the minority

In May 2013, the Central Council filed a criminal report with the Duisburg Public Prosecutor's Office, initially against the leaflet with the message "Stop the flood of gypsies! ..." on its cover. One of the reasons we declared, was that the leaflet was likely to incite hatred and violence against Sinti and Roma. In August 2013, the suit was extended to include the poster "Money for Grandma, not for Sinti and Roma". This

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smear campaign was said to menacingly disturb the public peace. Its design was said to appeal to base aggressive instincts and to be aimed to universally discriminate against our entire minority in a propagandistic way. Such a form of agitation was overstepping the de facto boundaries of the strict expressions of opinion that are permissible in an election campaign. Given the Nazi genocide that was committed against the Sinti and Roma, such emotional, public incitement was said to deny members of the minority the right to equal co-existence with others living in our country.

Such hostile practices which are inimical towards a state under the rule of law should no longer be permissible in Germany. Such a resurgence of history is not acceptable. Just like the Jews after the Holocaust, our minority has a special claim to be protected by the present-day state of the Federal Republic of Germany against such an intense propaganda of hatred.

The extremely discriminatory nature of the posters and flyers follows from the deliberate degradation and marginalisation of the Sinti and Roma minority ("Gypsies"). The rhyming slogan alleges and suggests to the reader/public that the minority is as a whole unworthy to receive "monetary" payments, regardless of the nature of the payments and the de facto and legal grounds for the payments. This generalisation aims specifically to instil a diffuse and vague but nonetheless fundamental defensiveness that extends to all areas of social and political life.

At the same time, the poster specifically avoids making a connection with any political or factual claims. The campaign aims at a general degradation and marginalisation of the minority, based only on the criterion of descent. It is not about offensive terms or phrases. The racially discriminatory nature arises from the disparaging objective and purpose of the campaign as well as the impact on the general level of respect towards and recognition of the minority as being people enjoying equal rights within society.

The deliberate generalisation used in the slogan does not allow for subsequent interpretation. This was, however, the defence adopted by the right-wing extremists in court when they claimed that it referred to the recent immigration debate. Besides, even then such an interpretation would be of a racially discriminatory nature, because

- a.) "Sinti" are not immigrants, but an autochthonous minority which has been living in Germany and the neighbouring German-speaking countries for over 600 years, and
- b.) the characteristics universally ascribed to the Roma within the immigration debate are equally incorrect and discriminatory. We will take a closer look at these issues in the documentation below.

An election poster emblazoned with the words "*Money for Grandma, not for Jews*" would not be tolerated in public areas for weeks on end, and rightly so, given its discriminatory message. The "Sinti and Roma" poster has a sustained adverse effect on the standing of the minority in society. That these are tolerated cannot be explained, in particular to children who have to walk past them every day. One of the foreseeable consequences is a problem with discrimination at schools.

The fact that the survivors of the Nazi genocide and the descendants of the German Sinti and Roma families lost, among other things, their families and also their grandparents in the death camps of Treblinka, Auschwitz, Buchenwald and Bergen-Belsen, to mention but a few, shows just how perfidious the allusion to the "Grandma" in the NPD slogan is.

b) The involvement of the German Federal Ministry of Justice

After the nationwide billposting campaign using posters emblazoned with: "Money for Grandma, not for Sinti and Roma" at the end of August 2013, the Central Council turned to Federal Minister of Justice Sabine Leutheusser-Schnarrenberger asking her and the Federal Government to take prompt action to ban

such discriminatory election propaganda. The Central Council called for legal clarification, if necessary, in the form of legal regulations by the federal and state governments. This was to ensure that election advertising material such as posters and leaflets, which deliberately target minorities and discriminate against them on the basis of their descent, must in the future be immediately removed from circulation at the expense of the operator. We particularly stressed, in view of the freedom of expression that we value so highly, unambiguous steps must be taken if – as in the case at hand – the boundaries of democratic tolerance and factual debate are overstepped, especially in election campaigns. After the Holocaust, it should no longer be permitted to marginalize members of a minority on the basis of their biological origin - as it was done before 1945.

In a first meeting with the State Secretary at the Federal Ministry of Justice, Dr Birgit Grundmann, on 17 September 2013, we agreed among other things to review the situation after the Bundestag elections and meet with the relevant ministers to discuss possible and necessary measures for preventing repeat occurrences.

3. COMMITMENT TO MINORITIES IN THE POLITICAL ARENA AND IN SOCIETY

a) The Mayor of Bad Hersfeld, and other cities

Mayors in various towns in Hesse, North Rhine-Westphalia and other federal states stood up for the minority and had the posters taken down on their own initiative. In some cases they also pressed criminal charges for incitement and slander.

After a violent attack against a young Sinto in Bad Hersfeld, the local mayor Thomas Fehling also ordered the removal of the posters, which he regarded as constituting unlawful agitation. When Kassel Administrative Court (VG) subsequently forced him to put the posters back up again, the Central Council of German Sinti and Roma urgently requested him to appeal against the decision of Kassel Administrative Court Kassel of 9 September 2013. The order will be the subject of closer study below. The letter of the Central Council to the Mayor of Fehling states, among other things:

"The FRANKFURTER ALLGEMEINE ZEITUNG reported today about the catastrophic order of Kassel Administrative Court on the NPD smear campaign posters. Mr Mayor, we would like to thank you sincerely for your exemplary handling of the situation. I would like to ask you to appeal against the ruling of Kassel Administrative Court under all circumstances because it is completely unjustifiable. Re-hanging these posters promoting the racial exclusion of an entire minority would also constitute a provocation with unforeseeable consequences for those concerned."

On 10 September 2013, the Central Council also turned to the Federal Ministry of Justice again after it had become known that the legal department of the Bad Hersfeld city administration had advised against appealing. The Central Council asked the Minister *"to imperatively find a way to intervene in this matter now."* The Council stated that, following the NSU scandal, the State could not fail once more, stand back and watch right-wing extremist practices against victims of the Holocaust repeating themselves.

The Minister replied on the same day with a letter to the Central Council that is documented in the annex, stating that she *"fully understood that the Sinti and Roma were not only offended by the NPD posters, which showed unsurpassed cynicism and lack of taste, but were also scared."* She went on to state that the Mayor of Bad Hersfeld and other mayors had acted decisively when he had the posters removed. *"I would completely understand if the City of Bad Hersfeld decided to exhaust the legal channels in this matter and submit a complaint"*, according to the letter from Federal Minister of Justice.

b) The Mayor of the City of Giessen

On 13 September 2013, the Mayor of the City of Giessen, Ms Dietlind Grabe-Bolz, informed the Central Council of the following:

"As you have surely noticed, I had the heinous NPD posters removed at the beginning of this week. Unfortunately, Giessen Administrative Court informed us yesterday that we must hang them back up without delay. The particular reason for this is that, from the point of view of the court, the posters did not fulfil the criteria for the offence of incitement to hatred. I do not share this assessment, which is why I have filed a criminal complaint against the state chairman of the NPD. At the same time, on my initiative, an inter-party alliance was formed, which has quickly launched a joint poster campaign. We responded to the NPD posters by hanging up 15 posters of our own in the municipality with the message: "My Grandma likes Sinti and Roma too". "

c) The local Jewish community in Thuringia

On 11 September 2013, the chairman of the Jewish community in Thuringia, Prof. Dr. Ing. Habil. Reinhard Schramm, lodged a formal complaint against an NPD election campaign commercial on the Mitteldeutscher Rundfunk (MDR). He wrote as follows with regard to the question on how the election poster should be interpreted:

"In the current election period, the NPD is publicly displaying seditious slogans everywhere, also in Thuringia, like "Money for Grandma, not for Sinti and Roma". Not only are they attempting to direct the dissatisfaction of older people towards a long-suffering minority which they are using as a scapegoat. They are also trying to expand the pogrom-like atmosphere to Germany that is prevalent throughout the EU, and which has already led to numerous murders of Roma. Was it not enough that hundreds of thousands of Sinti and Roma were murdered under National Socialism? Today, Germany is called on to show solidarity with the Sinti and Roma."

d) The International Sachsenhausen Committee

The managing board of the "International Sachsenhausen Committee", the organisation of the former prisoners of Sachsenhausen Nazi concentration camp from 18 European countries including Israel, which is headquartered in Luxembourg, wrote to the Central Council of German Sinti and Roma on 13 September 2013:

"The International Sachsenhausen Committee supports the demand of the Central Council of German Sinti and Roma for a ban of discriminatory election advertising by the NPD.

