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Executive Summary

As the phenomenon of discrimination entails complex and diverse understandings, so too may we view identities as multiple, often characterised by the intersectional experience. Men and women differ in their experiences of discrimination, as do their reactions to the phenomenon. GendeRace advances the view that social relations based on gender and racialised identities or ethnicity influence the perception and use of antidiscrimination laws. Whilst both EU and national institutional frameworks may provide numerous responses through action and conflict resolution, the project demonstrates that multiple-discrimination based on racialised identities and gender remains inadequately addressed.

The GendeRace project is funded by the European Commission Seventh Framework programme. It is coordinated by the Université Libré de Bruxelles and the Universitat de Barcelona. Beginning in February 2008 and ending in July 2010, the research has been conducted by six teams in France, Bulgaria, Germany, Spain, Sweden and the UK.

The GendeRace approach

Building on an exhaustive empirical research, this investigation has employed a wide range of qualitative and quantitative methods including secondary data and literature review, to produce national in-depth reports, conduct semi-structured interviews with experts, and the analysis of a quantitative data set comprising discrimination claims and complaints. However, the weight of its fieldwork is to be found within in-depth interviews with claimants and complainants, conducted from a life course perspective to test the project key theories and hypotheses. In addition, several workshops have been run in each country with stakeholders, policymakers and representatives from women’s and ethnic minority organisations involving discussion around findings and development of policy recommendations.

New knowledge, new concepts and European added values

This report reflects the project’s comprehensive undertakings to improve understanding of multiple discrimination based on racialised identities and gender, and the advancements that have led us to develop practical tools for better assessment of the effectiveness of policies and practices in the field of antidiscrimination when faced with cases of such discrimination. Our findings support the need for more policy initiatives addressing gender equality through the implementation of positive action and gender mainstreaming, taking into account specific needs, situations and experiences of different groups, and particularly in addressing women’s multiple identities. A clear message arises from our results - that better awareness of civil rights must be promoted and that existing resources for the making of complaints must be expanded, especially for women. The development of a legal definition and a specific methodology of multiple discrimination could allow an intersectional approach for dealing with claims/complaints. In addition, we identify a clear need for inclusion of a gender perspective within the treatment of discrimination cases and provision of specific assistance and services according to the needs of the claimant/complainant. The research demonstrates that data collection of complaints on multiple discrimination should be improved to reveal hidden discrimination based on several grounds. Finally, the project asserts the significance that gender equality be enhanced through positive action and gender mainstreaming, with a focus on ethnic minority groups such as Roma or Muslim women.
Key findings

Racialised discriminations are often gendered

• Both women and men face intersectional discrimination. However, the majority of victims unaware of subjection to gendered racialisation processes

• The gendered racialisation process of discrimination is strongly associated with prevalent gendered stereotypes concerning racialised men and women

• Women appear more conscious of experiencing racial discrimination than gender discrimination, even when confronted with multiple discrimination

• Women are more often the victims of harassment within the work environment and in their neighbourhoods with men most commonly facing discrimination in places of recreation or leisure

• The pervasiveness of discrimination experienced in a lifetime leaves many victims doubtful that reporting discrimination will effect any positive changes in the future

Gendered differences exist around access to and use of resources

• Individuals perceive many barriers when it comes to reporting their experiences of discrimination. This is especially the case for women fulfilling the ‘double burden’ of domestic and economic responsibility

• Men lodge complaints more frequently as well as pursue cases further than women

• Those resorting to legal remedy when exposed to discrimination are primarily citizens of foreign origin with higher education and in steady employment

• We find a clear lack of empowerment amongst the most vulnerable

Cases of multiple discrimination are not identified and treated as such

• Whilst there is a tendency towards the creation of single laws and equality bodies in the six countries, the multiple ground approach remains by and large overlooked by formal and informal bodies

• Data on multiple discrimination is scarce and is not coordinated in a meaningful sense at national and local levels

• Complainants exhibit difficulties in identifying their experiences as multiple
**Recommendations**

1. **To enhance recognition and empowerment of substantive citizenship, there is a need to promote the exercise of rights through:**

   Additional awareness campaigns to inform leadership at the community level and informal organisations/networks of the most vulnerable communities (migrant women, Roma, Muslims) of the importance of legal proceedings

   The increase of public offices (either smaller advisory organisations targeting particular groups or departments within equality bodies) assisting victims of discrimination to ensure access to services for the most vulnerable and marginalised groups most effectively at local levels and throughout the country

   That cooperation be fostered between small organisations targeting particular groups and equality bodies for multi-ground dialogue and operational understandings of intersectionality

   Increased financial support to cover the costs of legal proceedings for those organisations in charge of assisting victims

2. **To improve the treatment of multiple discrimination:**

   - **At the European level**

     For explicit reference to be made to multiple discrimination as an especially vulnerable form of discrimination within the new European Directive. This would enlarge the scope of protection against discrimination

     For the development of an operational definition of multiple discrimination that meets the standards set out in the European Union’s ‘Charter of Fundamental Rights’, Article 21
For the inclusion of a clause allowing complainants to lodge a complaint on several grounds within the framework of a single legal proceeding

- **At the national level**

To implement a specific legal methodological framework incorporating sociological and socio-historical contexts

That civil society (trade unions, women’s ethnic minority and professional organisations) in cooperation with lawyers and experts develops litigation strategies and class action as a method to bring gendered and racialised discrimination to the fore

To involve legal experts in the development of case law so that the implementation of cases based on multiple discrimination may impact the legal framework

To implement awareness-raising and professional training on anti-discrimination laws for legal advisors and counsellors, paying special attention to cases of intersectional

To inform victims of the existence of multiple grounds of discrimination

3. **We recommend the extension of the grounds for gender-specific discrimination**

- **At the European level**

Harmonisation of the EU Equal Treatment Directives of the protection against discrimination on the gender ground to the level of protection currently afforded the ‘race’ ground

Enhancement of the Equal Treatment Directives provisions vi development of positive measures, such as the positive duties on UK public bodies to promote equality and challenge structural, institutional and systemic discrimination
At the national level

The adoption of positive action taking into consideration the intersectional impact of racialised/ethnicised discrimination

A focus on the role of equality bodies on setting, enforcing and monitoring standards for gender mainstreaming, using methodologies based on intersectionality and focusing on the specific needs of different groups of men and women

Improvement of the visibility of gender differences on the experience of discrimination via equality bodies’ production and publication of gendered statistics

4. There is a need for standardised statistics on (multiple) discrimination:

At the European level

The adoption of the same criteria and indices for data collection, data recording and public availability by national equality bodies. This should permit comparative analyses at the EU level, including the possibility of registering multiple grounds - thus multiple discrimination

The publication of cross sections of data on gender and other social categories by EU agencies addressing information on the situation of groups subject to discrimination

At the national level

The adoption by organisations and institutions of common methods of collection at national and local level to allow a national overview

The introduction in registration systems of socio-demographic data on complainants to identify discriminated sub-groups. This would enable anti-discrimination policies to be better focused and would enhance the design of positive action and equality programs
A special national regulation on access and use of data, respecting the following principles:

To avoid undesirable categorisation systems, the method of freedom of choice and self identification with respect to nationality, mother tongue, religion, ethnic group or other “racialising categories” should be employed

Anonymity of personal files should be secured and the importance of data for combating discrimination should be emphasised

Data must be encoded in order to render impossible the identification of complainants’ origins

Access to anonymised individual cases should only made available for research purposes to those academics meeting the necessary ethical procedures.
Part I: Setting the Scene
Chapter 1: Rationale, approach and development

by

Isabelle Carles and Olga Jubany
1.1 Introduction

The right to equality before the law and the protection against discrimination is by and large recognised as a universal human right. To this extent, the importance for legislation to address discrimination based on racialised identities and gender is nowadays formally acknowledged, both at international as well as at European levels\(^1\), although is not always properly addressed.

Currently we can identify a number of official documents and studies commissioned by the EC as well as further publications by researchers, lawyers, numerous NGOs and other academics in the field that show the progress that there has been in this field in the last decade. It is particularly since the year 2000, that the European Union has worked towards the development of a new legal framework for equality, which started before then with the European Community law prohibition on discrimination based on sex and nationality. With the adoption of the Article 13 of the Amsterdam Treaty, the EU has enlarged its competence in the field of antidiscrimination. Based on this, the EU adopted two new directives in that year, which broadened the scope of prohibited discrimination by adding ‘race’ and ethnic origin, religion and belief, disability, sexual orientation and age to sex and nationality. Recently, further efforts have been made to extend discrimination on the grounds of sex: two new directives have been adopted, one on gender equality in employment, the other on occupation and provision of goods and services. And, in 2006 a Recast Directive (Directive 2006/54/EC) was adopted to bring together a number of Directives in the Gender discrimination field\(^2\).

Parallel to theses advances, there has been a theoretical and perhaps more social debate that allows us to explore and understand the intersection of multiple grounds within the experience of discrimination. This perspective addresses factors such as gender, age, social class, ethnic origin, religion and/or disability as fundamental in the configuration of multiple identities.

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\(^1\) The Universal Declaration of Human Rights (UDHR) prohibits discrimination of all types. So do the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural rights (1966). Other international instruments provide protection against specific types of discrimination. These include the International Convention Against all Forms of Racial Discrimination (1966) and the International Convention on the Elimination of all Forms of Discrimination against Women (1979). At European level there is the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) prohibiting discrimination on a large number of grounds.

\(^2\) Article 119 of the Treaty of Rome introduced the principle of equal pay between women and men.
Amongst the most affected groups, the position of ethnic minority women provides a clear example of the intersectional experience.

Both of these trends, the legal and the social, are adopted by the GendeRace project, whilst also taking account of the dual approach; policy and theory. It is through adopting this multidisciplinary approach that this research can now demonstrate how the cumulative effects of discrimination based on gender and racialised identities often place migrant women in the most disadvantaged position across the EU. This refers to fundamental situations in our contemporary society such as migration revealing that, for instance, if men from migrant backgrounds are disadvantaged in the field of employment, women are even more so, as their employment is often concentrated in particular areas of the market characterised by low pay, low status and job insecurity. At the same time, women may suffer gender related discrimination within their own communities. As the results from this investigation will show, manifestations of socially constructed identities reveal that ethnic minority men may too often find themselves discriminated against when entering bars, clubs and restaurants, for which we identify a similarly intersectional focus.

Despite the fact that intersectional discrimination in terms of racialised identities/culture/origin and sex/gender has been recognised, the concerned international bodies have not yet developed corresponding legal instruments and adequate policies towards the most affected groups. At the European level, we find the 1995 assertion by the Council of Europe that migrant women in Europe encounter more difficulties in their daily life than migrant men. This is due to the discrimination they may experience in the field of employment, as well as their isolation in domestic life, in being cut off from wider society.

The recognition ten years later by the Parliamentary Assembly has highlighted more clearly the forms of multiple discrimination experienced by immigrant women related to sex and origin, and from the country of residence as well as from within their own communities. In this context, the Assembly has requested specific actions to strengthen the fundamental rights of immigrant women in Europe.

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In the European Union, the issue of multiple discrimination experienced by immigrant women has been recognised several times, notably during the World Conference against Racism (Durban, 2001). On this occasion, the European Commission recognised intersections between racism and gender-based discrimination. It has been argued that the European Commission has integrated the gender dimension in its fight against discrimination

Despite the Community’s statement within the Race Directive of its intention to eliminate inequalities and promote equality between women and men, EU policies and legal framework against discrimination are fragmented, with grounds of ‘race’ and gender addressed by separate directives and programmes. Consequently, the ground of sex as a ground for discrimination is excluded from the 2000 antidiscrimination directives and from the programme to combat discrimination.

Similarly, the question of multiple discrimination is insufficiently addressed at the national level. Whilst the Commission does oblige member states to provide an evaluation of the impact of the implementation on women in its report on the implementation of the Directive 2000/43/EC, none have done so at the time of publication.

The GendeRace project enriches the current debate on intersectionality theory, defined in this context as the articulation of multiple discriminations focusing on the question of gender and racialised identities or ethnicity at different levels of the process of discrimination. To this aim, at the outset we advance the view that social relations based on gender and racialised identities influence the perception and use of antidiscrimination laws. We postulate that men and women experience different kinds of discrimination, reacting in different ways to the phenomenon and this is often connected to other discriminatory experiences in their daily lives, which may be related to structural and institutional discrimination. The institutional framework provides different responses according to gender, in terms of action and conflict resolution. However, this does not imply that multiple discrimination based on racialised identities and gender is adequately addressed.

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7 Article 17, par. 2 of the Directive
Due to its single discrimination grounds approach to equality legislation, the present legal framework falls short in addressing multiple discrimination based on racialised identities and gender. At the same time, many of the organisations dealing with the phenomenon of discrimination have not yet implemented guidelines from an intersectional perspective, instead focusing rather more on one specific ground.

This reinforces the fact that some forms of discrimination remain obscured, especially against immigrant and ethnic minority women. Moreover, this contributes to making the handling of multiple discrimination more difficult. With all of this in mind, the GendeRace project aims to provide guidelines for a better understanding and treatment of the phenomenon.

### 1.2 Our specific objectives

Focusing specifically on discrimination based on racialised identities or ethnic origin and that of gender, the project’s objectives are:

- To deepen understanding of the impact of gender on the experience of discrimination based on racialised identities or ethnic origin;
- To improve the knowledge of the combined effects of racism and gender discrimination in order to reveal the various forms of specific discrimination experienced by women;
- To progress understanding of the impact of gender on the treatment of complaints;
- To improve knowledge of the motivations underlying the use of the law and of the complainants expectations;
- To test key theories concerning the effects of a ground-specific approach to antidiscrimination legislation on the treatment of multiple discrimination based on a racialised identities or ethnic origin and that of gender;
- To develop practical tools to assess the effectiveness of policy and practice in the field of antidiscrimination to take into account the intersectional dimension of discrimination.
These objectives have been pursued through completion of research outputs including five thematic reports, a glossary of key antidiscrimination terms, and a final report. The objectives were completed through interviews with key experts at European and national levels and with women and men complainants as well as through the stakeholder meetings. The latter, held in each of the six partner countries, brought together members of national equality bodies dealing with complaints and non-governmental organisations working to support women and ethnic minorities. Research findings have been presented to stakeholders in each country and their observations used for the evaluation of project data and the production of final reports.