Even from abroad, the International Sachsenhausen Committee was horrified to learn about the discriminatory election posters which the NPD is campaigning in Germany.

It is especially the defamatory posters directed against Sinti and Roma with the slogan "Money for Grandma, not for Sinti and Roma" which have unquestionably overstepped the boundaries of democratic and factual debate.

It is outrageous that in Germany, where 70 years ago a population group was discriminated against because of their origin, and put into concentration camps, where approximately 500,000 people perished, there is once again a German party, the NPD, that is stirring up hatred against the Sinti and Roma.

How can the German State, 60 years after the Holocaust, again allow members of a minority to be marginalised from society solely because of their descent.

This kind of election propaganda on the part of the NPD is also unnerving for survivors abroad. We wonder whether the world has learnt nothing from past mistakes.

The International Sachsenhausen Committee therefore endorses the demand of the Central Council of German Sinti and Roma that the German Federal Government take legal action to ban discriminatory election advertising."

e) Mittelbau-Dora Memorial, State Secretary Dr. Grundmann, Federal Ministry of Justice

On 15 September 2013 it became known that the NPD had also hung up large numbers of posters with the inscription "Money for Grandma..." on the approach road to the memorial at the former Nazi concentration camp of Mittelbau-Dora.

The Central Council addressed this monstrous occurrence at a face-to-face meeting on 17 September 2013 with the State Secretary at the Federal Ministry of Justice, Dr. Birgit Grundmann, and requested that the Federal Ministry of Justice should contact the Thuringian Ministry of the Interior and Justice to arrange for the immediate removal of the posters. According to a press report, the authorities in Nordhausen, where the memorial is located, were uncertain whether they were allowed to remove the posters, following the administrative court rulings that had been handed down elsewhere. State Secretary Dr. Grundmann promptly took action, and wrote to the Central Council on 19 September 2013, stating:

"I wish to refer to our conversation on 17 September 2013 about the current NPD election posters, which cynically and distastefully seek to sow grudges against the Sinti and Roma living in Germany. You reported that the NPD had also hung up these posters in the immediate vicinity of the Mittelbau-Dora Concentration Camp Memorial in Thuringia. I unreservedly share your particular indignation on this matter.

My Thuringian counterpart, whom I immediately contacted, in turn kindly contacted his colleague at the Thuringian Ministry of the Interior without delay. I have enclosed his letter for your information. I was informed that the Nordhausen town administration had already removed all the NPD election posters referring to Sinti and Roma from the road leading to the concentration camp memorial on the day before."

In his letter, the State Secretary at the Ministry of Justice notified his counterpart at the Thuringian Ministry of the Interior as follows:

"The Chief Senior Public Prosecutor in Mühlhausen has informed me that NPD election posters with the inscription "Money for Grandma, not for Sinti and Roma" had been hanging along the "Street of the victims of fascism" in Nordhausen, i.e. the approach road leading to the Mittelbau-Dora Concentration Camp Memorial, during the last few days. For this reason, the director of the Mittelbau-Dora Memorial, Dr. Jens-Christian Wagner, filed a criminal complaint against those responsible on 6 September 2013. Mühlhausen Public Prosecutor's Office thereupon initiated investigation proceedings against those responsible in the NPD executive committee for suspected disturbance of the peace of the dead within the meaning of Paragraph 168 II of the German Criminal Code [StGB].

In accordance with Paragraph 168 II of the German Criminal Code [StGB], anyone who commits defamatory mischief at a public memorial for the dead, i.e. according to the relevant legal commentaries, acts in a grossly inappropriate manner by demonstrating crude behaviour. This does not necessarily need to be directed against the place itself, but expresses disrespect for its designated purpose and character, and therefore is guilty of a criminal offence. In the view of Mühlhausen Public Prosecutor's Office – and my own - this definition may render punishable the conduct of those responsible in accordance with Paragraph 168 II of the German Criminal Code [StGB].

In addition, I consider that this conduct may also be punishable due to the defamation of the memory of the deceased in accordance with Paragraph 189 of the German Criminal Code [StGB], and due to incitement of the people in accordance with Paragraph 130 I of the German Criminal Code [StGB]

(cf. also the Order of the Federal Constitutional Court (Bundesverfassungsgericht) of 12 March 2004 - ref. 1 BvE 6/04).

I think we agree that the said posters alone constitute an intolerable degree of impiety. But having the posters in the immediate vicinity of the Mittelbau-Dora Concentration Camp Memorial constitutes an unacceptable display of scorn for the victims of the so-called "Gypsy persecution" at the Mittelbau-Dora concentration camp. For this reason, I believe it is imperative for the regulatory authorities to take action to promptly have the posters removed from the vicinity of the Mittelbau-Dora Memorial, if necessary by the municipal supervisory authorities - in addition to the potential consequences under criminal law for those responsible. The commission of the abovementioned criminal offences is likely to constitute a violation of public safety and order in accordance with Paragraph 5 of the Thuringian Regulatory Authorities Act (Ordnungsbehördengesetz – ThürOBG).

f) Associations and parties in Schleswig-Holstein

On 11 September 2013, the State Association of the German Sinti and Roma in Schleswig-Holstein sent the Central Council a compilation of the expressions of solidarity received from organisations as well as political and social figures in Schleswig-Holstein. They criticised the posters and flyers as being racist and hatred inciting, and demanded that the judiciary take steps.

These included in particular:

- Günter and Ute Grass, for the Executive Committee of the Foundation in favour of the Roma people
- Henning Möbius, Chairman of the Round Table for Tolerance and Democracy in Neumünster
- Wolfgang Seibert, Chairman of the Jewish Community of Pinneberg
- Margret Steffens
- Renate Schnack, DialogForumNord
- Cindy Baginski, Bündnis gegen Rechts (Anti-Right-Wing Alliance), Neumünster
- Klaus Schlie, President of the regional Parliament of Schleswig-Holstein
- The Bündnis 90/Die Grünen party, State Association of Schleswig-Holstein
- Dr. Ralf Stegner and Birte Pauls, SPD State Parliamentary Group of S.-H.
- Lars Harms, Chairman of the SSW (Southern Schleswig Voters' Association) Party
- Astrid Damerow, CDU Parliamentary Group of S.-H.

This coincided with the launch of a poster campaign in Schleswig-Holstein by a non-partisan alliance, with the participation of the State Association of the German Sinti and Roma in Schleswig-Holstein, entitled "Against Racism and Marginalisation".

g) Advisory councils for foreign nationals

Many **advisory councils for foreign nationals** filed criminal reports against the election posters in Baden-Wuerttemberg, Bavaria, Rhineland-Palatinate and other federal states.

h) Trade unions

Several trade unions spoke out against discriminatory election campaigns and condemned the actions of the NPD.

4. THE FAILURE OF THE JUDICIARY IN THE LAST ELECTION CAMPAIGN

a) No protection from the courts and public prosecution officers

After several towns and cities had the posters removed, various administrative courts responded to motions lodged by the NPD by justifying the inflammatory posters in a number of rulings that were handed down. The courts forced mayors as well as town and city municipalities to replace the posters, mouthing the reasoning of the NPD, which is completely unacceptable and ignores the experience provided by history. Not only do the legal evaluations of administrative courts, public prosecutor's offices and chief public prosecution officers manifestly ignore the discriminatory nature of the posters and pamphlets, they also completely disregard the historical context and the posters' grave consequences for the affected minority.

The only exception is Wiesbaden Administrative Court, which rejected the NPD's motion to have the posters replaced, accusing it of formal inadequacies in the approval procedure (non-submission of the liability insurance cover requirements).

b) The decision of Kassel Administrative Court

On 9 September 2013, Kassel Administrative Court handed down the first negative order (ref. 4 L 1117/13 KS), which other courts, public prosecution officers and public authorities used as a reference.

The operative provisions of the ruling read as follows:

"The motion of the plaintiff for a temporary injunction to oblige the defendant to promptly replace the election posters with the inscription "Money for Grandma, not for Sinti and Roma" without delay at the original locations within in A-Town is well founded given that the plaintiff has brought a plausible case for an entitlement to injunctive relief, as well as for grounds for same."

The reasoning for the order starts by listing the underlying legal provisions:

"The entitlement to injunctive relief results from his claim under public law for the rectification of consequences. The removal of said election posters was unlawful."

It is immaterial here whether the removal of the election posters constitutes, in legal terms, direct implementation (Paragraph 8 of the Hesse Act on Public Security and Order [HSOG]) or a right to immediate enforcement (Paragraph 47 II of the Hesse Act on Public Security and Order [HSOG]). This is because the preconditions for (fictitious) underlying order are not satisfied at any rate. In accordance with Paragraph 11 of the above Act, the competent authorities can take the necessary steps to defend against a specific danger to public security or public order. The interests of public security include the integrity of the objective legal order. The abovementioned election posters do not violate the legal order (...)

When interpreting and applying Paragraph 130 of the German Criminal Code [StGB] (author's note: the original pdf document of the court in the annex contains the clerical error "Paragraph 1 of the Legal Code"), in particular the constitutional requirements that are derived from Paragraph 5.1 sentence 1 of the Basic Law [GG] need to be observed in order for the "value-setting importance of the basic communication right on a standard application level" to come into effect. For the interpretation of legal norms, Article 5.1 sentence 1 of the Basic Law [GG] requires, within the framework of the constituent elements of the applicable legislation, that the importance of the freedom of expression is weighed up against the legally protected rights that were restricted. This prevents an interpretation of

the factual circumstances of a criminal provision which exceeds the requirements of the protection of legal rights. The courts must also observe the constitutional requirements with regard to how laws are interpreted. Prerequisite for the subsumption of a statement or conduct under the criteria of Paragraph 130 of the German Criminal Code [StGB] is that the courts understand the precise nature of the controversial statement. In the process, they must also, on the basis of the wording, consider the context and the factual circumstances of the statement in accordance with the case law of the Federal Constitutional Court. The Federal Constitutional Court takes as a basis the principle that freedom of opinion is violated if, in the case of ambiguous statements, a court bases its considerations on an interpretation leading to a conviction, without having previously ruled out with reasonable cause those interpretations which cannot justify the sanction (see Federal Constitutional Court (BVerfG) decision from 06.09.2000 – 1 BvR 1056/95 - juris marg. 35 et seq., with further references). Considerations could, for example, include the circumstances under which the statement was made. Earlier utterances of a political party must also be taken into account provided that a clear reference to them is established (Federal Constitutional Court (BVerfG), not adopted decision from 24.09.2009 - 2 BvR 2179/09 - juris marg. 8, with further references)".

On the basis of these considerations the court then comes to the following conclusions:

"Measured in terms of these standards, it is not possible to determine with the required certainty that the plaintiff's actions pertaining to the display of the mentioned posters in public street areas constitutes incitement, as the content of these posters could also be interpreted in other ways that are not punishable. To elaborate:

The posters with the inscription "Money for Grandma, not for Sinti and Roma", on which, apart from the plaintiff's logo, the likeness of an elderly lady can be seen, could at worst be considered a call for arbitrary measures. Arbitrary measures are illegal, discriminatory measures aimed at causing damage or disadvantage (Fischer, German Criminal Code [StGB], 58. edition 2011, Paragraph 130 (10))."

Then the following core statements of this decision are presented:

"It is possible to interpret the statement on the poster in such a way that it calls for illegal and discriminatory arbitrary measures, in breach of the principle of equality (Article 3 of the Basic Law [GG]), aimed at taking away social benefits that the Sinti and Roma are entitled to and redistributing these funds to the elderly. However, the statement on the poster could also be interpreted as meaning that additional public funding should rather benefit the older generation than the population group of the Sinti and Roma; this demand would not be considered an incitement of hatred. The court has found no conclusive evidence that would allow it to completely rule out this second interpretation."

Several aspects of this line of reasoning are not plausible and are factually inaccurate:

The reasoning or interpretation of the court is absurd and not plausible. Of course it is inciting if "social benefits which the Sinti and Roma are entitled to are taken away arbitrarily". The statement that "additional public funding should rather benefit the older generation than the population group of the Sinti and Roma" is equally racist, inciting and unconstitutional. This statement means that state funds should not be disbursed for factual or political reasons, but should be refused on the basis of ethnicity or mere membership of a minority. The German Sinti and Roma are citizens of equal standing and also have an older generation. Unlawful conduct cannot be justified by another unlawful interpretation.

The court fails to recognise the demands on a possible "interpretation" which underlie German Basic Law judicature. Alternative interpretations are only permissible in so far as they cover the actual content and meaning of the statement. This is precisely what the Federal Constitutional Court meant in the above-mentioned decision from the year 2000 when it said that *"the meaning of the controversial statement must be correctly understood"*, which does not allow for reinterpretation.

The poster inscription ("Money for Grandma, not for Sinti and Roma") is a deliberate generalisation that is not limited to certain benefits, groups of persons, public or private areas (etc) in any way. It is directed against the entire minority, irrespective of whether the members of this minority have traditionally been based in Germany, such as the German Sinti and Roma, whether they are Roma immigrants from Eastern Europe, or whether they are young or old. For this reason, this does not constitute an interpretation, but an impermissible reinterpretation of the deliberate generalisation if the statement is subsequently limited as referring merely to "social benefits" or "additional funding". The conscious or deliberate generalisation and the reference to ethnic origin clearly reveal group-focused enmity. Otherwise, any racist propaganda against entire population groups could ultimately be justified by stating that it was only directed at individual "asylum abusers" or "criminals". Such a reinterpretation does not constitute a valid interpretation within the meaning of German Constitutional Law judicature.

Kassel Administrative Court (4 L 111 7/13.Ks) continues its explanation by saying:

"This also applies with regard to the connection established by the defendant to a campaign by the plaintiff using the slogan "Stop the flood of gypsies! Fight crime!" The plaintiff has submitted an affidavit by the deputy leader of the NPD party, credibly assuring the court that it will not be using any posters with the inscription "Stop the flood of gypsies! Fight crime!" in the current campaign for the parliamentary election on 22 September 2013. Only in North Rhine-Westphalia did one of the local associations distribute a postcard-sized flyer with this statement; after intervention by the party's federal executive board, this flyer was withdrawn from circulation long before the start of the election campaign. For this reason, no link could be established between the posters that were removed in A-Town and the campaign that had ended in another federal state. Even though the removed posters tastelessly exploit vulgar resentments and play off different population groups against each other, this does not constitute a punishable offence. A democratic society must also allow for fallacious opinions as long as they are not criminal in nature. It remains the responsibility of the people reading such posters to use their common sense to draw the right conclusions (also see VB B-Town, decision from 07/09/2011 - 1 L 203.11 -)."

It is alarming how blatantly the court trivialises and adopts the justification of the NPD.

The flyer *"Stop the flood of gypsies! Fight crime"* is not less discriminatory than the posters, and has been presented on the Internet over many months, where it can still be seen. The flyer allows for a conclusion on the mind-set of the NPD.

If *"population groups are played off against one another in a tasteless fashion"*, it is simply absurd if the court argues, with regard to the posters "Money for Grandma...", that this is not a punishable offence. This is completely missing the point. "Grandma" and "Sinti and Roma" are certainly not *"different population groups"*. There are also "Grandmas" in Sinti families (the difference being that many of the grandparents of Sinti and Roma were murdered in Auschwitz and other extermination camps on behalf of the German state).

The claim by the administrative court that it is the responsibility of the people reading the posters, *"to use their common sense"* and *"draw the right conclusions"* is equally absurd. If this means that the Sinti and Roma families, the mayors, politicians, parties and civil organisations that are rightly outraged by these posters are not using their common sense, we should question the judges' competence to judge.

c) Notice of the Chief Public Prosecutor's Office in Frankfurt am Main

On 6 September 2013, the Hessian Ministry of the Interior and Sport wrote to the Regional Association of German Sinti and Roma in Hesse:

"Thank you for your email dated 28.08.2013, in which you informed us of the NPD posters that were put up in Bad Hersfeld with the inscription "Money for Grandma, not for Sinti and Roma".

On Wednesday, 21.08.2013, the local supervisory authority of the city of Bad Hersfeld lodged a criminal complaint on suspicion of incitement of hatred against the responsible persons at the NPD for hanging up the NPD election posters. Local police could establish that several such NPD posters had been hung up in the municipality of Bad Hersfeld.

In order to, as quickly as possible, prevent this campaign from continuing and spreading to other areas of Hesse, we presented the facts of the case to the competent public prosecutor in Fulda on 21.08.2013. According to the public prosecutor, the election poster did not constitute a criminal offence. The Chief Public Prosecutor's Office in Frankfurt am Main confirmed this assessment on 22.08.2013. According to the Chief Public Prosecutor's Office in Frankfurt am Main, the same also applied for the flyer "Stop the flood of gypsies! Fight crime!"

Apparently, the contents of the listed NPD election posters are protected by the principle of freedom of expression according to Article 5 of the Basic Law [GG]. Although I take your concerns very seriously, I am bound by the above-mentioned decisions of the Public Prosecutor's Office in Frankfurt am Main."