1.3 Methodological approach and framework

GendeRace’s methodological approach takes into account existing levels of complexity in the analysis of discrimination based on gender, ‘race’ and other possible axes of discrimination such as social class or age. These have been addressed in terms of multiple, compound and intersectional discrimination. Multiple discrimination occurs when an individual experiences discrimination on several grounds. We understand compound or additive discrimination as that of discrimination occurring on more than one ground in the same instance with discrimination on the one ground adding to the discrimination on the other ground to create an added burden. Intersectional discrimination occurs when two or more grounds of discrimination interact concurrently. However for the latter, the grounds are inseparable and the discrimination taking place cannot be captured wholly by examining discrimination solely on one ground.

The project’s methodological approach integrates the complexities encapsulated in the oft-contested concepts of ‘race’ and ethnicity and in the barriers to access of personal data especially that classified as sensitive. In many countries, such as France, Germany and Sweden, data is not collected under the typology of ‘race’, usually due to historical reasons and concerns around implications that such biological divisions exist. However, wide variation exists as to the officially collection of data on ethnicity, with findings from this study suggesting the UK as the only Western European country where such data is collected and made available.

The research has been carried out through a study of 914 case law and complaint files, over 120 in-depth interviews with women and men of foreign nationals and members of ethnic
minorities. In addition, over 60 in-depth interviews of stakeholders, NGOS and social partners, including lawyers dealing with complaints have been carried out. These methods shall be explained in detail in Chapter 4 of this report which describes the investigation’s methodology framework.

1.4 Fieldwork illustrations of multiple discrimination

The following section provides examples of multiple discrimination encountered by the Genderace team in interviews with complainants/claimants. Why is a multiple ground approach important? A legal claim for discrimination on multiple grounds is most often treated by the courts by examining first whether discrimination on one ground has taken place and then whether it has taken place on the other ground. In other words, the courts consider each ground of discrimination separately. This approach is problematic in that it fails to take account of the particular forms of discrimination that arise on multiple grounds. Multiple discrimination occurs because of characteristics attributed to people based on a combination of features, such as age, gender, religion or race. Well-known and particular stereotypes attach, for example, to Muslim men, young black women, older Asian women and so on. In such instances, it can be impossible to establish that discrimination has taken place on a single ground. For example, a restaurant may refuse to employ a black woman as a waitress. The woman claims that this is discrimination precisely because she is a woman AND because she is black, and this may deemed as multiple discrimination on grounds of gender and race. If the court looks at the grounds of gender and race separately, it will not find discrimination. The restaurant employs both men and women as waiters, so it is not treating women less favourably than men. It also employs black men and thus does not treat black people less favourably. Only if the two grounds are taken together will the discrimination be identified. So in this case the black woman would only have a chance of success if she could claim discrimination on a combination of grounds.

Another clear example would be a driving school which refuses to employ older women: there would be no gender or age discrimination because they employ both men and women and older men as driving instructors. But an older female applicant is turned down because of the combination of age and gender. If she cannot claim discrimination on the combined grounds, she will have no remedy in law.
In practice lawyers will bring claims on whichever of the sole grounds appears stronger. But there are cases in which discrimination takes place on multiple grounds and it cannot be established on a single ground, leaving individuals who may be the most vulnerable and discriminated against in society without a remedy. So a multiple ground approach in law and in the courts is necessary because otherwise cases of discrimination will be left without any legal remedy.

**Two French cases**

One interviewee, a French national, was prohibited from boarding a flight because of his origin. The claimant is a professional boxer and an international kick-boxing champion, and in August 2007 was invited to participate in an international championship in Florida. The claimant was refused boarding of the flight on the grounds that his passport was invalid and that he should have had a visa. Having an emergency passport, he should have been able to benefit from the visa exemption programme. He was ultimately able to travel using said passport with another airline and to gain entry to the USA. The refusal of service provision appears to be unsubstantiated and seems to show racial discrimination.

The HALDE organised mediation between the claimant and the American airline. The mediation failed because the airline refused to acknowledge that it had undertaken discriminatory ethnic profiling. The complainant's case before the civil court was also dismissed but the claimant nevertheless decided to appeal. The case is still ongoing. This is a typical case of multiple discrimination based on religion/ethnic origin and gender. The airline employee profiled him on a gender and ethnic and religious basis, considering the claimant, of North African origin, as a potentially dangerous individual in the context of the terrorist attacks of 11 September 2001.

Another case in France relates to the refusal to allow a woman to attend a stipend-paying training course due to the wearing of a headscarf. A claim was lodged with the HALDE when a woman wearing a headscarf was refused access to a training centre run by a private organisation, the internal rules of which prohibited the wearing of any clearly visible religious symbols on the centre’s premises. This demonstrated refusal or conditional discrimination in providing access to goods or services on the grounds of religion. The HALDE Council
recommended that the internal by-laws be changed and gave its Chair the power to undertake a penal transaction which a procedure specific to French anti-discrimination legislation.

In France, the prohibition of religious symbolism is applicable only to schoolchildren or students in secondary schools in compliance with the principle of non-discrimination. In addition, civil servants are required to maintain complete neutrality. The HALDE had to repeat in several deliberations that these are the only limits set out by the law under the fundamental principle of religious freedom, which historically guarantees the principle of separation between Church and State. However, this case was only dealt with by the HALDE as discrimination based on religion. The gender aspect was overlooked while it could have been interpreted as a form of multiple discrimination based on both religion and gender.

Two cases in Spain

The ‘La Nena’ case is a clear case of multiple discrimination experience expressed by denial of the widow’s pension. The woman claimant married almost forty years ago in a traditional Roma ceremony which was not entered into public record, and despite having countless documents showing a formal union with her husband she was refused access to social security benefits, having to survive without a pension for 8 years after the death of her husband. The woman had devoted all her life to raising her family, according to Roma convention, and had not worked outside the household. By means of the legal and financial support provided by the Fundación Secretariado Gitano (Roma NGO) she was able to file several complaints, including within the Spanish Constitutional Court. These proved unsuccessful until her case was recognised by the European Court of Human Rights in Strasbourg which granted her economic compensation. Although the case was treated in court as that of racial discrimination, her legal advisors (Rey and Giménez) have identified hers as a case of multiple discrimination, as it is a clear case of discrimination only applicable to a Roma woman.

She was the first Roma woman to bring her case to the ECHR, and also constitutes its first Spanish case of discrimination.

The Beauty Solomon’ case concerns a woman of Nigerian origin with Spanish residency status that was subject to a physical and verbal attack by Majorcan police officers. Despite
having filed two criminal complaints against the officers, she received neither effective protection nor reparation. Madrid-based NGO Women's Link filed a complaint via the Constitutional Tribunal, which was later rejected on the grounds of lacking constitutional relevance. On April 2, 2009, Women's Link filed an application before the European Court of Human Rights alleging the Spanish State to have violated the European Convention of Human Rights.

Solomon is still seeking measures to challenge discriminatory, systematic ethnic and gender profiling regarding black women’s presence in public spaces in Spain, and the racism embedded within the national legal framework. Equally, her wish is to achieve recognition by the ECHR of the multiple or intersectional discrimination faced by minority women, issues which should be tackled by national legislation. The Solomon case is the first case of multiple discrimination to be brought to the ECHR.

**A German case**

A young woman visited the anti-discrimination office in Hamburg when she was denied the opportunity to partake in a professional training course (on-the-job) on the basis that women wearing the headscarf ‘would not be employed’. She describes the headscarf ban in schools as leading to social and economic problems. Born and raised in Germany, she began to wear a headscarf at the age of 11. Since then, she has continually experienced perceptions of the headscarf as problematic in public and by teachers and employers. As an education student she has been especially discriminated against in her attempts to find an apprenticeship. Her headscarf has become a barrier in the search for a place for her professional training (training on the job). The manager of the institution to which she had applied stated "You are so competent and you speak German so well. It is a great pity that you cannot start this training because you do not want to take off your headscarf.” It was against these grounds that she filed a complaint, of which the result of the complaint is still open (at the time of publication). It is her hope that a positive signal goes out from the complaint in terms of discrimination protection. However, she expresses the fear that the complaint could also have a negative effect, as Hamburg could adopt the headscarf ban which is the rule in other federal states/Bundesländer*.
She reports: “While searching for a trainee position I have found out that there are huge restrictions. Some say immediately: no, no way! Because of the religious neutrality of educational institutions, we would not like to influence people. We prefer that religion stays in the private sphere and does not interfere with work. Because of this, I do not know at all whether I have chosen an occupation in which I can earn money for living... generally, it makes me think whether or not I am still welcome in this society.” She feels excluded from access to the job market and under pressure to choose between her occupation or on her faith. Although she was born and raised in Germany, she now raises the possibility of moving abroad.

Discrimination against Muslim women wearing the headscarf was a central theme of several interviews conducted by the TU Berlin Genderace team: This was brought up by the individuals themselves, as well as by legal experts and by a witness. The context is the headscarf ban, which is currently valid in eight federal states/Bundesländer* for teachers at state schools. Wearing a headscarf is especially criticised in educational institutions. Besides, it is raises the question as to whether its wearing is permitted as a symbol of a certain interpretation of Islam in special areas of the public, in particular with state employees and in state education facilities, or should be prohibited. Moreover, it addresses a conflict between the freedom of religious belief of the citizens on the one hand and the religious neutrality duty of the state on the other.

* Headscarf bans have been applied in Bavaria, Baden-Württemberg, Berlin, Bremen, Hessen, Lower Saxony, North Rhine-Westphalia and Saarland.

**Two cases in Bulgaria**

A female of Roma origin with her own business was approached by a municipal officer (female) accusing her of irregularly parking her car. The officer insulted her based on her ethnic origin and as a conclusion ‘recommended’ that she ‘go back to her horse and cart!’ According to the victim, the insults arose not only by the fact that she was a Roma woman but also by the fact that her car was expensive. This stirred envy in the officer as many stereotypes depict Roma as lazy and poor. According to the victim, the officer was provoked by the fact that a Roma woman appeared to have achieved good social status, a view most insulting for the complainant. She filed a complaint before the Commission for Protection from Discrimination (CPD) for multiple discrimination on the grounds of ethnic origin and social status.
Another interesting case relates to a male belonging to the national majority with some years left until retirement. He was dismissed after thirty years of working for the same school. The complainant believes that he was dismissed because of being male, i.e. it is a widespread belief that it would be easier for a man to find a new job – for instance as unqualified worker. In addition, it is assumed that as being older he has raised his children and has fewer family responsibilities. According to the complainant, it is a school policy to be more tolerant to women, who he sees as keeping their position regardless of their professional qualities and experience. The man filed a complaint with the CPD for unequal treatment in the workplace on the grounds of gender.

Two cases in the UK

A black woman was bullied by a white male colleague and by students, who followed his example. For example, when he asked her where she was from and she told him, he replied: ‘so, you are one of those people who commit fraud’. She was asked why she couldn’t go back to her own country (although she has the same nationality as him); remarks were made that people with plaited hair do not wash their hair. And, one of the students said: ‘I used to have a childminder like you’. The male colleague did treat black male colleagues in a different way and did not make the same remarks to them. This is clearly a case of intersectional discrimination/harassment based on the combination of race and gender, taking place because she was a black woman. The colleague and the students would not have treated a white female colleague or a black male colleague or a white male colleague in the same way.

Another case relates to an African woman who worked as a chef in a restaurant chain. She had been in Europe since 2004 and had not previously experienced discrimination. Due to pregnancy, she felt ill in the hot kitchen and had stomach pains. Under the company’s maternity policy, she was entitled to take additional rests as needed. She tried to rest when the kitchen was less busy but, while her immediate manager (an Asian female) was sympathetic, the restaurant’s general manager, a white male, was hostile and disapproving which made her feel very uncomfortable. She also asked to be excused the heavy physical work involved in cleaning her equipment at the end of her shift, offering to forgo pay for that part of the work. This was refused. She was not paid for absence due to ante-natal appointments although that is required by law. Finally, her number of shifts was reduced without discussion.
She discovered that a white waitress, who was also pregnant, had been well-treated and given the kind of adaptations she had requested but been refused. She obtained legal advice and brought a discrimination claim against the company. The company’s head office became involved, settled her claim, gave her back her shifts and sacked the restaurant manager. The victim told the Genderace interviewer that she had been reluctant to ascribe her treatment to discrimination but eventually realised that this was the case. Prompted by the interviewer, she acknowledged that multiple discrimination was likely to have been present as the manager got on well with white women and black men.

Two cases of multiple discrimination in Sweden

One interviewee was a passenger on a bus when the driver harassed her for wearing a veil. She pushed her so hard that she fell to the floor and tore her veil, whilst calling her names and accused her of being on benefits, and saying that people like her should not be allowed in Sweden. She urged her to go back to her home country and said it was her husband that had forced her to wear the veil. The driver was altogether very aggressive. There was no provocation whatsoever from the interviewee’s side. It was an unprovoked act of racism. Even though the interviewee was attacked mainly due to the fact that she was a Muslim woman wearing a veil she does not herself identify the discrimination as multiple or intersectional, she found racism to be the most important ground. The only ground that was discussed in the legal treatment of the case was discrimination due to ethnic origin.

In the second case, the interviewee says that as a Finnish Roma woman, with traditional clothes, her community is discriminated against every day because they are so visible. When they go to the shop for example, staff follow them and they are always watched and monitored and sometimes they are not let in. The interviewee also says that as a Finnish Roma woman in traditional clothes you do not have a chance to get a job, that the option just does not exist.

The specific situation for which she made a complaint happened when she was at a conference arranged by the Antidiscrimination Office. Of about 30 participants, she was the only person of Roma origin, with the rest being of the Swedish majority population. When she used the coffee machine for the guests at the hotel she was questioned three times by the staff even upon showing the keys to her hotel room. The staff explained that their behaviour stemmed from having had a lot of problems with Roma at the hotel, in terms of stealing etc.
The incident occurred in the hotel lobby and the interviewee felt very exposed and humiliated. During the rest of her stay at the hotel, she was ignored by the manager and the staff.

The interviewee identifies the discrimination as multiple because she wears the traditional clothes of Finnish Roma women and therefore is more exposed to discrimination. The only legal ground for discrimination in the treatment of the case was ethnic origin.