That same day, the chairman of the Central Council of German Sinti and Roma wrote a personal letter to the chief public prosecutor in Frankfurt and protested against this assessment. The Central Council requested clarification on how it was possible that this assessment was passed down to local authorities in Hesse although this was not in the jurisdiction of the Public Prosecutor's Office in Frankfurt am Main.

The Chief Public Prosecutor's Office in Frankfurt/Main responded on 11 September 2013 with a negative reply, stating among other things:

"As you have correctly assessed, it was our office that investigated whether the mentioned NPD posters constituted a criminal offence.

Although I fully agree that what they portray is the height of bad taste and cynicism, after a comprehensive evaluation of the case law on this matter we have reached the conclusion that the posters do not constitute a criminal offence; in particular, they do not fulfil all criteria for an incitement of hatred in accordance with Paragraph 130 of the German Criminal Code [StGB].

In order to avoid interpretation of this offence from assuming boundless proportions, the supreme courts, in particular the Federal Constitutional Court, has always deemed necessary a restrictive interpretation of this criminal law provision.

Because regardless of their possible slanderous content, the textual and visual statements of the NPD posters are protected under the provisions of freedom of expression according to Article 5 (1) sentence 1 of the Basic Law [GG]. This constitutional standard gives everyone the right to freely express and disseminate his opinions in speech, writing and pictures. In particular in public debate, and especially in the political arena and during elections, everyone has the right to voice critique, even in the form of provocations and polemics. In view of the constant information overload we are confronted with in today's world, the fact that a formulation is strongly worded or exaggerated does not automatically mean it is no longer protected by the provisions of freedom of expression according to Article 5 (1) sentence 1 of the Basic Law [GG]."

It seems almost brazen to tell the affected minority, who were victims of the holocaust, in this a case, which has been more extreme and more sustained than ever before, that “a boundless expansion” of the laws on sedition should be avoided.

It also fundamentally fails to take into account the facts of the case if it rejects any criminal relevance on the grounds that "provocative and polemical critique" and "strongly worded and exaggerated formulations" are acceptable in election campaigning as far as Basic Law is concerned. The subject of the poster inscription is not "provocative critique or exaggerated formulations and definitions". The NPD, which has always used the term "gypsies" in the past, has purposefully avoided this in order to be able to cynically use its rhyming slogan. It is precisely this deliberate formulation that reveals the party's group-focused enmity by suggesting that the entire minority is socially inferior and should be excluded.

It is alarming to see that such an obviously illogical assessment was used to justify the discriminatory behaviour nationwide, leaving the minority defenceless – once again.

d) Giessen Administrative Court and Hesse Administrative Court

After the mayor of the City of Giessen, Ms Dietlind Grabe-Bolz, had the posters removed, Giessen Administrative Court on petition of the NPD ordered her to hang them back up. Subsequently, due to a complaint by the NPD, Hesse Administrative Court (VGH) in Kassel ruled on 18 September 2013 that the mayor was not permitted to comment publicly on the discriminatory process and the behaviour of the NPD. The unworldly decisions of the courts side completely with the right-wing extremist party and completely ignore the protection of the minority.

In the operative part of the decision of Hesse Administrative Court (Ref.: 8 L 1914/13.GI) it is stated:

"In the way of the interim measure, the defendant is prohibited from intervening in the current federal and state election campaign to the detriment of the plaintiff, in particular from publicly calling for a ban of the plaintiff, and literally or in spirit claim, propagate or have others propagate on her behalf, that the current advertising campaign by the plaintiff in the City of Giessen would indicate that the plaintiff is "not adhering to our legislation and is not interested in fair democratic competition."

The mayor had said in a press release on 10 September 2013 that the city was currently preparing a criminal complaint against the state chairman of the NPD for incitement of the people. At the same time she regretted the perpetual legal tug-of-war with the NPD over its propaganda. She fervently hoped that proceedings for a ban of the NPD would finally be initiated. The poster campaign of the NPD was yet another example showing that the NPD was not upholding our laws and had no interest in fair democratic competition.

On 18 September 2013, Hesse Administrative Court ruled as follows in the above-mentioned case:

"With this statement, the mayor of the defendant violated the duty of neutrality imposed on municipalities and their bodies by Federal Basic Law (cf. Federal Administrative Court, judgment dated 18.04.1997 - 8 C 5/96, cited by juris). According to the constitutional principle of freedom of choice (Article 38 (1) Sentence 1, Article 28 (1) sentence 2 of the Basic Law [GG]) the electorate must be permitted to draw its own conclusions in a free and open process of opinion formation without any undue influence from government or non-government side. The principle of freedom of choice prohibits state and municipal bodies from identifying with political parties, or supporting or fighting against them becoming public officials (Federal Constitutional Court [BVerfG], judgment dated 17 September 2013 - 2 BvE 4/13; judgment dated 2 March 1977 - 2 BvE 1/76; Federal Constitutional Court [BVerfG], judgment dated 18.04.1997 - 8 C 5/96 -; cited by juris)."

The decision is untenable, and not only because it prevents any form of criticism by office holders, even when this criticism is directed against discriminatory practices that are contrary to the rule of law. If a party uses misanthropic, discriminatory practices, not only should it be the duty and responsibility of the authorities and office holders to uphold the public peace and ensure the well-being of its population, but they should also be authorised to take a public stance to elaborate on these occurrences. This applies in particular if - as is the case here - public media has reported on these occurrences and is awaiting an explanation on how the authorities are planning to deal with these issues.

The question of the legality and lawfulness of electoral practices is not part of the election campaign, but a question of public order and safety, even if the courts have difficulty distinguishing between unlawful agitation and a permissible democratic battle of opinions. Not allowing the mayor to make a statement to the press on this matter would not only be quixotic, but would also breach the obligation of the public authorities to inform the public.

With regard to the unlawfulness of the poster campaign, Hesse Administrative Court then also reprimands the City of Giessen by continuing:

"The requisite for risk of recurrence arises not only from the statement that has already been made, but also from the fact that the respondent and the mayor in the current proceedings continue to cling on to the opinions they have expressed, as can clearly be seen from the position statement to the senate brought forward today, although Giessen Administrative Court has, in another administrative dispute between the parties, made a decision on 12 September 2013 - 4 L 1892/13.GI - stating that:

"To avoid further legal disputes, the court wishes to point out precautionarily that the notice sent on 9 September 2013 to the plaintiff by the mayor of the City of Giessen is also clearly unlawful. The notice, which neither provides information about legal remedies available nor cites any legal provisions is already unlawful due to the fact that the posters of the plaintiff with the inscription 'MONEY FOR GRANDMA, not for SINTI & ROMA' do not meet the legal criteria for the crime of incitement to hatred, which is why the reason provided for the intervention constituted a disregard for the decision of Kassel Administrative Court on 9 September 2013 (Ref. 4 L 1117/13.KS), which is known to both parties. Furthermore, the department head of the Public Prosecutor's Office in Frankfurt/Main informed the court by telephone on 9 September 2013 in the parallel proceeding 4 L 1841/13.GI that, after having examined the posters of the plaintiff with the inscription 'MONEY FOR GRANDMA, not for SINTI & ROMA', it became clear that this did not constitute an offence of incitement to hatred and that all the public prosecutors in Hesse had been notified of this by email and that consensus had been reached to this effect."

It seems that adopting the ignorant stance of Kassel Administrative Court was not enough. Moreover, the judges of Hesse Administrative Court accentuated that the actions of the City of Giessen were "clearly illegal" and emphasised that *"consensus had been reached"* in all of Hesse. Although it does not really compare, it does remind us of the fervour with which the judiciary embraced the racist ideas against the Sinti and Roma in the past (see 5 (c): "The judiciary, and coming to terms with history").

e) Duisburg Public Prosecutor's Office

Following our criminal complaint about the NPD flyer *"Stop the flood of gypsies! Fight crime!"*, Duisburg Public Prosecutor's Office sent the Central Council of German Sinti and Roma a nolle prosequi on 16 July 2013, declaring that they were not willing to continue with the preliminary proceedings. It is stated in the explanation, among other things:

"The facts of the case do not meet the requirements for incitement to hatred (Paragraph 130 of the German Criminal Code [StGB]) or for public incitement to crime (Paragraph 111 of the German Criminal Code [StGB]) or for slander (Paragraph 185 of the German Criminal Code [StGB]). All of these offences first require a clarification of the relevant statement contents. This requires both an individual assessment of the formulations as well as a general review and the context from the point of view of an objective 'recipient'. Moreover, it must be noted that if several interpretations are possible, and one does not hold any criminal relevance, this interpretation must, according to the supreme court, be given precedence.

Pertaining to this case, it follows from above that:

although the term "gypsy" is charged with negative connotations, not least due to its defamatory use under the Nazi regime, nevertheless the use in itself is not considered relevant to criminal law. The fact that the term is used as a deliberate provocation by certain persons, namely those on the extreme right of the political spectrum, does not impact this assessment.

Even if used in conjunction with the word "stop", "flood of gypsies" is not of criminal relevance because this in itself does not constitute an act of degradation. It could also be interpreted as calling for an intensified political debate on the large number of immigrants in Germany and, from the point of view of the originator of the flyer, the associated problems in the area of crime".

The reasoning of the public prosecutor relating to the term "gypsy" – which stems either from sheer ignorance or cynicism – has absolutely nothing to do with the question at hand and is, therefore, not appropriate. The pamphlet would be just as discriminatory and inhuman if it was referring to "Sinti and Roma" instead.

The reasoning that the content *"could also be interpreted as calling for an intensified political debate on the large number of immigrants in Germany and, from the point of view of the originator of the flyer, the associated problems in the area of crime"* is completely unacceptable. This interpretation is just as discriminatory and inciting as all the other possible interpretations of the flyer text. In the context of the immigration debate, speaking of a "flood of gypsies" which brings *"associated problems in the area of crime"* represents a blatant violation of the existing principles of the rule of law, where only the individual is responsible for his possible misconduct, not his entire ethnic group, family or other community to which he belongs. "Clan liability", as under National Socialism, is no longer permitted in our constitutional state.

Furthermore, such a biased attribution of criminality as the court attempts to make, is a direct violation of the protective provisions of the "Framework Convention for the Protection of National Minorities" (Article 3), which prohibits such an attribution. In 2010, the Conference of the Ministers of the Interior also produced a report and decision to this effect. It is incomprehensible that these basic facts are not known or are deliberately ignored.

The following conclusion drawn by Duisburg Public Prosecutor's Office in Duisburg is equally scandalous:

"Even the portrayal of weapons cannot be seen as an explicit invitation to violence against Sinti and Roma. It is just as likely and plausible that this could be calling for political measures against criminal immigrants, who themselves carry and use weapons. Irrespective of the question whether the first interpretation may already be a sufficiently concrete fact, a second interpretation is thus presented that does not constitute a criminal offence."

In his apparent endeavour to justify the flyer, the public prosecutor decides to reinterpret its message. If the NPD had actually wanted to refer to "criminal immigrants carrying weapons", this is what would have been stated. The wording "Stop the flood of gypsies! Fight crime!" does not permit the previous stated interpretation without the meaning of the statement being reinterpreted in an inadmissible way. Again, allowing a flyer that would have the inscription "Stop the flood of Jews! Fight crime" would be unthinkable.

f) Düsseldorf Chief Public Prosecutor's Office

In response to the complaint by the Central Council, Düsseldorf Chief Public Prosecutor's Office informed us on 10 September 2013 that our complaint had been rejected. The letter states:

"That the accused - probably not for the first time - project their prejudices onto the population group of the Sinti and Roma, who as we all know suffered unspeakably under the National Socialist dictatorship of the "Third Reich", is barely tolerable, also in my point of view. Nevertheless, bound as I am by the legal provisions of the Basic Law with regard to freedom of expression, which the disputed flyer falls under, I was not able to find sufficient evidence of any criminal offence."

The wording ("*(...) barely tolerable, also in my point of view (...)*") seems almost cynical towards those affected when it is followed by:

"However, the wording of the flyer could also be understood as calling only for a restriction on immigration within the context of a wider and more general objective, namely the reduction of crime, where the Sinti and Roma are seen as a problem, but not necessarily as an object of hostile feelings and actions or as contemptible."

If Düsseldorf Chief Public Prosecutor's Office finds the claim admissible that "*the Sinti and Roma are seen as a problem*" "*within the context of (...) the reduction of crime*", it thereby justifies unlawful assertions that are in violation of the rule of law. According to the system of values protected by our constitution, it is not permissible to make an attribution of criminality based on descent (or the colour of the skin, for instance). The existing awareness gaps in this regard in the judiciary need to be addressed urgently. It is also necessary to finally learn the lessons of recent history as it pertains to the Sinti and Roma.

g) The Regional Court in Bremerhaven

At the beginning of September 2013, the Association of German Sinti and Roma in Bremerhaven brought a civil action before the regional court, seeking to prevent the posters from being hung up. The defendant was the local NPD. On the urgent recommendation of the competent judge, in whose assessment the lawsuit had no real prospect of success, the association withdrew the complaint, also in view of the high cost risk involved. In a public statement, the association, represented by its chairman Roberto Larze, pointed out that this decision was taken with a heavy heart. Larze explained that, nonetheless, it was still the responsibility of the public authorities to intervene against this massive and sustained public stigmatisation, and take all the necessary legal steps to quash the discrimination.

5. MINORITIES ARE PARTICULARLY AFFECTED – HISTORICAL BACKGROUND

a) The Nazi genocide - as yet unresolved

The smear campaign against the Sinti and Roma by a party like the NPD cannot be fully understood without taking into account the historical background of the Nazi genocide. The special responsibility of the Federal Republic of Germany resulting from history must also play an important role in the balancing of interests when applying Article 5 of the Basic Law [GG]. The survivors of the Holocaust are once again reminded of the incitement to hatred under National Socialism against anyone not considered part of the so-called "national community". So far, this has been completely ignored in all judicial decisions on this matter.

In this context, it is important to bring up some basic facts about the Nazi genocide of the Sinti and Roma. This is intended to counter prejudices and misconceptions that continue to live on in large parts of the community as a consequence of the Nazi propaganda. Even if judicial authorities want to interpret the election propaganda as only a "provocative debate on the large number of immigrants", it evokes an inaccurate and biased perception of the German Sinti and Roma minority.

On 16 March 1997, the German Federal President Roman Herzog said in his landmark speech on the occasion of the inauguration of the Documentation and Cultural Centre of German Sinti and Roma in Heidelberg:

"The genocide of the Sinti and Roma was carried out for the same racially fanatical reasons, with the same intent and with the same desire for a systematic and complete annihilation as the genocide of the Jews. In the entire Nazi sphere of influence, they were systematically murdered in family groups, even the children and elderly."

The German Sinti and Roma were and are a long-established national minority in Germany and have been citizens of the state for more than 600 years. In contrast to the propagandist clichés of the National Socialists, the Sinti and Roma were German citizens who were as much part of society as the Jews until the so-called "seizure of power". They had and have, for generations, practised the same occupations in their home towns as everyone else, as workers, employees, business people, artists etc., and had and still have a firm place in society. They served as soldiers in the German Imperial Army, and later on also in the German armed forces, and were often highly decorated. Documents show that the commander of Auschwitz, Rudolf Höss, complained to Himmler in Berlin that some of the Sinti and Roma had been deported to the concentration camp in their uniforms, bearing all their medals and insignia.

The segregation and disenfranchisement that started at the beginning of the National Socialist reign deprived the members of our minority of their heretofore-normal life as German citizens. The concentration and extermination camps of Auschwitz, Treblinka, Sobibor, Majdanek, Bergen-Belsen and others are a symbol of the state-organised Holocaust against the Sinti and Roma.

b) Continued discrimination after 1945 by former Nazi perpetrators

The affected minority is also experiencing the current smear campaigns against the background of continuing public discrimination and stigmatisation after 1945.

While the Federal Republic of Germany reviewed its past with regard to the Shoah, the Holocaust of the Jews, the National Socialist crimes against our minority were never properly reviewed.

To the contrary: The former perpetrators and organizers of the genocide of the Sinti and Roma were again put into key positions in public service and in the security authorities – including members of the SS from the Reich Main Security Office (RSHA) and members of the Gestapo and police force from the NS central offices that had carried out the deportations of Sinti and Roma families.

None of those in leading positions at the Reich Main Security Office were ever held accountable for their role in the genocide against the Sinti and Roma. Instead, the former members of the SS from the so-called RSHA "Gypsy" Centre in Berlin were almost all integrated into the police force of the new Federal Republic of Germany. Paul Werner, a senior member of the SS and one of the heads of the Reich Security Main Security Office, was, until the 1960s, a ministerial councillor at the Ministry of the Interior in Stuttgart. Prior to 1945, he was temporarily in charge of the RSHA division "Reich Central Office for Combating the Gypsy Nuisance", which had played a central role in organising the genocide against the Sinti and Roma. Although he admitted during his interrogation by the public prosecutor on 19 May 1959 to having worked for the Reich Main Security Office and stated that it had been the intention to "register the entire gypsy population in the Third Reich" and "effect a uniform treatment of all gypsy matters in the territory of the German Reich", he was allowed to continue working for the government, and his case was dismissed "due to a lack of sufficient evidence".