1.5 Structure of the report

The first part of this report ‘sets the scene’ of the GendeRace project, introducing the framework and background to the study. The project’s rationale, approach and development are delineated within the first chapter via this introduction, the project’s objectives and our scientific and methodological approach.

Chapter 2 describes the project’s national contexts as well as common trends within the EU framework. Here, the European social fabric in relation to racism and gender discrimination as well as international and European antidiscrimination instruments are explored. In addition, we find an analysis of the main European statistical data sources on gender and race. The third chapter outlines the analytical framework of the study covering issues of comparative research and methodology in practice in application to the research process and explains the methods used for the fieldwork.

The second part of the report addresses discrimination based on gender and racialised identities across Europe. We begin with a survey of the implementation of European Union antidiscrimination legislation via concepts, policies and debate. This is explored through trends concerning antidiscrimination legislation and intersectionality in the GendeRace countries, communications and studies commissioned by the EC, as well as European publications on intersectionality, and research on the gendered use of antidiscrimination legislation and resources. Chapters 5 to 9 present the main outcomes of the fieldwork, gathered in thematic reports with detailed comparative analysis on each of the project’s Guiding Themes - developed around the central enquiries of the research; the impact of gender and racialised identities on the experience of discrimination; Differences on the use of institutional and non-institutional resources according to gender and racialised identities; the impact of gender and racialised identities on the treatment of discrimination complaints.
claims; the capacity of political/legal framework and institutional arrangements to handle multiple discrimination; and the collection, recording and public availability of data on discrimination complaints.

The final part of the report takes a step beyond the analysis, by way of outcomes and recommendations. We find in Chapter 10 the project Glossary, designed not only for the development of common terms and concepts to ensure communication and understanding within the research process, but to contribute to theory and practice at the European level when addressing racialised and ethicised discrimination. Policy recommendations are presented in Chapter 11. The research has identified a number of important messages, with a range of policy implications at both European and national levels. These messages focus on four key areas: the impact of gender on access and the exercise of rights by victims of discrimination; the impact of “one single law and one single equality body” approach on the handling of multiple discrimination; statistics on discrimination and complaint databases and the impact on the visibility of multiple discrimination; the impact of the multiplicity of grounds on gender equality.

At the end of the report we have included some concluding remarks. These are not meant to introduce any further conclusions or summaries of the information presented, neither to extend or elaborate on the recommendations exposed. Rather, in this section the coordinators wish make a few general observations from a more abstract perspective that may otherwise have remained overlooked.

Finally, in regard to the authorship of the report it is worth noting that whilst only the researchers of the partner team responsible for each chapter have been acknowledged on title pages, all chapters with this report are the result of collaboration by the GendeRace team as a whole. Partners have worked together continuously to provide feedback, support, and data analysis at each stage of the project.
Chapter 2: National Contexts and common trends of the EU Framework

by
Maya Grekova, Maya Kosseva, Iva Kyurkchieva and Orlin Avramov
2.1. Introduction

Europe has a diverse demographic composition which necessitates the construction of a tolerant system for the mutual coexistence of the different individuals and communities represented therein. The EU institutions and the national authorities have created a legal framework to combat the manifestations of discrimination and to discourage discriminatory practices. Different types of organisations, governmental institutions, NGOs and social scientists have conducted studies on discriminatory practices with various objectives: to analyse the reasons for their existence; to suggest new institutional and legal instruments able to combat these practices; and to monitor and control the effective application of the existing legal provisions.

The objective of this project is to contribute an enhanced understanding of the problems related to multiple discrimination and to the methods for its study and how to deal with such issues. We use the concept of intersectionality to analyse the complexity of the phenomenon of multiple discrimination based on ‘race’ and gender. The initial surveys in the six states, when subjected to analysis, reveal that many aspects of the gender and race discrimination issue have been addressed by social studies and in the form of legal instruments. This research puts special emphasis on the existing legal framework in Europe and its transposition and implementation by the EU member states. National investigations and reports have demonstrated the presence of discrimination in various social spheres in all six states. The envisaged case studies along with the research relating to the affected groups and the interviews with experts and state officials have as an objective the identification of the manifestations of discrimination common to all states, the methods for its prevention and the specific features of the national legislative and institutional environment created to counteract it. A focal point of this research is the identification of the conditions necessary for the existence of gender-informed reactions to race discrimination, the analysis of its specific characteristics and the capacity of the legal system to deal with its manifestations.

This chapter describes and analyses the social situation in the six project partners’ states with regard to groups in disadvantaged positions; the conditions leading to the existence of discriminatory practices; and specific features of the national legal systems seen within the context of all the existing international and European legal and political instruments. Target groups, key experts and key sources for the project research are also identified.
Definitions of the terms used in the chapter

These definitions are for the purpose of this chapter only. A further elaborated and discussed list of concepts and debate are included in the Glossary (Chapter 10) and Methodology chapters (Chapter 3) of this report.

*Discrimination*

“Any distinction, exclusion, restriction or preference based on ‘race’, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”. *Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin* (Article 1.1 ICERD) makes the distinction between the concepts of direct and indirect discrimination⁹.

*Race*

“Race and ethnic groups, like nations, are imagined communities… They are ideological entities, made and change in struggle. They are discursive formations, signalling a language through which differences may be named and explained”

*Gender*

“A constitutive element of social relationships founded on differences detected between sexes”.

*Racism*

“Belief in, or set of implicit assumptions about the superiority of one's own race or ethnic group, often accompanied by prejudice against members of an ethnic group different from one's own. Racism may be used to justify discrimination, verbal or physical abuse, or even genocide… Even where there is no open discrimination, racism exists as an unconscious attitude in many individuals and societies, based on a stereotype or preconceived idea about different ethnic groups, which is damaging to individuals (both perpetrators and victims) and to society as a whole¹⁰.”

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Xenophobia: “Fear or strong dislike of strangers or anybody foreign or different.”

Integration
Process of removal of prejudices related to racial/ethnic differences, of stereotype attitudes to it, of expectations of its impact, which lead to racially/ethnically formed models of interaction in everyday life. Overcoming of racially/ethnically based inequality in the spheres of education, employment and career, residence, healthcare, participation in local government. A prerequisite for the initiation of the integration process is the presence of legal mechanism for protection against discrimination. The process of integration differs in its very essence from the process of assimilation. The integration presupposes respect and recognition of cultural differences, while assimilation is based on obliteration/annihilation of the different, which is considered inferior.

Intersectionality
The academic lawyer Kimberle Crenshaw (1989) was the first to use the word intersectionality to define a situation in which there is a specific type of discrimination, in which several grounds of discrimination interact concurrently. For instance, minority women may face specific types of discrimination, not experienced by minority men, because they are exposed to specific types of prejudices and stereotypes.

2.2. The European social fabric in relation to racism and gender discrimination
All European states have a more or less diverse population in terms of ethnicity and/or language and/or religious affiliation. In most of the European states the “different” groups traditionally residing within their territory are recognised as minorities and the documents adopted by the Council of Europe and the European Union for protection of their rights are applicable to them.

The largest and most consistently discriminated-against traditionally resident group in the six states overall six countries subject to the study is that of the Roma. The Roma are analysed in

12 See Framework convention for protection of national minorities and the position of each state: http://www.coe.int/T/E/human_rights/minorities/. France has not signed this Convention yet.
the reports for Bulgaria (where they number approximately 700,000–800,000 persons), France (approximately 500,000 persons, of which 75% have French citizenship), Spain (approximately 500,000–600,000 persons), Germany (approximately 70,000 persons), Sweden and United Kingdom (no data given on the number of Roma).  

In Bulgaria the members of the Roma ethnic group are the main victims of discrimination. The Bulgarian Roma group is stereotyped by publicly accepted images and concepts containing predominantly negative characteristics. These negative images and concepts inevitably generate a negative attitude towards the individuals belonging to the Roma group. A major consequence of this is the isolation of the Roma in “Gypsy neighbourhoods” and avoidance of the everyday life interactions with them i.e. spatial and social segregation. The fact that any contacts with Roma individuals are to be avoided solely because the person in question is of Roma origin can be viewed as a manifestation of discrimination against the Roma per se.

In Sweden the Roma and groups from African and “Muslim” states are especially vulnerable to discrimination. A study on the exclusion of the former shows, for example, that discrimination is significant and complex, widespread and part of everyday life for Roma people.  

In Bulgaria the immigrants’ community is relatively small. Most of them do not have legal status and do not file complaint due to distrust in the authorities and fear that it will worsen their situation. Five out of the six states under investigation – France, Germany, the United Kingdom, Spain and Sweden – identify ‘immigrants’ as those being most vulnerable to discrimination. A serious problem in this field is the fact that a significant part of those persons marked out as immigrants are actually (already) citizens of the respective state in question. The institutional viewpoint should not differentiate them from all ‘other’ ordinary citizens. Nevertheless the attitude of the institutions has absorbed the everyday life attitude where it is impossible to distinguish an African or Iraqi person who is a citizen of the corresponding state from a similarly looking individual who is still not a citizen. The

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13 See for example http://www.soros.org/resources/articles_publications/publications/euminority_20021125/overview.pdf
everyday life point of view identifies and differentiates in accordance with visible ‘at first glance’ features – appearance, name, language, religion. This everyday life viewpoint cannot and does not want to know whether the person having these visible features is or is not a citizen of the respective state.

That is why the term ‘immigrant’ is often conflated with other designations such as foreigners, foreigners by nationality or origin, foreign-born residents, people with immigrant background and so on. These designations aim to introduce some sort of differentiation – at least at the linguistic level - and are also intended to secure some possibility for the implementation of the corresponding provisions of the antidiscrimination legislation. In the everyday life viewpoint, the distinction of these categories is impossible – their members do not look different and they are identified not with regard to their legal status but in accordance with their (ethnic, racial) origin, which has typical and visible characteristics.

**France**

Permanent immigration to France has grown consistently during the past decade, increasingly from the Maghreb and French-speaking Africa. France continues to be the leading EU state for asylum-seekers, despite a recent decline in numbers. Third-state nationals represent 3.8% of the population (2004 census) and foreign-born residents make up 8.1%. The three main states of origin are Algeria, Morocco and Turkey. Muslim immigrants are those most exposed to racism. There is a lack of official statistics, but the number of Muslims in France is estimated at between 4 and 5 million. North Africans make up the second biggest community exposed to racism. They represent approximately 1.5 million people. Finally, the approximately 570,000 Sub-Saharan Africans in France are also victims of racial discrimination.

**Germany**

With the opening up of East and South-eastern Europe the make-up of the migrant population in Germany began to change. Between 1990 and 1999, around 2 million more immigrants entered Germany. At the same time the number of persons entering from Asia, Africa and Latin America has grown. Since the colonial era and especially since the Second World War there has also been an increase in the number of Germans with African heritage. Nearly 70% of all migrants (non-citizens of Germany) have lived for at least eight years in Germany and

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15 The legislation applicable to the citizens of the respective states and to the other EU citizens (See Art. 13 of Directive 2000/43).
35 percent of them for more than 20 years. In 2004, 48 percent of the foreigners and migrants were women and 52 percent men. The average age of the foreigners/migrants was 36.7 years, and of Germans, 43.2 years.

United Kingdom

The dominant immigrant populations in the post-war years in the United Kingdom (England, Scotland and Wales but not Northern Ireland which has separate equality legislation) were from its former colonies in the Caribbean, South Asia and Ireland. Ireland (other than the six counties of Northern Ireland) became independent in 1920. The colonies became independent between the 1940s (India in 1947) and the 1960s (Africa and the Caribbean). By the 1990s, the composition of migrant flows had begun to change as a result of increasing numbers of asylum seekers and refugees from Eastern Europe, the Middle East and Latin America. Many of these migrants did not fit neatly into the existing ethnic categories. For example, a Turkish person could categorise himself as ‘white’ or ‘other’. White migrants, such as the Irish, Portuguese or the Polish could also suffer discrimination. In fact the Irish were added as a specific category in the 2001 census in recognition of the bad treatment they experienced in services such as health. In some local authorities, there has been an attempt to add nationalities not covered by ethnic categories (e.g. Somalis, Turks) to their data collection in order to better understand unequal access to services.

Spain

As a result of significant waves of immigration over the course of recent years, Spain has faced a rapid increase in third state nationals who will eventually become residents. By combining different sets of records and statistics on the immigrant population it can be determined that the following collectives represent the most numerous groups in Spain. In order of significance these are: Moroccans, Ecuadorians, Colombians, Romanians, British, Chinese and Italians. The population of de facto resident but undocumented third state nationals is difficult to determine not only because these people may be in transit towards other European states but also because they tend to be afraid of being expatriated and try to remain invisible. It seems that all immigrants – both immigrants with work/residence permits and undocumented immigrants – are treated in much the same way. There is no legal category for ‘Spanish citizens with foreign nationality and/or of foreign origin’.
Sweden

The number of people with what is called a foreign background has increased, especially since the 1990s, and in 2005 this group amounted to 1.5 million or 16% of the population; three quarters of these people were born outside Sweden. From the 1990s onwards, a new wave of immigrants came to Sweden. This influx was related to the wars and disturbances in Bosnia-Herzegovina, Iraq and Iran. Together, groups from these states form the majority of those born outside Sweden. Even during 2006 and 2007, many Iraqi citizens immigrated to Sweden, and they were the second largest immigrant group during 2007(15%).

All national reports in this study raise the issue of gender discrimination. This discrimination is in all the given cases related to women – most importantly in relation to members of the groups which are most vulnerable to general discrimination in each respective state. At the same time, all reports pay attention to the fact that women in general are in an unequal position or are unequally treated in different ways and in different social spheres when compared to men.

The French report supplements its description of the discriminatory attitude towards women with the special viewpoint taken towards some men: “The representations underlying racism vary according to the victim's gender. Men are seen as a danger to the public order, especially young men living in the outer suburbs\(^{16}\) following the riots of 2005. Women are seen as victims to be protected (Roulleau-Berger 2004).” This specific dimension of gender discrimination has been kept in mind during the project. It is suggested that this phenomenon is likely not restricted only to France. During the last decade – as a side effect of a wave of world terrorism and the fight against it – the image of the Muslim terrorist has become notorious and inevitably influences the everyday life and institutional perceptions about Muslims.