In the so-called "Travelling Community Centre" of the Bavarian Office of Criminal Investigation, the same SS officers that had been responsible for organising the extermination of the Sinti and Roma at the "Reich Central Office for Combating the Gypsy Nuisance" at Himmler's Reich Main Security Office were put in charge of police deployment against the minority – nationwide. They continued with the special registration of the Sinti and Roma using the "race" documents and files they had taken over from the SS Reich Central Office. They continued to spread racist ideology from the Nazi era at police conventions and even created racist legislation, such as the Bavarian "Vagrant's Ordinance", whose only aim it was to criminalise minority members, harass them with police controls and subject them to reprisals.

This permanent harassment made it difficult for many families to re-establish themselves in professions and businesses. Racism against the Sinti and Roma was kept alive and the members of this minority were marginalised.

c) The judiciary and the appraisal of history

During the Nazi era and in the period after the founding of the Federal Republic of Germany, the judiciary also played a disastrous role in the discrimination of the Sinti and Roma. Insofar as well-educated jurists were not accomplices to the mass murders during National Socialism, they failed completely.

Even though the situation is different under the rule of state law that we have today, the judiciary still bears the responsibility of learning from history and guarding against recurrence.

Only recently, a commission was appointed by the German Federal Ministry of Justice (BMJ) to examine the question as to what extent the continued employment of NS jurists at the Federal Ministry of Justice had a negative impact on the newly founded Federal Republic as a state under the rule of law, thus continuing the spread of Nazi ideology. This has become blatantly obvious, especially in the face of how the Sinti and Roma minority has been treated.

Up to 1964, Franz Massfeller worked as head of department at the Federal Ministry of Justice. In the Third Reich, Massfeller had been an authoritative commentator on the "Nuremberg Race Laws" as well as a representative of the Reich Ministry of Justice at the follow-up meetings of the Wannsee Conference on "The final solution to the Jewish Question." He wrote in his commentary on the "Law for the Protection of German Blood":

"It is not only the mixing of German with Jewish blood that puts the purity of German blood at risk. Mixing German blood with blood of other foreign races also has a negative impact on the development of the German race (...). Other carriers of foreign blood would include (...) the negro bastards in the Rhineland and the gypsies resident in Germany." ("Blood Protection and Marriage Health Law" by Gütt, Linden. Massfeller, Munich 1936, p. 225ff).

This instilled an attitude among the population that the subsequent persecutions and the genocide against Jews, Sinti and Roma were based on "applicable law". In this way, the population could watch how minorities were systematically excluded from society and how entire families were deported, while rationalising that all was in order.

The actions of these NS jurists shaped right-wing policy in the Federal Republic of Germany for decades. Thus, on 7 January 1956, the judges of the Federal Supreme Court (BGH) ruled against compensating the Sinti and Roma for their persecution under the Nazi regime. The Federal Supreme Court agreed with the National Socialists that "gypsies" were "foreign to the species" and should be treated as such. The court refers to a comment by Massfeller and explains: *"As experience has shown, they [the gypsies] have a propensity for crime, especially theft and fraud, and often lack the moral impetus of respecting other people's property due an uninhibited desire towards usurpation, just like primitive, prehistoric man."* (Federal Supreme Court (BGH) IV ZR 211/55 p. 8 and 9 in RZW 56; 113, No. 27).

The federal judges, who were under the supervision of and nominated by the Federal Ministry of Justice, had no need to worry about being reprimanded by Massfeller or his superiors.

This continuation of racist "judicial" conceptions formed the basis for further discriminatory prejudices in the population in the following decades and served above all as a justification for repression, oppressive police controls and special registration by the police authorities. This took place under federal instructions by the so-called "Travelling Community Centre" at the Bavarian State Criminal Police Headquarters. This is where the former members of the SS from the Reich Main Security Office worked, who had organised the genocide against the Sinti and Roma.

Until the 1970s, a national decree demanded that any claims for compensation by Sinti and Roma concentration camp survivors had to be submitted to the "Travelling Community Centre" at the Bavarian State Criminal Police Headquarters by the competent state office for compensation. The former SS officers then made entries in the compensation claim files, using the same old Nazi jargon, disputing the applicants' persecutions, while persecution was a legal requirement for compensation. The result was a systematic exclusion of the Holocaust survivors from our minority from the compensation for the suffering in the concentration camps and the massive damages incurred to body, health, property and professional advancement. In the compensation procedures, the survivors were once again confronted with the same perpetrators who had been responsible for their suffered injustice.

Some of those affected are still alive today and had to look at the mentioned NPD posters over several weeks in 2013.

This makes it all the more appalling that – as the court decisions on the NPD poster campaign show – the judicial authorities have not drawn the necessary consequences, but are instead looking to tolerate this smear campaign by making absurd considerations and reinterpretations.

d) Special entitlement of the minority for protection against racism

Due to Germany's history, the Sinti and Roma are entitled to protection against racism and discrimination, which the rule of law and the judiciary must guarantee.

For this reason, the state parliament in Schleswig-Holstein decided in November last year to include the German Sinti and Roma in the article on the protection of minorities in the regional constitution, the "Basic Law" of this state. This amendment to Article 5 is the first time that a state constitution guarantees our minority the "right to protection and promotion", as guaranteed to other national minorities. This constitutional provision is of fundamental significance: it formulates the basic rights and objectives that the state must adhere to. This constitutional provision not only prohibits any form of exclusion and discrimination against members of our minority in legislation and policy, it also guarantees our minority equal participation and equal opportunities in all areas of society as a fundamental right.

In addition, the Sinti and Roma minority is protected by the "International Convention on the Elimination of All Forms of Racial Discrimination" (ICERD) and the "Framework Convention for the Protection of National Minorities" of the European Union (see also paragraph 7 below). Under these agreements, racist practices are not only prohibited in Germany, but in the whole of Europe.

These positive developments for our minority are contrasted with the discrimination, marginalisation and lack of opportunity in many areas, and the threat posed by growing right-wing extremism.

e) An everyday reality characterised by discrimination

The Central Council of German Sinti and Roma has prepared a compilation of case files for the Anti-Discrimination Agency of the Federal Government (ADS) documenting the discrimination against our minority over the past three decades. In the meantime, in some areas racist practices or publications have been revised—at least in part. However, the poisoned atmosphere that was created in society and the virulent bias against our minority still exists. This is partly due to the personnel continuity after 1945, which led to continued racist exclusion in the police and judiciary. Institutionalised discrimination against our minority still exists and has influenced many judicial decisions above and beyond those that have been reported.

Following the special registration of the Sinti and Roma by former SS members after 1950 at the so-called "Travelling Community Centre" of the Bavarian State Criminal Police, we are still subjected to oppressive police controls even today. Furthermore, our minority is stigmatised in documents and press releases from the police and public prosecutors (as can be seen in the recent NSU-case, see below); even racist terminology, such as "gypsy type", "Sinti and Roma clans", "vagrants" and "Euro-nomads", is still used in police man-hunts, despite having been criticized repeatedly.

As far as the judiciary is concerned, German courts have delivered many racist judgements against the Sinti and Roma in the past (e.g. the Federal Supreme Court ruling in the aforementioned judgement from 1956: "*Criminals*" with "*an uninhibited desire to usurpation*", or the Bochum Tenancy Law decision from 1996: "*Sinti and Roma (...) are generally not suited for taking over the lease of an apartment*"; Cologne Public Prosecutor's Office in 2011: "*Roma gangs*"; the District Court of Stuttgart in the 1990s: "*Theft learned in*

the cradle"; in recent proceedings, judges stated that the crimes of individuals would *"harm the reputation of the entire minority"*.

Although much has changed in the meantime, some media still portray discriminatory stereotypes and use biased illustrations. Discriminatory clichés appear again and again in television, documentaries and films ("Tatort", "Eurocops", "Niedrig und Kuhnt – Kommissare ermitteln" etc.).

Church leaders (Cardinal Meissner, Cologne) publicly alleged that the Roma cannot be integrated into society, and similar allegations are made as well.

Surveys have shown that the Sinti and Roma children experience a considerable amount of discrimination at schools and in their neighbourhoods. The same also holds true at the workplace, or when searching for an apartment (mobbing using the derogatory term "gypsy"). Added to this is a massive exploitation of labourers from south-eastern Europe (e.g. in the meat industry).

The Sinti and Roma are subjected to special contractual terms by insurance companies (*"dubious damages from the travelling community"*) and banks (KfW: *"Social particularity"*, CC Bank: *"No ethnic affiliation of the Sinti and Roma"*); lawyers call the Central Council to collect debts from *"your fellow countrymen"*.

Our minority is still mostly excluded from social bodies such as broadcasting councils and state media institutions. There is also discrimination with regard to access to public institutions/places, at camping sites (up to 2013) which are part of the Federal Association of the Camping Industry (BVCD), and previously the German Camping Club (DCC) and the ADAC.

Well-known travel guides have warned against "gypsies" in Mallorca and other travel destinations (TUI, Marco Polo, Fischer, etc.). A cause for concern in the area of sports is the racist "fan" activities and incidents in stadiums and sports halls where violent right-wing extremists chant the slogan: "Zick Zack Zigeunerpack" ("Zigzag gypsy pack").

Discriminatory statements and racism against Sinti and Roma have been found in scientific publications and other literature, including in criminological standard works (Kaiser pp), lexicons (largely revised) and ethnological papers (Dr Arnold and successors).

f) Current stigmatisation of the Sinti and Roma in the so-called NSU proceedings

A particularly serious incident of public discrimination by the police and judiciary was recently experienced by the Sinti and Roma in connection with the so-called NSU proceedings after two police officers had been attacked in Heilbronn, with one of the officers killed, and the other seriously injured.

Prompted by spokespersons of the Public Prosecutor's Office and the police, Sinti and Roma were massively stigmatised immediately after the incident in 2007. The Sinti and Roma - including many older people among them - were, without reason, subjected to massive police controls. The clichés about the allegedly "nomadic minority" and the traditional "gypsy" stereotypes led the authorities to place the minority under general suspicion countrywide for this serious crime. This was due to traces of DNA found at the crime scene from, as the police called it, a "phantom woman". The trail led the police to various parts of Germany, Austria and France. Nationwide, the authorities were speaking in the press and on television about *"investigations in the gypsy milieu"* and *"solid leads"* pointing to suspected *"Sinti clans"* and members of *"mobile social groups such as the Sinti and Roma, who are difficult to trace"*. The competent Ministry of Justice justified the conduct of the Public Prosecutor's Office. The matter caused a great deal of concern among the minority.

In 2009, it came to light that the DNA trail had merely been an investigation slip-up. The actions of the authorities in such a spectacular case were particularly irresponsible because there had been early evidence to suggest that the DNA trail was incorrect.

The Central Council of German Sinti and Roma welcomed the solving of the brutal murder and attempted murder in Heilbronn. In view of the affiliation of the alleged perpetrators with the "Thüringer Heimatschutz", a neo-Nazi organisation that the investigating authorities had known about for many years, we once again pointed out the danger of such organisations.

The Central Council expressed its appreciation for the work done by the NSU inquiry committee of the Bundestag. In a letter to its chairman, Member of Parliament Sebastian Edathy, we stressed that the committee carried out its investigation with all due diligence. However, the facts that came to light are a cause for serious concern. In its investigation, the committee uncovered discriminatory attitudes and practices by public prosecutors and police that we would not have thought possible. How is it possible, in a state under the rule of law, that an anonymous tip-off stating "It was gypsies" (as the committee determined on page 644 ff. in its final report to the German Bundestag) and a "racial" diagnosis by the authorities, speculating that the show people at the fairground had been "Sinti and Roma" or "members of the travelling community", led to the deployment of the entire police force and judiciary, including the BND, against the minority.

The file notes quoted by the inquiry committee remind us of the modus operandi of the former "Travelling Community Centre" of the Bavarian State Criminal Police Office. And, worst of all, the hostilities towards our minority were continued by the authorities even after the inquiry committee had determined that the DNA trail of the so-called "phantom" was incorrect. It turned out to be another showcase of animosity towards the Roma.

The modus operandi of the police and the public prosecutor in Baden-Wuerttemberg, and the associated violations of the Agreement on the Protection of Minorities still need to be reviewed. It will also be necessary to remove the racist statements and accusations against the Sinti and Roma relating to the terrorist murders from the police records and, in particular, destroy the data and DNA samples that were collected in the process.

Such failures of the police and judiciary to respond to the dangers posed by right-wing extremism must be prevented in the future. Within the context of the dispute about the NPD posters, a Sinti family from Minden received an abusive and threatening letter, which begins with: "Long live the NSU".

6. AN APPEAL TO THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY FOR PROTECTION AGAINST DISCRIMINATORY ELECTION CAMPAIGN PRACTICES

a) An appeal in the context of the immigration debate in March 2013

The increasingly aggressive debate that ensued since early 2013 about immigrants from Bulgaria and Romania in particular, which already at this time threatened to become an important election issue, has led to growing concern. For this reason, the Central Council addressed the public on 5 March 2013, and at the same time appealed to the Federal President Joachim Gauck. We appealed to the democratic parties to not turn discussions about crime and economic migrants directed exclusively against Sinti and Roma into an election campaign topic. In previous public debates our minority had been sweepingly declared a "public danger", and thus denounced and massively stigmatised. We asked the President of the Federal Republic of

Germany to speak out against this towards the party leaders. In separate letters, we demanded a discrimination-free election campaign from the party and faction leaders. The Central Council of German Sinti and Roma asked Federal President Gauck and the parties to send a political signal to not use immigration to Germany as a populist campaign topic at the expense of the Sinti and Roma minority. This is also important because it is necessary to stress the fact to the public in general that minorities are protected by the constitution. The democratic parties followed this appeal in an exemplary way.

The new right-wing populism in Germany, driven by politicians and frequently picked up by the media, uses allegations of "benefit abuse", "abuse of freedom", "asylum abuse" and "crime", and is directed only against members of the Roma community. As a consequence of this (German) debate, the Roma are already being used as scapegoats by the politicians and media in their countries of origin and blamed for the delays in the negotiations on the opening of the Schengen Agreement or the accession negotiations. This further aggravates the situation of the Roma by bringing about even more exclusion and discrimination.

This situation is also so worrying because the older people who survived the Holocaust are once again feeling afraid that they might become targets of right-wing violence, especially in the wake of the terrorist attacks by the "NSU".

b) The speech of the Federal President of Germany in Kiel to the Roma and Sinti

In his speech to the state parliament of Schleswig-Holstein on 22 March 2013, the Federal President addressed the topic of minority protection as it relates to the Sinti and Roma. He thanked the parliament, in particular for the amendment to Article 5 of the Basic Law [GG] of Schleswig-Holstein from 14 November 2012, which also protects the culture and language of the German Sinti and Roma in Schleswig-Holstein. He pointed out that the Sinti and Roma have been living in Germany since the 15th century. The amendment to the Basic Law not only represented a legal clarification, but also a political commitment, said the Federal President. The message from Kiel clearly states: the protection of minorities is not an act of kindness; the protection of minorities is an expression of our democracy.

Thereafter, the Federal President stated in his public speech before the state parliament and the press:

"In the light of current European developments, this message is of a special relevance. We are currently witnessing a very emotional debate because the Roma - the biggest losers of the transformation societies - are leaving their homelands behind, often as a result of discrimination or persecution: these are EU citizens from Bulgaria and Romania, who are looking for a better life in Germany and other member states of the EU. If their presence leads to conflict in some places, this must be resolved on a case-by-case basis, and solutions must be found. This requires dialogue. To stigmatise an entire group of people or deny their integration capability will only lead to a continuation of the unholy, century-old tradition of discrimination, exclusion and persecution. This not only goes against the principle of the equality of all citizens, it is also contrary to our positive experience. In fact, thousands of migrant Roma have been living in West Germany since the 1960s and are well integrated. They came to us from Yugoslavia as guest workers.

What we need therefore is prudence, factual debate and vision. We need to commit not only to offering the Roma a dignified life here in Germany, but also, and especially, in their countries of origin, and treat them with due respect and honour their dignity. This demands considerable effort on our part and also on the part of Europe as a whole. This is a European task."

The media reported nationwide on this remarkable speech and made reference to the appeal by the Central Council that had preceded it.

The Central Council thanked Federal President Dr. Joachim Gauck in a letter for his speech to the parliament in Kiel, with which he protectively embraced the Sinti and Roma minority. It was the first time that a federal president had, in a public debate, expressed his concerns about the danger of discrimination against the Sinti and Roma and called for respect, prudence and the respect of human dignity with regard to the minority.