All national reports take note of the absence of attention to the double gender and race or intersectional discrimination. It is suggested that this is an effect of the different legal provisions applied to the two types of discrimination and of the inertia in the social and legal thinking in cases where discrimination must be categorised.

\(^{16}\) One of the politically correct designations for areas inhabited mainly by black population.
2.3. International antidiscrimination instruments

2.3.1 Introduction

The international legal instruments mentioned below may be divided into two groups:
- legally binding (conventions, covenants and the UN Charter). These instruments impose duties on the states party to them.
- political instruments (declarations) which do not confer powers and duties. These instruments are an expression of a political will/commitment on the part of the states who have voted for them.

It should be kept in mind that the status of legally binding instruments with regard to individual victims of discrimination depends on the specific national features of the legal system of the State Party (see Adherence to International Instruments). Further, the status of the legal instruments depends on their own texts as such. Thus, the States Parties to the International Covenant on Civil and Political Rights undertake to respect and to ensure the rights envisaged therein, while the legal obligation under the International Covenant on Economic, Social and Cultural Rights is for the states to take steps, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognised in the Covenant by all appropriate means, including particularly the adoption of legislative measures. It is clear that ICCPR emphasises legislative measures while the ICESCR relies mainly on measures of economic and other non-legal character (see Art. 2 of both Covenants).

2.3.2 The instruments

The beginning of the contemporary international antidiscrimination protection can be found in the Universal Declaration of Human Rights adopted on 10 December, 1948 by the General Assembly of the United Nations and its Article 2 prohibiting discrimination “of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Attention should be paid to Article 16 of the Declaration as well. This provision expressly guarantees equality between men and women “without any limitation due to race, nationality or religion” with regard to marriage and family rights.
The UN Charter (adopted on 26 June 1945) expressly declares that one of the objectives of the organisation is “promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion” (Article 1 (3) and Articles 13 and 55 as well).

To this end, the 16 December 1966 Resolution 2200 A (XXI) was approved by the General Assembly of the United Nations, which led to the adoption of the International Covenant on Civil and Political Rights and the Optional Protocols thereto, and the International Covenant on Economic, Social and Cultural Rights which unlike the Universal Declaration have a legally binding nature. Both acts declare that the rights envisaged by them will be respected, ensured or exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (Article 2 (1) and Article 2 (2) respectively). In addition to these the Civil and Political Rights Covenant has its Article 26 prohibiting discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. This prohibition is general in nature and not restricted only to the rights stipulated by the Covenant – a step forward in comparison with the Universal Declaration. Attention should also be paid to Article 27 (protecting persons belonging to ethnic, religious or linguistic minorities) and Article 24 (prohibiting racial, gender etc. discrimination in relation to children).

The ICCPR is also important with regard to the Human Rights Committee established under its auspices and the activities of the latter. This is true both in view of the Committee’s general comments (e.g. General Comment No 18 on discrimination of 1989, General Comment No 23 on Article 27 ICCPR of 1994) and in view of its examination of individual complaints. For instance in the Broeks case\(^{17}\) the Human Rights Committee (9 April 1987) established discrimination on the grounds of both sex and family status since at the time the Dutch legislation required a married woman, in order to receive social security benefits, to prove that she was a ‘breadwinner’ - a condition that did not apply to married men. The Committee adopted a different approach in the Lovelace case\(^{18}\) where an Indian woman claimed \textit{inter alia} to be the victim of discrimination on the grounds of sex. Lovelace married a non-Indian and lost her Indian status and the right to live in the Indian Reserve. She was not

\(^{17}\) S.W.M. Broeks v. the Netherlands; Communication No. 172/1984
\(^{18}\) Sandra Lovelace v. Canada, Communication No. R.6/24
allowed to return there even after her divorce. These rules did not apply to Indian men. The Committee found violation of the right of Lovelace “to enjoy her own culture in community with the other members of her group” and refused to examine the alleged discrimination on procedural grounds. On the other hand, the Committee took notice of the fact that the Canadian law was “based on a distinction de jure on the ground of sex”. The Tcholatch case (decided in 2007)\(^{19}\) could serve as an example of an over-inclusive complaint since its author claimed violation of more than a dozen articles of the ICCPR – including discrimination (the latter was found inadmissible by the Committee). Another cornerstone decision of the Committee that can be viewed in a Gender/Race perspective is the so called Mauritian women case\(^{20}\) (1984) where the Committee found that a law that granted to wives of Mauritian citizens the right of free access to Mauritius and immunity from deportation and denied such right to foreign husbands of Mauritian women, amounted to sexual discrimination under Art. 26 ICCPR.

Other important UN international instruments on discrimination are the Convention on the Elimination of All Forms of Racial Discrimination of 1966 and the preceding Declaration of 1963. The convention contains specific antidiscrimination rules and also offers a definition of the term “Racial Discrimination”: « any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life »

Of equal importance for the project is the Convention on the Elimination of All Forms of Discrimination Against Women of 1979. The approach of CEDAW is similar to that of the Racial Discrimination Convention. Following the general lines of the CERD approach, CEDAW is preceded by a declaration that defines the term "discrimination against women" as « any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field ». It envisages rights for women and state duties to achieve that end.

\(^{19}\) Natalya Tcholatch v. Canada, Communication No. 1052/2002

\(^{20}\) Shirin Aumeeruddy-Cziffra et.al. v. Mauritius , Communication No. 35/1978
Both conventions establish Committees whose activities may be subject to study as well, although they are supposedly of less legal significance than the Human Rights Committee under the ICCPR. According to the official statistics, since its establishment CERD has decided only 41 cases. The number of the complaints filed by women is relatively small (in any case it does not exceed 25% of the total) and the majority of them have been struck down as inadmissible. Nevertheless there are two cases of interest where racial discrimination against women has been established with respect to the right to work21 and the right to freedom of movement and residence22. The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, establishing the right to individual complaints, entered into force in 2000. Until this moment the CEDAW has issued only ten decisions on individual complaints in half of them declaring the complaint inadmissible. On the other hand, the general comments and recommendations of the two committees can serve as a guide to the existing international antidiscrimination law.

Naturally the antidiscrimination international instruments that have some relation to the gender/race perspective are not restricted to the above:
One can also mention: UNESCO Convention against Discrimination in Education (1960), Convention on the Political Rights of Women (1952), Declaration on Race and Racial Prejudice (1978), the ILO antidiscrimination conventions (e.g. Nos. 100, 111) etc.

2.4. European antidiscrimination instruments

2.4.1 EU Law

Basic primary law provisions

Article 19 Treaty on the functioning of the EU (TFEU) (was Article 13 EC):
Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

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21 Yilmaz-Dogan v. The Netherlands, Communication No. 1/1984
- Article 6 of the TEU:

1. The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.

The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.

The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions.

2. The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties.

3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

2.4.2 Legally binding instruments, especially the following directives:

- Council Directive of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (76/207/EEC) This is now repealed by the Recast Directive (Directive 2006/54/EC)
- Council Directive of 10 February 1975 on the approximation of the laws of the Member states relating to the application of the principle of equal pay for men and women Is this Directive 75/17EEC? Then it has been repealed by the Recast Directive as well)

2.4.3 Political instruments

2.4.4 ECJ case-law

The significance of the ECJ case law for the project can be found in the following aspects:


b) the ECJ has a significant practice in interpreting the antidiscrimination directives within the reference for preliminary ruling procedure, thus establishing a case law which is to be followed by the national courts (See for example Judgment of 11 October 2007, Case C-460/06, Nadine Paquay v Société d’architectes Hoet where the Court ruled that a decision to dismiss on the grounds of pregnancy and/or child birth is contrary to Articles 2(1) and 5(1) of Council Directive 76/207/EEC, irrespective of the moment when that decision to dismiss is notified and even if it is notified after the end of the period of protection). This is of special importance in cases which have been referred to the ECJ by jurisdictions from the states subject to research in this project since apart from important legal interpretations, the judgments of the Court could be used for a case study as well (see for example: Judgment of 20 March 2003, Case C-187/00, Helga Kutz-Bauer v Freie und Hansestadt Hamburg; Judgment of 11 March 2003, Case C-186/01, Alexander Dory v Bundesrepublik Deutschland; Judgment of the Court of 13 January 2004, Case C-256/01, Debra Allonby; Judgment of 18 March 2004, Case C-342/01, María Paz Merino Gómez v Continental Industrias del CauchO SA etc.).

c) ECJ is also the final instance to determine whether a member state has fulfilled its obligations to implement the EU antidiscrimination directives. From the viewpoint of this project these types of judgments are important not only with regard to the possible sanctions that follow a judgement declaring that a Member State has failed to fulfil its obligations. These judgments provide a European perspective to the reasons why and the fields in which the corresponding state has not managed to implement the European aquis on its own territory (Example of such cases are: - Judgment of 8 November 1983, Case 165/82, Commission v United Kingdom of United Kingdom and Northern Ireland; Judgment of 21 May 1985, Case 248/83, Commission v Federal Republic of Germany; Judgment of 25

2.4.5. The Council of Europe’s legal instruments

The role of the Council of Europe should be taken into account bearing in mind the vast body of international instruments adopted by it. The CE has adopted basic human rights treaties such as the 1995 Framework Convention for the Protection of National Minorities (see for example Article 4 (1) prohibiting discrimination), the revised European Social Charter (its Article E expressly prohibits discrimination on grounds such “as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status while the rights and principles to be attained are enumerated in expressly anti-discriminatory manner in Part I of the Charter. In its turn Article 20 provides for equal treatment in matters of employment and occupation without discrimination on the grounds of sex), the European Charter for Regional or Minority Languages, the 2005 Convention on Action against Trafficking in Human Beings etc. Non legally binding acts - such as Recommendation 1261 (1995) on the situation of immigrant women in Europe and Resolution 1478 (2006) on integration of immigrant women in Europe - should be considered as well.

Naturally, the basic CE instrument to be considered is the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto. Its Article 14 expressly prohibits discrimination but ‘only with regard to the enjoyment of the rights laid down in the Convention itself’. The general prohibition of discrimination was introduced by the Twelfth Protocol which came into force in 2005. It is submitted that the importance of the ECHR case-law could necessitate closer examination of the cases dealing with Article 14, which will provide an insight to the Court’s (and therefore judicial) approach towards gender/race discrimination cases. ECHR case-law could be a perfect background on which the national approaches can be analysed. The significance of the ECHR case-law is further highlighted by the fact that the Charter of Fundamental Rights of the European Union is largely based on the ECHR.
2.4.6. Comparative assessment of the national legal framework

The following preliminary conclusions have been reached from national reports

**Adherence to international instruments**

In general, all six states are party to the basic international agreements dealing with antidiscrimination issues although there are some differences. Thus, the international instruments are not directly applicable in the United Kingdom, and therefore an individual cannot rely on their provisions before the courts and other public bodies. In Bulgaria, some of the international treaties have not been published in the official State Gazette and their applicability to individual cases of discrimination is doubtful as well (most notably those that apply to the International Convention on the Elimination of All Forms of Discrimination against Women).

**Council of Europe instruments**

All six states are party to the European Convention on Human Rights and Fundamental Freedoms. It appears, however, that five of the states have not ratified the Twelfth Protocol, which introduces general prohibition on discrimination. The only exception is Spain, which ratified the protocol on 13 February 2008 (entry into force for Spain 1 June 2008). Germany, in its turn is signatory to the Protocol since 2000. The overall impression is that the six states analysed in this project comply (at least formally) with the Council of Europe’s legal standards The only expressly stated exception is the refusal of France to sign the Framework Convention on National Minorities while Spain has taken a leading step as far as the Human Rights Convention is concerned.

**EU law**

The initial information in the national reports indicates that all states have taken serious steps to transpose and implement the European antidiscrimination directives. On the other hand, the results of this process display some shortcomings. Problems with the transposition of the European directives are reported by Bulgaria, France, United Kingdom, Spain and Germany. Sweden seems to be the best performing state, demonstrated by the fact that it is the only old member state amongst the partner countries which has not been brought before the ECJ for failure to fulfil its obligations with regard to the EU antidiscrimination directives.

At this stage only Spain reports transposition of Directive 2006/54/EC, while France has initiated this process, through the anti-discrimination Act of May 27th, 2008.
National legislation

It is apparent that the prohibition of discrimination is well-established and deeply rooted in the national legislation and case-law in all six states. Institutional frameworks have been developed to some extent as well. On the other hand, it remains doubtful that national legislation and case-law are designed to deal with multiple and especially race/gender discrimination.

2.5. European statistical sources on discrimination complaints and cases

The general framework of this chapter results from reports of EU affiliated organisations such as CERD, ECRI, FRA (formerly EUMC), which provide one of the main sources of statistical data for the project - national reports on racism and discrimination. Important information can also be found in the reports and studies of NGOs such as ENAR (European Network against Racism) and EWL (European Women’s Lobby).

The European Union Agency for Fundamental Rights (FRA)\textsuperscript{23} is an institution established by a Council Regulation in 2007. It is based in Vienna and has built upon the European Monitoring Centre on Racism and Xenophobia (EUMC)\textsuperscript{24}. FRA’s objective is to provide the relevant institutions and authorities of the Community and its Member states with assistance and expertise relating to the observation of fundamental rights. FRA has the task of continuing to protect the rights of persons belonging to minorities and to ensure gender equality. It cooperates with national and international bodies and organisations, in particular with the Council of Europe. It also works closely with civil society organisations. The Agency does not have powers to review individual complaints. It publishes thematic and annual reports on issues related to the basic rights included within its scope of activity. The basic task of the Agency is to collect, register and analyse information and data and to present these to the relevant Community institutions. Special attention is paid to the development of communication strategies and to scientific cooperation.