The Central Council emphasized that the appeal of the German Federal President was all the more important because the highly charged debate about economic migrants was still continuing. There have already been aggressive demonstrations by right-wing extremist organisations such as the "Pro NRW" in front of houses in which Roma families live. This was the first time that the methods of the right-wing extremist "Jobbik" party in Hungary were being used in Germany, which led there to considerable tension and violence against the Roma. The democratic parties in particular must have been aware of this.

Racism against Sinti and Roma is just as present and dangerous as anti-Semitism. All democratic parties should be aware that this is not just about minority groups, but that the underlying values of the rule of law and democracy are under attack. In other words, this is about the foundation on which our democratic culture is based.

7. DEMANDS AND LEGAL BASES

a) Statutory regulations

There is a considerable amount of uncertainty among authorities and within society. The unilateral decisions of the judiciary in favour of the NPD are in contradiction to the prevailing view in society and the non-discrimination principle in the value system of our legal order.

It is therefore necessary to establish statutory provisions

- that unequivocally prohibit discriminatory election campaign posters (as part of the legal provisions on security and order in the states, federal and state road law) as well as
- that prohibit discriminatory TV spots and commercials (broadcaster programme guidelines) and other discriminatory advertising;
- that point out Germany's special responsibility after the Holocaust.

As part of the approval procedure for the display of posters, the cities and municipalities must not only ensure that criminal laws are adhered to (Paragraphs 130, 185 ff. of the German Criminal Code [StGB]), but also check for violations against non-discrimination principles. These are not only derived from Article 3 of the Basic Law [GG], but also in particular from Article 2 (1)(a)(b) of the "International Convention on the Elimination of All Forms of Racial Discrimination" (from 7 March 1966, Federal Law Gazette: 1969 II, p. 962), which prohibits such racial discrimination by individuals and organisations. Since its ratification this legal norm must be observed as a legal prohibition.

Furthermore, the posters are also a violation against Article 4. paragraph 1 of the "Framework Convention for the Protection of National Minorities", Federal Law Gazette. 1997 II, p. 1408), which states that "any discrimination based on belonging to a national minority shall be prohibited". This also includes the autochthonous German Sinti and Roma minority, who are being discriminated against by the posters.

The courts and the public prosecution authorities also need to examine violations against criminal laws (with regard to Paragraphs 130, 185 ff of the German Criminal Code [StGB]) and the decisions of the Federal Supreme Court on the use of degrading terminology, e.g. Federal Supreme Court (in its judgement from 15 November 1967, Ref.: 3 StR 4/67), which states that it is considered an incitement to hatred "to

refer to a Jewish candidate as being a "Jew" on an election poster because identifying the candidate as such is calling for the exclusion of Jews from public office". Also to be taken into account are the other criteria that the Federal Constitutional Court mentioned with regard to the punishability of classifying someone as a "Jew" (according to Paragraph 130 of the German Criminal Code [StGB]) in the year 2000. According to the law, criminal liability would ensue "if the person making this statement identifies with Nazi racist ideology" and the affected are branded as "inferior members of the community" (Federal Constitutional Court decision on 6 September 2000, Ref.: 1 BvR 1056/95).

b) A legal assessment by the German Institute for Human Rights (DIMR) about legal bases

At the request of the Central Council of German Sinti and Roma, the German Institute for Human Rights, an independent scientific institute backed by the federal government, offered a legal assessment. In his written statement from 16 September 2013, Dr. Hendrik Cremer explains:

"In the past, the German Institute for Human Rights has repeatedly pointed out that racism and racial discrimination in Germany are not sufficiently identified by the judiciary.

Against this background, the decision of the Constitutional Court in Kassel leaves some obvious questions unanswered:

Is Paragraph 130 of the German Criminal Code [StGB] the only guideline as to whether the content of the election posters in question violate the law?

The question as to whether the substance of the statements represents incitement to hatred in accordance with Paragraph 130 of the German Criminal Code [StGB] is not answered, according to previous legal practice, by determining whether a statement is racist or not. In current legal practice pertaining to Paragraph 130, the question as to whether a statement is racist is not posed.

There is also the question as to why the Constitutional Court in Kassel only takes into consideration a call for arbitrary action (Paragraph 130 sub-paragraph 1 No. 2 of the German Criminal Code [StGB]) and not an assault on human dignity (Paragraph 130 sub-paragraph 1 No. 2 of the German Criminal Code [StGB]).

What is the role of other legal norms, in particular the fundamental norm of Article 3 (3) of the Basic Law [GG], which explicitly protects against racial discrimination and is closely linked to Article 1 (1) of the Basic Law [GG]? According to the Article 1 (1) of the Basic Law [GG], it is the duty of all government authorities to not only respect, but also protect the dignity of a human being.

This question is all the more relevant because the Sinti and Roma in Germany undoubtedly enjoy special protection against racial discrimination according to Article 3 (3) of the Basic Law [GG]. The protection of the Sinti and Roma against racial discrimination is also a consequence of other human rights standards such as the International Convention on the Elimination of All Forms of Racial Discrimination (Federal Law Gazette: 1969 II, p. 962).

The prohibition of election posters with racist content can in particular be backed up by Article 2 subsection 1 (b) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). It requires all contracting states to "neither promote nor protect nor support" racial discrimination by individuals or organisations. As a consequence, the state may not protect election posters with racist content.

In order to avoid international law infringements by the Federal Republic of Germany, jurists must apply Germany's international ICERD obligations. The convention was ratified by Germany, thus the provisions have become part of national law according to Article 59 (2) sentence 1 of the Basic Law [GG], and must be upheld by its judiciary (Article 20 (3) of the Basic Law [GG]).

According to the established case law of the Federal Constitutional Court, Germany must also observe ratified human rights treaties in the interpretation of the fundamental rights laid down in the Basic Law in order to avoid violations of international law. As far as Basic Law is concerned, the guarantees of a human rights convention serve to aid interpretation when determining the content and scope of fundamental rights. The prohibition of racial discrimination according to Article 3 III of the Basic Law [GG] must therefore take into account in its interpretation Article 2.1(b) of the ICERD.

The German Institute for Human Rights has already pointed out that the impact of racism on the affected is all too often underestimated. With a view to the specific effect of racist election posters, a study has just been published in Austria which underpins the negative impact on the affected children and adolescents."

The German Institute for Human Rights also urges the state to protect against racial discrimination if the local authorities - as in this case - are unsure how to act:

"The convention in particular requires the state to act against racial discrimination. According to Article 2.1, Germany as a contracting state is obliged to use, without delay, all appropriate means to eliminate racial discrimination and promote understanding among all races. Article 2(a) obliges each contracting state to ensure that all state and local authorities and public bodies observe this obligation."

c) A legal assessment of the NPD posters by the Federal Anti-Discrimination Agency

On 13 September 2013, the Federal Anti-Discrimination Agency (ADS) provided an unequivocal written assessment on this matter by its director, Dr. Christine Lüders:

"I am highly concerned by the captions and motifs. Personally, I find them to not only be defamatory and dangerous, but also an incitement to hatred. I find this extremely worrying, because I know what anxieties and anger such posters may cause - not only, but especially for the victims of the Porajmos and their offspring. (...)

From my point of view, legal action should be taken against these posters. I would also advise that the International Convention on the Elimination of All Forms of Racial Discrimination is consulted as a possible legal basis. The Convention, which Germany ratified in 1969, has the legal status of a federal law, and clearly defines which actions are classified as racial discrimination. It states that racial discrimination includes, among other things, making distinctions based on nationality or national origin, as well as exclusions or restrictions leading to an impairment of fundamental freedoms in the political, economic or social fields.

From my point of view, the NPD election posters in question clearly aim to stir up resentment against Sinti and Roma in the population and could have a negative social impact on these ethnic groups. (...) In my opinion, the Convention offers local authorities the necessary legal basis for taking action against the NPD election posters."

8. SUMMARY

What can be regarded positively is the fact that the NPD was not able to profit politically from the campaign in the parliamentary elections or in the state elections in Hesse. But what remains is substantial public damage and a negative impact on the reputation of the minority in society. In particular, these events have eroded the trust of the minority members - often of entire families - in this state which is under the rule of law.

We never want to experience anything like this ever again. The Federal Government, the state governments, the local authorities, and possibly the federal legislature, must undertake legal clarification and create an awareness of this matter, also in the judiciary. It is of paramount importance to provide the police and regulatory authorities with clear instructions.