\textsuperscript{23} See: \url{http://www.eumc.eu.int/fra/index.php?fuseaction=content.dsp_cat_content&catid=2}
The **European Commission against Racism and Intolerance** (ECRI)\(^{25}\) was established by the Council of Europe. It is an independent human rights monitoring body specialising in questions relating to racism and intolerance. The basic difference with FRA is ECRI’s work programme with its “state-by-state approach, whereby it analyses the situation as regards to racism and intolerance in each of the member states of the Council of Europe and makes suggestions and proposals as to how to tackle the problems identified. The work takes place in 4/5 year cycles, covering 9/10 states per year. The reports from the first round were completed at the end of 1998 and those from the second round at the end of the year 2002. Work on the third round reports started in January 2003. These reports examine whether ECRI’s main recommendations from previous reports have been followed and implemented, and if so, to what degree of success and effectiveness. The third round reports deal also with “specific issues”, chosen according to the different situations in the various states, and examined in more depth in each report.”\(^{26}\)

National reports do not simply collect and present data, but also assess the changes and progress in implementation of the EU directives, and monitor the results. They contain recommendations and exercise pressure on national governments. The third report on each state pays special attention to international legal instruments, specialised bodies and other institutions, and to access to public service and education. The reports consider carefully the status of non-citizens in all six states. All have received recommendations to mitigate the spread of prejudice and negative stereotypes through the media. Specific features of each state are described in the Third national reports for the period 2004 – 2006 \(^{27}\).

The **Committee on the Elimination of Racial Discrimination** (CERD)\(^{28}\) to the Office of the High Commissioner for Human Rights is based in Geneva, Switzerland. States party to this agreement are required to submit comprehensive reports to the Committee every four years, with brief updating reports at intervening two-year periods. When a report comes before the Committee for examination, a representative of the state concerned may introduce it, answer questions from the experts and comment on the observations they make. The Committee's report to the General Assembly summarizes these proceedings, and offers suggestions and recommendations.

\(^{25}\) [www.coe.int/t/e/human_rights/ecri](http://www.coe.int/t/e/human_rights/ecri)

\(^{26}\) ibid

\(^{27}\) See for details: [http://www.coe.int/t/e/human_rights/ecri/1-ecri/2-state-by-state_approach](http://www.coe.int/t/e/human_rights/ecri/1-ecri/2-state-by-state_approach)

The organisation relies especially on NGO reports and has the power to review individual complaints. The 64th session of the organisation\(^29\) (23/02- 12/03 2004) reviewed the periodic reports of 9 states and discussed the issues of racial discrimination and non-citizens’ rights.

There are two international NGOs whose reports are relevant for this project:  
**The European Network Against Racism** (ENAR) is a network of European NGOs working to combat racism in all EU member states and represents more than 600 NGOs throughout the European Union. “ENAR is determined to fight racism, xenophobia, anti-Semitism and Islamophobia, to promote equality of treatment between European Union citizens and third state nationals, and to link local/regional/national initiatives with European Union initiatives. ENAR issues a Weekly Mail every week, compiling information on European and national news items which may be of interest to its member organisations. ENAR produced 26 state-specific Shadow Reports in 2006.”\(^30\) ENAR has published an EU-wide Shadow Report identifying trends concerning the phenomenon of racism in the EU during 2006. “The reports deal with the many faces of racism and discrimination in Europe at both legislative and local level, from policy to practice. They are a compilation of grassroots data collected by a large network of NGOs.”\(^31\) Even where there is extensive official data, NGOs offer a vital alternative data source that comes directly from the experiences of those individuals and communities experiencing racism on a daily basis. The ENAR Shadow Reports are produced to fill the gaps in the official and academic data, to offer an alternative to that data and to offer an NGO perspective on the realities of racism with the EU and its Member states.

**The European Women’s Lobby** (EWL)\(^32\) is the largest umbrella organisation of women’s associations in the European Union. The EWL Secretariat is based in Brussels, but EWL has member organisations in all EU Member states. “The European Women’s Lobby aims at promoting women’s rights and equality between women and men in the European Union. EWL is active in different areas such as women’s economic and social position, women in decision-making, violence against women, women’s diversity etc. EWL works mainly with the institutions of the European Union: the European Parliament, the European Commission and the EU Council of Ministers.”\(^33\)

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\(^29\) See for details: [http://www. unhchr. ch/html/menu2/6/ cerd-reports64. htm/ noncitizensE. pdf](http://www. unhchr. ch/html/menu2/6/ cerd-reports64. htm/ noncitizensE. pdf)  
\(^31\) The following address contains the reports concerning all six states included in this study: [http://www.enar- eu. org/Page_Generale. asp?DocID=15294&la=1&language=EN](http://www.enar-eu. org/Page_Generale. asp?DocID=15294&la=1&language=EN)  
\(^32\) See for details: [http://www.womenlobby. org/site](http://www.womenlobby. org/site)  
\(^33\) ibid.
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<th>State</th>
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<td>Sweden</td>
<td>DO (Ombudsman against ethnic discrimination) JämO (The Equal Opportunities Ombudsman) Local antidiscrimination agencies Statistical central departments (SCB) papers and yearly statistical reports, and their journal <em>Welfare</em></td>
<td>Resolution of gender/race discrimination at a central level.</td>
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All of those connected with government organisations, independent agencies, NGOs, and migrant organisations in the six states publish reports related to gender/race issues. These take the form of annual reports, experts’ reports and studies and analyses on discrimination provided by research centres. The national reports comment on the scientific activities and their results. All partners pay special attention to the data from organisations working directly with migrant women or minority group members who have suffered discrimination. All reports have started identifying individuals to be interviewed: representatives of the various government institutions and organisations; experts who receive complaints and those related to support organisations who resolve concrete cases; academic researchers and scholars; lawyers working on gender / race discrimination issues, trade unions etc. It is also planned to take advantage of the information potential of the media and cinema (see the reports from Spain, France and Germany). The general impression with regard to the main statistical data about gender and race discrimination complaints and cases is that the materials of the central and local government and those of the independent organisations are specific to each state.

The comparative analysis reveals some differences among the states:
- In France the most important data on race and gender complaints is provided by HALDE, the police and the Justice System data.
- In Sweden the emphasis is on the Ombudsman’s activities in the field of discrimination.
- In Spain, complaints are received and collected by NGOs and government bodies.
- In France and Bulgaria the institutional framework, established by the state and the European Commission, is well developed and functional, which presupposes that the issues related to the gender / race discrimination are resolved at a central level.
- The institutional structure in the UK is extremely strict due to the existence of the Equality and Human Rights Commission.
- Germany provides an example of a good balance between official and independent institutions, a fact possibly explained by its federal structure.

With regard to NGOs, in all the states under investigation a strict separation could be observed between organisations specializing in gender issues and others dealing with minority and migrant groups. Apart from some isolated cases, there are no organisations with clearly formulated functions in the field of double discrimination. Even so the NGOs are an extremely useful source of information, as is clearly displayed in the Spanish, French and Bulgarian reports. It should be remembered that the NGOs frequently have greater experience than national bodies and represent valuable points of reference for the national bodies.

2.6. Current debate on race and gender discrimination at European level

2.6.1 Current debate

The basic issues in the expert and/or public discourse in the six states are generally similar. The differences relate to the extent to which a given issue is part of the public or the expert debate, the extent to which different aspects of the issues are included in the discussion, and the amount of studies related to the corresponding issue.

a. On the use of ethnic statistics to measure discrimination

Only two of the six states – the United Kingdom and Sweden – have a clearly established tradition of officially collecting data and using information related to ethnic identity. This is considered a prerequisite for adequate policy and interventions with the objective of combating inequality and the discriminatory treatment of different groups within the general population. This issue has recently been extensively discussed in France and was resolved with the decision of the Constitutional Council in November 2007 to prohibit the use of racial or ethnic origin in studies that aim to measure diversity (Decision No. 2007-557 DC of 15 November 2007).
In the rest of the states investigated the issue of the absence of information collected systematically for the purposes of integration and/or antidiscrimination policy, and the need for such information, is a subject of specialized interest only (scholars in the social sciences and NGO activists). These states have at their disposal limited and unsystematic data on some specific features of different ethnic and/or linguistic and/or religious groups, collected mainly through research studies conducted by scientific and non-governmental organisations.

b. **On the implementation of positive action with regard to groups in disadvantaged situations: ethnic minorities, immigrants, women**

The United Kingdom is the only state with a clear and systematically implemented political will for positive action with regard to groups in disadvantaged situations. The systematically collected data on ethnicity, religion and language is used mainly for the implementation of this positive action policy.

In France, the positive action policy is generally not accepted as a result of traditional adherence to the republican model under which the citizens of the state can by no means be distinguished on any grounds. Nevertheless, it is precisely France that has been applying a positive action policy in relation to women for years (See Roudy Act, 1983).

In Sweden, scientific research often is the basis for official political decisions (for example much research referred to is presented in SOU - Swedish Government Official Reports - that are produced by researchers).

In Germany, the implementation of the antidiscrimination directives has raised a broad public discussion. It took five years (2001–2006) to enact the General Equal Treatment Act, based on the four European antidiscrimination directives.

In Spain, summaries of national policy and surveys of the status quo are plentiful at this point, but studies of how to effectively implement national policy in local and specific cases are few. The existence of numerous institutional reports on the recent changes in race antidiscrimination legislation is indicative of the lack of progress being made in relation to the actual practical implementation of this new legislation.
In Bulgaria, despite the existing factual data displaying the discriminatory attitude against the Roma and the traditional underestimation of women (predominantly within the Roma and Turkish community but also in Bulgarian society as a whole), it should be emphasised that there is no actual public debate on these issues. The results produced by studies on Roma and gender issues do not have any effect on the public and fail to attract public interest.

c. On gender discrimination

A public discourse on gender is present in all six states but it is usually restricted to separate aspects of the issue, being partial rather than general and systematic in nature. The theoretical and academic depth of the discourse and the variety of research topics depend on when the gender debate emerged in each state. In the United Kingdom, Sweden and France the issue became popular in the 1980s, in Germany and Spain – in the 1990s, in Bulgaria – during the last decade. Very often, the topics of the debate and research are directly provoked by the media, public opinion or some influential institutions which tend to set the general agenda (see the case of the Institute for Women’s affair in Spain). The basic topics which usually attract public interest are: domestic violence, inadequate representation of women at the higher levels of the state institutional hierarchy and/or in some sectors of society; and sexual harassment, human trafficking and prostitution. Some of the discussions focus on women belonging to groups in disadvantaged positions (immigrants, Roma, victims of trafficking) while in other cases the debate is related to women in general.

d. On race discrimination

The academic and public debate on discrimination based on race is also historically determined in different states. In the United Kingdom where the diversity of the population is traditional and the legislation against race discrimination was enacted in 1976, there is extensive literature on the issue. In France there was little scientific literature on racial discrimination in general until the 1990s.

In Germany, research on racism began slowly in the 1990s with a study of incidents and surveys among foreigners about their perceptions of racism. The academic research was minimal. But it became more important throughout the 1990s, when it started dealing with violence against foreigners which increased after German unification and the opening up of borders from East to West. It took longer before the concept of racism was recognised as a
potential area of academic research, since it was very much associated with National Socialism and stigmatised as something associated with the Holocaust and its racist ideologies.

In Spain, the current debate is still very much dominated by studies on the theoretical causes of racism, a subject that has now been in vogue for decades but which has failed to reach any definitive general conclusions concerning root causes or universality. Although the general interest in this debate has been consistent for some years the particular focus of the debate is constantly changing and is somewhat led by fashion. Current studies, implicitly accepting the ongoing and extensive presence of racism, tend to focus on the promotion of human rights as the antidote-like solution to the problem. Social analyses of the particular situations and social dynamics that generate racist attitudes and behaviour within communities appear to be out of favour and now represent exceptions to the general rule.

**e. On double discrimination and intersectionality**

The debate about discrimination on more than one ground depends on the level of scientific research and public awareness in different states. In the United Kingdom, as early as 1992, it was discussed how the law should deal with situations in which both sex and race discrimination are targeted at the same individuals (black women). Consequently, the problem of double and multiple discrimination and the issue of intersectionality became a focus for academic and public debate. Recently the debates about discrimination have shifted from a focus on formal equality to a focus on a more substantive equality. This shift has been followed to some extent by the legislation establishing the Race, Disability and Gender Equality Duties. It has also led to calls for a more comprehensive and inclusive single equality act to replace the many acts and regulations currently prohibiting discrimination, a call which has now been taken up by the Government and which should result in a Single Equality Bill in the foreseeable future.

In the other states within this research, the issues of double/multiple discrimination and intersectionality are rather new but nevertheless attract the attention of numerous researchers and NGO activists. In France, the overlapping of racism and sexism has only recently been addressed. It has been argued that this is the result of the dominance of gender and class analysis during the 1970s. But it is also because French feminist scholars, whose education is
based on the principles of universalism and egalitarianism, have tended not to see women as a diverse group.

Germany was to some extent sensitive to parallels, differences and overlaps of the categories of gender and ‘race’ which were evolving, most explicit in the transnational gender research. In Germany, this awareness became stronger towards the end of the 1980s, specifically in relation to the inequalities created by other institutional and structural factors, especially the instances of ethnicity/ racism and social class.

In Spain and Bulgaria, double discrimination and intersectionality are only now emerging as part of the current race and gender antidiscrimination debate. At present the discussion is restricted to describing what double discrimination and intersectionality are, outlining the potential advantages of this approach over previously adopted analytical frameworks and suggesting possible practical applications for these concepts in the antidiscrimination struggle.

2.6.2 Science and research

Racism and the unequal treatment of women, combined with the issues of identity, migration, immigration, social exclusion and social integration (as opposed to assimilation) have been the subjects of research (and the motivation for commitment to civil rights) on the part of scholars during the entire 20th century. During the last decades and in relation to the formation of a general European political and legal framework for the complex and, to a great extent nationally specific, issues of relations among members of different (and established on different grounds) historically formed groups of the population, the attention has shifted to the discriminatory practices which produce social exclusion and impede social integration. These discriminatory practices de facto violate and/or restrict human rights despite the existence of political and legal international and national instruments. These discriminatory practices are based on historically formed and permanently rooted prejudice and negative attitudes concerning human differences. Interest in these issues brought to the attention double discrimination issues and in more concrete terms the discrimination against women who are members of traditional minority or relatively new immigrant communities.
The studies mentioned in the national reports are dedicated to several spheres. These studies are directly or indirectly influenced by the fields of manifestations of racism and religious discrimination formulated in the European documents:

- employment,
- housing,
- education,
- health,
- policy and law instruments,
- racist violence and crime,
- access to goods and services in the public and private sector,
- media.

The studies in the separate states are also directly related to the specific social structure of the respective national society, its traditional ethnic and/or religious and/or language groups, as well as to the immigrant communities formed over the course of the past decades. Specific manifestations of racial, ethnic, religious, national and gender discrimination are identified and studied. The social research carried out for the national reports effectively highlights the issues of multiple discrimination (or double discrimination) and more specifically the intertwining of racial and gender discrimination against women belonging to minority/immigrant communities.

Most of the studies in Europe are related to the activities of official institutions dealing with discrimination and to some of the large European NGOs (e.g. ENAR, the Helsinki Committee, ECRI). There has been an increase in the number of comparative international studies funded by the European Union.

Studies on these issues are being published in periodicals and as separate books. The expert opinion of the scholars is an important source in relation to the formulation and discussion of discrimination issues and also with regard to the introduction of new institutional and legal instruments on both national and European level. The most recent debate in the EU is focused on providing a uniform protection across all grounds of discrimination and not on creating a hierarchy of rights between grounds. 2007 was European Year of Equal Opportunities for All. One of its outcomes was the EU Council call to member states and the European Commission “to not only ensure existing antidiscrimination laws are effective, but also to strengthen
efforts to prevent and combat discrimination based on sex, race or ethnic origin, religion or belief, disability, age or sexual orientation, inside and outside the labour market and to take full account of multiple discrimination when designing laws. The European Parliament itself has repeatedly called for legislation to “level up” protection across all grounds of discrimination. These political commitments have contributed to the stated aim of the European Commission to bring forward legislation which will ensure that discrimination is prohibited on all grounds in access to goods and services so as to achieve this necessary harmonisation and “levelling up” of protection.” This has led to the Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM (2008) 426 of 02/07/2008), which will extend the protection under Council Directive 200/78/EC to all the areas covered by Directive 2000/43/EC.

Of main concern to the NGO activists is that “the current antidiscrimination legal framework is limited in its ability to address the issues of institutional discrimination, structural or systemic discrimination and segregation, including spatial and educational segregation as well as the lack of protection against discrimination on grounds of racial or ethnic origin in the area of criminal justice, which in many states is defined as outside the scope of the race equality legislation.” ENAR Shadow Reports also indicate lack of effective protection for third state nationals, against discrimination based on nationality and in the areas of asylum and immigration, as very often immigration matters are excluded. The main problem identified by the ENAR analysts is that “while the antidiscrimination directives offer a high level of protection, their implementation has demonstrated gaps in the overall legal framework for the protection against racial discrimination, compounded by inconsistent and incomplete implementation of the Racial Equality Directive across the EU member states.”

The GendeRace project reveals the extent of awareness to those problems in the six states and the measures being taken to solve them.

36 ibid
37 ibid
2.7. Common trends of EU framework

The analysis included in this section is based on the conclusions from specific state reports elaborated for GendeRace.

- Presence of discrimination practices in all six states.

Expert opinions reveal that the main victims of discrimination in France, Germany and Spain, are immigrants and citizens with ethnic origins different from that of the majority of the (indigenous) population. Typical victims of discrimination in every state are the Roma who are the basic target of discrimination in Bulgaria. Women are typical victims of discrimination in certain spheres of society. As a consequence, it could be expected that female members of the groups suffering discriminatory attitudes be subjected to double or intersectional discrimination, regardless of the fact that the situation may not amount to such type of discrimination from a legal viewpoint.

- The issues of discrimination and protection from discrimination policy are subject to public and expert discourse in all six states.

Public debates are typical for states with long-standing traditions of receiving significant number of immigrants and refugees from Asia, Africa and America – France, Sweden, and the United Kingdom. Expert debates predominate in Germany and Spain. In Bulgaria the debates are exclusively on expert level. The debates are focused on several key issues: how to collect credible information about individuals who are considered potential victims of discrimination; by whom, how and why are discriminatory actions performed; how discrimination should be combated; is the anti – discrimination legislation in force efficient.

- All six states have enacted in recent years antidiscrimination legislation, following the EU antidiscrimination policy.

In Sweden and the United Kingdom, the antidiscrimination legislation has a long-standing history. France has a law postulating equality between men and women. In the rest of the states the antidiscrimination provisions were originally introduced as general principles in different statutes.
During the last years all states have adopted statutes implementing the EU directives. The extent to which the new legislation is efficient in combating discrimination will be established after we have done the comparative analysis of case-law and structured interviews with experts from the corresponding states.

- Bulgaria and Germany have transposed the basic EU antidiscrimination directives by the means of a single statute (The Protection against Discrimination Act, 2004; The General Equal Treatment Act, 2006, respectively). France, Spain, Sweden and the United Kingdom have enacted different statutes, which provide antidiscrimination protection in different social spheres and on separate grounds. In the UK, a single Equality Act 2010 will replace the diverse antidiscrimination statutes.

Bulgaria, Germany, France, Sweden and the United Kingdom have a single official national institution, before which individual victims of discrimination can complain, while the other three states have two separate official institutions at national level. All states possess data on the complaints filed – these complaints being a basic subject of this research. The number of the complaints filed is significantly higher in the states with greater experience in the field of anti–discrimination legislation (Sweden and the United Kingdom). It is a common feature of all six states that the percentage of the complaints which are brought before the court is low. It is to be established whether this phenomenon is caused by legislative shortcomings and/or by the relatively low legal culture in the antidiscrimination sphere, the latter being typical for all six states, according to the experts.

- Both on European and national levels, (with regard to all six states) NGOs exist which act to popularise the antidiscrimination legislation, assist the filing of complaints by persons who have been affected by discrimination practices, organize antidiscrimination training courses for the potential victims of discrimination practices; collect information and conduct studies.

The United Kingdom is the only state where an official institution has been collecting data on ethnic grounds for a significant period of time. In all other states the data concerning the ethnic structure of the population and the ethnic/national origin of the immigrants have been collected inconsistently – by separate NGOs or through scientific studies. The absence of
systematic data on groups which are potentially threatened by discriminatory practices creates obstacles for the proper assessment of the situation in the separate states. The available information has to be collected from the various sources and classified. The interviews with claimants and applicants appear to be the only source to establish their origin and the specific circumstances which have led to the complaint.

- In all six states the discrimination case-law is usually based on a single ground: ethnicity, nationality, gender, etc. There are, however, some examples of complaints based on more than one ground of discrimination.

The United Kingdom has a case where a claim has been filed on two grounds but this approach has not been affirmed on the appeal. The Bulgarian Commission for Protection against Discrimination has issued several decisions dealing with multiple discrimination (although the currently available ones do not deal with gender/race). The investigation of the separate cases and complaints, the interviews with applicants and experts should allow the project teams to detect the typical discrimination practices and to analytically identify the possibilities for amendment of the legislation and case law in the direction of recognition of cases of double, multiple and intersectional discrimination.
Chapter 3: Methodology of the Investigation

by
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3.1. Introduction

There has been a burgeoning literature on multiple discrimination and the interaction between different axes of discrimination or intersectionality as well as the absence or inadequacy of legal measures to deal with these issues. Much of this literature focuses either on theoretical aspects or on a single country situation with some consideration of differences between two countries. An example of the latter is the comparison of different attitudes towards and systems of multiple discrimination in the UK and Canada, or the UK and Germany (Moon 2007). Often the analysis of these differences is based on a comparison of significant case studies. Although this is important to furthering our understanding of how multiple discrimination is treated in different states, there has been little attention paid to investigating how multiple discrimination, and especially gender and race, is experienced by a large number of individuals in a range of countries with different histories of migration and antidiscrimination policies and strategies. Even less literature is available on the methodological issues of conducting comparative or cross-national research across a large number of states as is the objective of the GendeRace project. Thus in the Glossary we firstly address some general aspects of cross-national European research as they apply to this project and then outline the issues, problems and procedures to be followed. In the methodology session held at Middlesex University in London on 20-22 May 2008, we presented some of the key considerations relevant to the application of concepts (definitions provided in the chapter of the glossary) and methods to be used in the subsequent empirical research.

The first section in this chapter focuses on issues of conducting international comparative research. Given the diversity of historical and contemporary differences in tackling discrimination and the groups that are primarily the target of discrimination, we need to consider the impact of the range of countries within the study. Within this particular study, the countries range from those with long histories of recognition of discrimination and legislation in place to tackle discrimination, especially sex and race (Sweden and THE UK), to those with only very recent experience (Bulgaria, Spain). In others, such as France and Germany, there had previously been resistance to recognising the ethnic and racial basis of discrimination and hence of putting in place relevant legislation. In this case the development of EU directives has been crucial in stimulating debate and legislation.
Having selected a range of countries, there are a series of differences which also impact upon the conduct of the research. For the purposes of this project, some of the most significant differences are the basic and often contested concepts, such as ethnicity and race; availability and access to personal data, especially that which is defined as sensitive; the sectors covered by discrimination legislation and data collection, primarily employment and housing; and the regulatory ethical framework governing research into human subjects. These differences may come into play to a greater extent and be more significant in some phases of the project than in others. For example, issues of accessing complainant files may pose considerable problems in some countries due to the operation of regulatory frameworks and interpretations of data protection and transfer to third parties. On the other hand, there may be fewer problems raised in interviewing stakeholders where access and consent may be obtained directly without the need to rely on intermediaries, such as NGOs and public bodies.

All of these dimensions render the research process extremely complex. However there has been relatively little reflection by researchers on the methodological implications of their research and how in particular they have proceeded from one level and phase to another, from objectives to outcomes and how in their comparative analysis they have sought to connect up the different types of data and results. In this report we have referred in particular to the publications on comparative research methodology produced by some recent European Union projects which have addressed topics such as the selection of countries (Hantrais 2006), contextualisation, the relationship between the production of data and its analysis (Brannen and Nilsen 2006), the meaning and interpretation of contested concepts and their transportability across societies (Cameron and Moss 2006). In addition, we have drawn from the valuable surveys of access and availability of ethnic statistics and data protection concerning EU and Council of Europe states (Simon 2004, 2007).

The next section of this chapter focuses on the major issues confronting comparative research. These include differences in the meaning of concepts, contextualisation, the availability and coverage of comparable statistical data, and the regulatory framework governing the ethics of the research process with human subjects and its application.
3.2. Comparative Research

3.2.1 Contested concepts

Contestation of concepts may take place in a comparative project in a number of ways:

- Country unique concepts that are not prevalent in other countries
- Contested concepts
- Concepts with differing salience

Different examples can be given from past EU projects of concepts with different meanings and salience. Some may be poorly understood in one society, whilst at the same time commonly used in another. For example precarity is not commonly used in the UK but is in widespread use in European social sciences (Waite 2009). In Care Work in Europe: how do we compare? Claire Cameron and Peter Moss outlined the nuances of meaning in five countries of the core concept of ‘care’. Their conclusion is that:

There is always the need to get results, to be pragmatic, to overcome language difficulties as barriers, and not enough time and space to explore the subtleties of meaning through non-comprehension …This seems to hold up the work, those representing lesser spoken languages come to regard this as their personal problem...And yet, it would be precisely the non-understanding which could give us the most valuable clues to differences in meaning, to the need for further clarification of familiar terms and concepts, to the transformation of taken-for-granted perspectives into creative, shared knowledge’

Walter Lorenz, 1999

In the GendeRace project, the concepts of ‘race’ and ‘ethnicity’ were the most contested. In many countries ‘race’ is not used, usually due to historical reasons and concerns that the use of the word implies the reality of the object, i.e. that races as a biological division of society actually exist. There were lengthy discussions about whether the term should be used with inverted commas to convey the sense that it is not a real but a constructed category. Recital 6 of the Council Directive 2000/43/EC Implementing the principle of equal treatment between persons irrespective of racial or ethnic origin states clearly that “The European union rejects theories which attempt to determine the existence of separate human races. The use of the
term ‘racial origin’ in this Directive does not imply an acceptance of such theories’. However, though commonly defined as imagined communities and an ideological category, there is still resistance to its application in the classification of populations.

Critiques of the fixity of ‘race’ have led to other concepts being developed to give the sense of a more dynamic and constructed, rather than being a biologically fixed, category. For example, the term, ‘racialisation’ (Miles 1989) has been taken up by many scholars (Murji and Solomos 2005). It refers to the ways in which racial ideas are constructed to define differentiated social collectives and applied as the basis of exclusionary practices.

At the same time, the power relations in which racial discrimination occurs are not necessarily straightforward. At a local level, as in the workplace, specific power relations may result in dominant groups at a national level being discriminated against. An example would be the case of an Asian male manager discriminating against an older white woman. Thus other categories, such as age, may complicate racial and sexual discrimination. This complexity or intersectionality of discrimination seems to be more apparent in the UK with its longer history of diverse migrations and antidiscrimination legislation.

Ethnicity too, which is often linked with race (Fenton 2010), has widely varying definitions. The principles and recommendations for population and housing censuses, Revision 2, Draft, United Nations, September 2006 (Simon 2007: 28) affirms it as a social construct with fluid boundaries (cited in Simon 2007). The UN defines it in the following way:

“Ethnicity is based on a shared understanding of history and territorial origin (regional and national) of an ethnic group or community as well as on particular cultural characteristics such as language and religion…Ethnicity is multidimensional and is more a process than a static concept, and so ethnic classifications should be treated with moveable boundaries”.

As Fenton (2010:3) notes, ethnicity refers to the social construction of descent and culture, its social mobilisation and the meanings built around them. However there is a wide variation in whether data on ethnicity is officially collected with the UK being the only Western European country to do so since 1990. There are, however, only detailed classifications for the minority populations, mostly on the basis of race (colour),
national categories, and more recently, mixed categories. In Europe in general, place of birth and nationality or citizenship are more likely to be available as proxies of social differentiation. Nationality is the most common form of enumeration in censuses in Europe (Morning 2008), while the collection of ethnic data may be strongly disputed and contested (see discussion of French conflicts around this issue in the next section).

3.2.2. Accessing comparable data.

In the report in 2006 to the Council and European Parliament on the application of Directive 2000/43/EC (cited Simon 2007:68), the Commission noted the crucial role which could be played by statistics in activating antidiscrimination policies and referred to the misunderstandings in the relationship between data protection and the production of statistics on discrimination. As we have indicated, there are substantial variations in data collection which are influenced by national conventions. The source of data, the purpose for which they were gathered, the criteria used and the method of collection may vary considerably from one country to another. The categories themselves may change over time reflecting policy concerns and the changing population being studied. In turn this raises issues of how discrimination and equality of opportunity may be measured and monitored without statistical evidence (Simon 2004).

In terms of data relating to individuals, legal provisions come from the European Directive of 95/46/EC 1995 “on the protection of individuals with regard to the processing of personal data and on the free movement of such data” which has been transposed into all EU countries and aims to guarantee citizens’ privacy by enforcing respect for anonymity and to restrict the collection of ‘sensitive’ data (the list of these data will correspond to grounds of discrimination) to certain conditions. All EU states have transposed the Directive on the processing and transmission of the such information. Whilst Article 8 prohibits the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and the processing of data concerning health or sexual life, there are a number of principles which authorise exceptions on certain conditions to the collection of what is defined as sensitive data. In some countries interpretation is strict and only data explicitly referring to ‘ethnic’ or ‘racial’ origin’ are prohibited; in others it is broader and includes anything that may act as a proxy, for example nationality, country of birth and name.
All countries include a list of exemptions to the collection of sensitive data but the grounds of exemption are not the same in each state. It may exclude employment or health and vital interests and files kept by NGOs. The latter may be permitted to keep such data on the condition that the processing relates solely to the members of the body and that the data are not disclosed to a third party without the consent of the data subjects (Article 8(2d). On the other hand, there may be highly sensitive areas such as social welfare where proxies are prohibited even though information is collected in the census, for example on nationality and place of birth in France38. Finally, states may lay down exemptions for reasons of public interest (Article 8(4), as is the situation in the UK.

As Simon (2004) has commented “When ‘racial’ (or equivalent) categories are created their congruence with the personal identity of individuals is always a subject of dispute, while the extent to which equivalences are realistic determines their salience within a policy on equal treatment”. One of the main constraints to collecting data on discrimination comes from the laws and judicial precedents prohibiting intrusion into people’s private lives and governing the conditions under which computerised data can be collected and disseminated. Different balances may have been struck between the need to identify in order to document discrimination and the protection of people’s private lives and which are often reflected in the ethical regulations and the stringency with which they are applied.

Only the UK has an established tradition of collecting and using data on ethnic minorities and identities. It is based on laws and regulations governing the production of sensitive statistics which are laid down in the Race Relations Acts (1976 and 2000) where it is argued that there is a need to collect data for the purposes of ethnic monitoring which can be used to highlight potential inequalities, investigate their underlying causes and remove unfairness and disadvantage (Simon 2007: 42). Promoting equal treatment is also mentioned in the list of exemptions from the Data Protection Act 1998. Apart from Belgium and the Netherlands, other Council of Europe countries have not modified their data protection laws to align them with equal opportunities policies.

Most of the old EU states collect information on country of birth and citizenship, whilst the UK, Ireland and the Netherlands collect information on ethnic group and religion and in

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38 The Commission Nationale Informatique et Libertés deemed in 1980 that data in this area could only be collected by three headings: French, EU alien and non-EU alien (Simon 2007: 19).
Denmark parents’ country of birth. In France, permission to collect personal data must be requested from the CNIL whose powers were established with one of the first data protection laws in Europe in 1978. In 2005 it acknowledged “that the aims of combating discrimination in the matter of employment are legitimate in terms of public interest but considered that in the absence of ethno-racial typologies, on which it expressed strong reservations, there was no purpose to analysing names or nationality (Simon 2007: 49-50). There has been a lively public debate on the collection of ethnic statistics but the decision not to collect such data on race and ethnicity has been reaffirmed in France in the decision of the Constitutional Council in November 2007 to prohibit the use of racial and ethnic origin in studies which seek to measure diversity (Decision no. 2007-557 DC 15 November 2007). However since its inception in 2005 the High Authority against Discrimination and for Equality has been analysing the complaints submitted to it as an indicator of the kinds and grounds of discrimination being experienced. Nevertheless it has been possible in the past few years to study the situation of descendants of immigrants in France drawn from data on tests for job seekers and applicants for housing.

In Germany, the transposition of Directive 95 in 2003 stipulated that a key condition of the collection of statistics was ensuring that personal consent is obtained. Federal agencies and public sector are subject to greater supervision than private sector organisations. However case law on collection of ethnic statistics is very limited. It is only since 2005 that the migrant background of men and women has been collected in micro censuses. However data on discrimination are incomplete. Not only is there no official data on discrimination in employment but there is also little non-official data (Baer, 2005 cited in Simon, 2007). There is also little public debate on discrimination and antidiscrimination, and on the collection of statistics except for some NGOs and researchers. However some larger cities, such as Berlin, Wiesbaden, Essen and Stuttgart, are beginning to set up systems to collect data on integration which includes discrimination. For example, Berlin produced Antidiscrimination Report 2005-7.

There is less systematic data available in some countries due to the recency of their immigration flows and/or development of antidiscrimination legislation. Collection of such data may be the subject of interest by academics and undertaken in small scale studies or by NGOs, both of which only yield a very partial coverage, as is the case of Spain. We also have to take into account major differences in significant groups. Though present in all countries,
the Roma, probably the most disadvantaged group in Europe, only form a numerically significant population in Bulgaria where they constitute the main victim of discrimination.

Significant data for collection also changes over time. Thus familiar categories such as ethnic minority in the UK, which are embedded in legislation and have until recently determined who may benefit from protection against discrimination, may impede the way we understand more recent changes that have sought to extend the groups covered by legislation. The categories of data collection on ethnicity need to be flexible and incorporate a subjective appreciation to take account of duration of settlement, mixed marriages and diversification of flows. For example, in the UK the original ethnic classification was developed in response to post colonial migration but has in recent years been modified to take account of political representation by groups such as the Irish, who though ‘white’, were able to demonstrate considerable discrimination in terms of a number of economic and social indicators. Inter-marriages between ethnic groups have generated an increasing number of children in mixed categories. Discrimination against other ‘white’ groups such as the Eastern Europeans has become more common but it is difficult to assess due to their inclusion in the broad category of ‘white’. Many Middle Eastern migrants also classify themselves as ‘white’. These developments require a much more sophisticated understanding of processes of racism and racialisation beyond a simplistic ‘black’ and ‘white’ dichotomy. Gender statistics too use the broad ethnic categories rather than country of birth or nationality which would capture more accurately recent changes in immigration and groups subject to discrimination.

Another variation is the collection of data on religion which is included in official statistics in a number of countries such as Bulgaria, Germany, and the UK in the 2001 census but not in ethnic monitoring forms. As Muslims have been subjected increasingly to harassment and discrimination in the past decade, belief and religious identity, including dress and especially the wearing of the headscarf, have become the object of exclusionary and discriminatory practices. In this regard, discriminatory practices have a gender dimension, especially in relation to education and employment.

Though only providing limited coverage, it is NGOs who are more likely to collect data on the newly recognised forms of discrimination. As we have noted, NGOs have an important role to play in raising awareness of different forms of discrimination and the interaction between them (Simon 2004), particularly where there is constitutional opposition to the
collection of data or simply lack of official data. It is often easier to gain direct access to NGO data than that collected by official bodies. Of course, information on characteristics of perpetrators and victims of discrimination, which are of relevance for the study of multiple discrimination, may have never been compiled. Furthermore, we need to take into account that the data collected by official bodies and NGOs may not be the same.

3.2.3 Contextualisation

Contextualisation refers to the way in which we make sense of data assembled as part of a cross national enquiry – how we interpret it in relation to something wider than the cases analysed and data gathered ((Brannen and Nielsen 2006). As the studies of case files and individual interviews demonstrate, the contexts in which data has been compiled, and the relationship between the quantitative and qualitative elements, vary enormously.

The interpretation of cross-national data typically means:

- taking account of different types of data. Such data sets are often very different and may involve integrating findings based on qualitative research with those based on quantitative enquiry
- reviewing the literature and making sense of our study findings in relation to the literature
- usually referring to national trend data: it is typical of such enquiry to have a trend mapping phase sometimes involving secondary analysis of such data
- involving the study of documents as in studies that locate themselves in relation to public policy and policies at a supra national level (Brannen 2006)

3.2.4 Regulatory Ethical Frameworks

Ethical regulation may be imposed externally, often from outside the research community itself, as well as those which lie within the remit of the individual researcher or research team (Freed-Thomas 1994). There are four kinds of ethical research controls, but most existing controls will contain elements of all of these:
1. The externally imposed, such as legislation, legal, administrative and contractual arrangements, sanctions, or implementation of technical solutions.

2. Data protection legislation, which we have previously discussed, relates to the protection of the right to privacy of the data subject. As we have seen the procedures contained in the legislation of the various European countries vary greatly, as does the stringency with which they are imposed.

3. Internal review board, to review all proposals for human research before the research is conducted to ascertain whether the research plan has adequately included the ethical dimensions of the project. Many university departments, institutions, hospitals and research organisations have such boards, as do many governmental departments and statistical agencies.

4. Measures operated by archives, data brokers and electronic gatekeepers or monitors to ensure that some, at least, of the ethical principles and procedures are not abused and assisting in the administration of sanctions against misuse of research data, particularly statistical data. The effectiveness of these has considerably eased the problems faced by those contemplating data-based research and facilitated access to anonymised data provided by third parties.

3.3. Methodology in Practice

Methodological considerations are very important in successfully undertaking meaningful comparative research and were addressed throughout the project. Issues of comparability of concepts, contextualisation, access and availability of data, ethical procedures and regulatory frameworks, sampling of interviewees are particularly relevant in the empirical work tasks, namely study of complainant files, stakeholder and expert interviews and interviews with individual women and men concerning their experience of discrimination and the legal and institutional systems in place.

At the first meeting held in London on 20-22 May 2008, sessions were devoted to clarification of the key concepts, issues that these raise for the outcome of the project and achieving comparability in data and sectors for study in obtaining complainant files.
3.3.1. Methodology Workshop Programme

A number of general theoretical issues concerning multiple discrimination and intersectionality and its implementation at European and national levels were presented by Eleonore Kofman, Erica Howard and Helena Wray. The discussion drew upon several key texts (asterisked in references). In the literature three forms of multiple discrimination are often identified (European Commission 2007, Makkonen 2002).

Multiple discrimination
First of all there is the situation in which a person suffers from discrimination on several grounds, but discrimination takes place on one ground at the time. So a disabled woman might be discriminated against in one situation, for example access to a restaurant, because she is disabled, and in another situation she might be discriminated against, for example, passed over for promotion, because she is a woman. Therefore, discrimination takes place on the basis of several grounds operating separately. Sometimes the term multiple discrimination is used for this specific form.

Compound or additive discrimination
The second form is where a person is discriminated against on more than one ground in the same instance and discrimination on the one ground adds to the discrimination on the other ground to create an added burden. In other words, one ground gets compounded by one or more other discrimination grounds. A good example is a situation where the labour market is segregated on a multiple basis: some jobs are considered to be only suitable for men and only some jobs are reserved particularly for immigrants. In such a situation the prospects of an immigrant woman finding a job matching her merits are markedly reduced because of compound discrimination. An example from the British case law is the case of Perera v Civil Service Commission (no 2). In this case, an employer had set out a number of requirements for a job and Mr Perera was turned down because of a variety of factors which were taken into account by the interviewing committee, including his experience in the UK, his command of English, his nationality and his age. The lack of one factor did not prevent him from getting the job, although it made it less likely. The lack of two factors decreased his chances still further. He did not get the job because of a variety of different grounds.
**Intersectional discrimination**

The third form takes place where two or more grounds of discrimination interact and discrimination takes place because of this interaction. For example, a disabled woman might experience specific types of discrimination not experienced by disabled men or by women in general. The grounds interact and the discrimination that takes place cannot be captured wholly by looking at discrimination on one ground separately. The grounds are inseparable. Another example, minority ethnic women might be subject to particular types of racial prejudice and stereotypes and may face specific types of racial discrimination not experienced by ethnic minority men. There is also the problem that a combination of factors might have what Makkonen calls the ‘trigger effect’: person might not in general discriminate against women or immigrants, but the combination of these two factors may trigger discriminatory behaviour.

There is also a burgeoning literature on intersectionality which has become a central concept in feminist writing about identities and inequalities. For a fuller discussion of analytical and methodological issues and their application to transversal studies.

In the workshop, a number of questions concerning the meaning and application of intersectionality were raised.

1. Why the interest in intersectionality and amongst which groups has it been raised – was it at European or national levels?

2. What are the different meanings of intersectionality?

3. What problems have been identified with intersectionality and does each form of inequality have different logics?

4. What are the issues involved in applying intersectional analysis i.e. transposition of different theoretical understandings to concrete situations?

5. To what extent is this form of analysis actually being applied or not in our different countries?

6. To what sectors is it or could it be applied e.g. Employment, access to goods and services, violence including domestic violence?

7. To what extent is sufficient data available in possible selected areas of application?
- Having briefly discussed the different theoretical approaches and how we could put these into practical approaches, we also posed the question of what is the outcome we are aiming at, because this will influence our methodology. Our objectives of policy recommendations and possible proposals for legal changes mean fuller discussion of:
  - Who are we looking at?
  - In what arenas?
  - At what type of discrimination?
  - Implementation of EU legislation for each state. Does it differ from state to state? What sorts of body/bodies have been established?
  - Who uses the law?
  - Who has access to the law?
  - Is there a difference between men and women in this both in making claims and access to claims?
  - What are the channels of access available and used?
  - Is there a difference in awareness between men and women about the available tools?
  - To what extent does lack of legislation/possibility to make intersectional claims hinder/stop people from making claims?
  - Does the lack of recognition of intersectionality influence the making of claims?
  - There followed a discussion of ensuring comparability of data collections and sectors in which discrimination complaints are made. It was suggested that employment, as the area in which discrimination had been applied for the longest time both in terms of sex and race discrimination, should be covered by all partners. However other areas, such as access to public goods and services, education and housing will be looked at, if and when available. However other areas, such as access to public goods and services, education and housing has been looked at, if and when available

The methodological approach for each part of the project was presented by the research tasks leader. Methodological issues were discussed in each transnational meeting, especially in relation to the interviews with stakeholders and experts and with women and men experiencing discrimination and their encounters with legal and institutional systems.
3.3.2. Application of Methodological Approaches

The Interface project on *Immigrants and National Integration Strategies* usefully summarised the different approaches, first outlined by Hantrais and Mangen (1998), adopted in comparative European research. The two strategies cover a *juxtaposition approach* where each partner collects and analyses data for their own country. Drawing out comparative analyses and insights is left to the end of the project. The second one is the *safari approach* where a partner collects and analyses data for a selected theme across all countries. Both approaches have their advantages and problems. The first leaves the comparative analysis until the end, including the problems of working with radically different concepts and data. The second is expensive but, more significantly, may produce ethno-centric findings for each topic (Redmond 2003:10) which reflect the understandings of the partner responsible for the theme and the difficulties of working in institutional structures with which they are not familiar. This becomes particularly acute where concepts and policies are contested, as is the case with race and racial discrimination. In reality, many EU projects combine elements of both approaches such that partners collect and analyse data for their own country (*juxtaposition*) whilst at the same time discussing the different meanings and practices prevailing in each country as well as allocating a specific topic for comparative analysis to a single partner (*safari*). Redmond (2003) recommends cross-national studies, based on mixed nationality research teams this undertaking data gathering processes within their own national/cultural contexts as the best way forward with research teams grounded in their own research context, methodology and findings.

In the case of GendeRace, the five themes were agreed and incorporated in the data analysis. The analysis of each partner for each theme is subject to further comments by the other partners. Furthermore, the analysis of European literature and policy developments and the Glossary are intended to explicate commonalities of debates and concepts.

Many researchers in EU projects also divide their research into levels which may correspond to phases (macro, meso, and micro) with distinctive methodological approaches, as Julia Brannen and Ann Nilsen (2006) have done for their FP 5 project Transitions: Gender, Parenthood and the European Workplace.
In GendeRace, empirical research is divided into the following levels. The initial macro level corresponds to the juxtaposition approach outlined above whilst the safari approach is increasingly applied to comparative analysis of the micro levels:

**Macro**

1. National reviews consisting of statistical data on ethnic minority and migrant populations by gender, documentation on the major groups experiencing discrimination and the development and application of antidiscrimination policy. The general report, based on a comparison of the national surveys, brings out the key similarities and differences in the main groups being discriminated against, whether data on discrimination is systematically collected, and the range of governmental and non-governmental organisations involved in dealing with gender and racial discrimination.

2. European level review of concepts and discussions on multiple discrimination and intersectionality based on comparative and European research and policy making.

**Meso**

*Sampling of case files of complaints made by women and men of racial discrimination using a variety of sources.*

The initial questionnaire schedule has to take into account variations in the availability of data, for example collection of data on country of birth or ethnicity, the range of data to be collected from organisations likely to provide files of complaints. The potential organisations able to provide files and the data they make available in turn constrict the pool from which complainant files are drawn. The difficulty of getting organisations to participate due to time and financial constraints on their part may limit the range of files and cases. On the whole, and due to the emphasis on employment, this will be a key sector of study, although it will not necessarily be as dominant as in the UK.

Some of the main problems in undertaking arise from differences in data collection, the different ethical regulatory frameworks for obtaining information from a third party and their strictness of their application by different organisations. Thus apart from lack of official data, a major problem encountered was the transfer of information to a third partner or to the researcher without the permission of the research subject and their awareness that the
information is being used for research purposes. For example, whilst official data on
employment tribunal cases is anonymised and deposited in archives in the UK, the strict
application of regulations on the transference of information to third parties on public bodies
and NGOs means it is not possible to access directly the main sources of complainant files
held by Law Centres and Citizens Advice. Only personnel from the organisations in question
could access these files but this often involved lengthy negotiations. It is not possible to use
the anonymised official files analysed for subsequent interviews although this link may be
possible with NGOs.

This contrasts with conditions of access in Scandinavian countries where researchers are
permitted direct access to non-anonymised files held by the Ombudsman Against Ethnic
Discrimination, set up in 1999. Though an official organisation, it is possible to interview
their individual complainants. However it should be borne in mind that they estimated that
only 4% of complaints were actually reported to them in the early years of operation (Englund
2002). An analysis of their cases for 1998-2003 demonstrated that they were failing to reach
the most exploited groups. Subsequently they have tried to encompass hard- to-reach groups.

**Micro: Individual semi-structured interviews with complainants and stakeholders.**

In the interviews with experts, the interviews with complainant and the workshops, the
following themes serve as guidelines structuring the interviews and the stakeholder
workshops and the basis of the overarching comparative analysis. Each theme was analysed
by one of the partners with subsequent feedback on the interpretation of the national context
by all partners i.e. applying a safari approach.

1. The impact of gender on the experience of discrimination. The impact of racialised
   identities on the experience of discrimination.

2. The use of institutional and non-institutional resources available to complainants in the
   field of gender discrimination and racial discrimination.

3. The influence of gender and racialised identities on the treatment of discrimination
   complaints

4. The capacity of the institutional and legal framework to handle multiple-discrimination
   based on racialised identities and gender.

5. The collection, recording and public availability of data on discrimination complaints.
Interviews with experts were conducted in the light of the review of national policies and the European review, which will form the background to the interviews with stakeholders and experts. The sample therefore includes a range of legal academic and practitioner experts and governmental and non-governmental bodies working in both gender and race discrimination fields. Ethical regulatory frameworks were less significant in undertaking interviews since it was possible to make contact directly and obtain consent directly. The semi-structured interviews (up to 10 in each country) are designed to fulfil the objectives of this interview, which are to improve the knowledge of the combined effects of racial and gender discrimination, how complaints are treated and how multiple discriminations are treated to assess the effectiveness of policies and suggest best practices in this field.

Interviews with claimants and complainants consisted of semi-structured and biographical interviews with over 120 women and men who have been victims of discrimination and have either made claims or complaints about it. The aim was to reconstitute the events leading to the claim or complaint, the extent to which the they perceived their discrimination as being multiple or intersectional, the extent to which the lack of recognition of multiple discrimination influenced the making of their claims, their representation of the legal and institutional systems, their satisfaction of the proposed solutions for resolving the conflict, and the judgement of the efficiency of the legal framework in fighting against discrimination.

A purposive sample constructing a set of interviews that reflects the range of groups experiencing discrimination was based on the specificity of each country. There may be a bias towards established migrants and minority ethnic groups who are more conversant with the system and more secure in terms of residence and employment i.e. are citizens or have long-term residence permits.

One of the issues was the relationship between the sample generated in the case studies and the sample interviewed. Some organisations were not willing or able to provide interviewees; hence the samples were different, as in Spain, where the interviews included a disproportionate number of Roma and fewer migrants than in the case studies. Different kinds of organisations are likely to supply different types of interviewees and this should be taken into account. Official public bodies and NGOs may differ in the information collected, especially in relation to the sectors and services (employment, housing, entertainment services) in which discrimination is experienced and the groups they cover. Combining these
two considerations will yield different samples. For example, in the case studies for the UK over half the files were generated almost 5 years ago before the arrival of large numbers of Eastern Europeans, who have experienced discrimination. It is believed they make up a significant number of recent clients in an organisation such as Citizen Advice which in many rural areas is the only organisation dealing with advice and complaints on employment, health, housing and welfare. In Sweden, on the other hand, due to its open access to information, the interviewees with complainants were drawn from the files generated for the case studies.

The interviews brought together the individual understanding and experience of discrimination and stigmatisation within society and the institutional and structural conditions shaping it, that is the different facets of intra-categorical and inter-categorical intersectionality (McCall 2005). As Chang and Culp stated ‘it’s one thing to say that race, gender, sexuality, class, and nation operate symbiotically, cosynthetically, multidimensionally, or interconnectedly. The next step is to be able to prescribe or imagine points of intervention’ (2002: 490). The interviews enable us to gain insights into how individuals interpreted the discriminatory practices they faced and how these connected with different aspects of their identity, forms of everyday stigmatization and broader structural forces in society. They also demonstrated that an understanding of multiple discrimination is weakly understood by most interviewees except in Sweden.
Part II: Discrimination based on Gender and Racialised Identities across Europe
Chapter 4: Implementation of European Union Antidiscrimination Legislation: Concepts, Policies and Debate

by

Czarina Wilpert,
in collaboration with Isabelle Carles and Olga Jubany
4.1. Introduction

4.1.1. Overview concerning intersectionality in the European context

An abundance of literature addressing antidiscrimination legislation has been published within the European Union since the implementation of the new EU directives referred to in this overview. There have been a number of official documents and studies commissioned by the EC and publications by researchers, lawyers and other academics as well as the numerous NGOs in the field. Many have addressed issues surrounding the implementation of the Antidiscrimination laws, the potential for the application potential of the concept of multiple discrimination, whether as an additive concept or as a unique group configuration (intersectionality) within these EU laws.

Here, it will only be possible to discuss a selection of what should be the most pertinent and latest publications which often build on the classic publications in this area. The GendeRace research overview must be seen in the context of our main research question which is the impact of gender on the experience, application and uses made of legislation with regard to racial discrimination. GendeRace explores a form of double or multiple discrimination that has been originally identified as intersectionality. The latter term has become the most frequently used in English language academic literature to capture the significance of the intersection of these two categories or grounds of discrimination. Nonetheless, official publications within the European Union which address issues that imply some form of intersectionality prefer to use the term multiple discrimination. This is done with reference to the terminology that is found in international human rights documents and a number of legal documents at the European and at times the national level (Cf. next Section).

With the implementation of the principle of Equal Treatment Directive the EC has explicitly referred in Recital 14 of the Preamble in accordance with Article 3 (2) of the EC Treaty to the aim “to eliminate inequalities, and to promote equality between men and women, especially since women are often the victims of multiple discrimination.”

39 See the appendices for related research that addresses the EU legislation, discrimination and many dimensions of gender/racial/ ethnic intersectionality.
40 It will also be possible in some instances/ countries to control for the impact of racial/ ethnic origins on the experience and use of legislation concerning gender discrimination in the fields of employment, occupational training and education.
As was pointed out in the same text, the EC Framework Directive contains the same reference in Recital 3, but the term ‘multiple discrimination’ does not appear anywhere else in either of these Directives and no definition of it is given. More significantly there is no indication as to how to handle cases of multiple discrimination.

The Action Programme\(^ {41} \) also mentions multiple discrimination a number of times. Firstly, Recital 4 of the Action Programme is similar to Recital 14 of the Race Directive. Secondly, Recital 5 states that ‘the different forms of discrimination cannot be ranked; all are equally intolerable’ and that the programme is intended, among other things, ‘to develop new practice and policy for combating discrimination, including multiple discrimination’.

Finally, Article 2 on the objectives of the Action Programme mentions that ‘the Programme shall support and supplement the efforts at Community level and in the Member states to promote measures to prevent and combat discrimination whether based on one or on multiple factors’. The task of our research is to investigate how these general intentions are addressed and applied within the various national contexts.

The initiators of the GendeRace research base much of their theoretical and methodological concern about the implications of multiple discrimination in the context of antidiscrimination legislation on the pioneer work of black feminists in the US, especially Kimberle Crenshaw (1989) and the debate that has ensued elsewhere especially in the English language literature also in the aftermath of the post-colonial era that stimulated an awareness and in-depth attention to the implications of intersectionality for specific forms of gender and racial discrimination. This debate, which originated in the late 1980s in light of the North American antidiscrimination legislation, has become more refined over time and has spread to other parts of the world. It is important to point out that the original contribution made by Kimberle Crenshaw responded directly to the issue of justice with respect to antidiscrimination legislation in the U.S. for black women. As Conaghan (2009)\(^ {42} \) recently references, Crenshaw argued, “that black women were located at the intersection of racism and sexism. Their experiences were thus the product of both and equivalence of neither” (Op cit, 23). Important in this analysis was the ‘reliance of antidiscrimination legislation on a single axis framework, in which separate claims could be made on the basis of race or sex, but not in combination,


\(^ {42} \) Conaghan (2009) was available in 2008 but the impressum states published by Routledge-Cavendish in 2009.
(it) deprived black women of a legal remedy with respect to their particular experience of discrimination as black women.’

Conaghan continues again with an argument that relates directly to the GendeRace research, “…precisely because that experience was perceived by the courts to be a ‘hybrid’ rather than a ‘pure’ form of race or sex discrimination, it rendered black women ineligible class representatives of women or black people for antidiscrimination law purposes, their intersectional identity seemed to overwhelm the assumed single identities of antidiscrimination complaints”.

Crenshaw’s interventions and further reflections go beyond this immediate concern with remedial gaps pertaining to black women’s experience of discrimination and the inability of this to be given full recognition within the legal process. Her work has also had implications for intersectionality and identity politics. More important here is, as Conaghan (op cit) insists, that Crenshaw’s “work was strongly embedded in the practical application of feminist theory and politics and her primary concern was to facilitate more strategic engagement with law”.

(op cit, 26) Thus, Crenshaw’s historical contribution relates directly to the research at hand and is not primarily an academic debate about shades of difference and anti-essentialism, but it responds directly to the legal context. These issues receive more attention in section 3.

Nonetheless, as argued in this project’s research proposal, early feminist theorists have been criticised for neglecting the intersectional issues of ‘race’ and class (Williams, 1991; Crenshaw, 1989). This debate opened a second age of feminist jurisprudence, arguing that “gender essentialism” (Harris, 1990) did not take into account the specificities of the experience of black women, because the analysis concerns mainly the experience of white middle class women. In section three of this report attention will be given to some of the most important recent developments with respect to the application of the concept of intersectionality in the context of the newly implemented EU antidiscrimination directives in the member states.
4.1.2 Some trends with respect to antidiscrimination legislation and intersectionality

a. Antidiscrimination legislation

Much of the state of the art with respect to literature on legislation and intersectionality has been addressed in the GendeRace Description of Work. An overview of the countries participating in the GendeRace study discloses quite a differentiated view of academic attention to multiple discrimination or intersectionality. The debate about discrimination on more than one ground has a longer tradition in the UK; it depends on the academic tradition in gender studies as well as the longer experience of the country with legislation either with respect to gender and/ or racial/ ethnic discrimination.

Legislation with respect to the protection of individuals against racial discrimination existed almost two decades previous to the European directives resulting from the Amsterdam Treaty agreements (1999). Also with respect to gender discrimination there has been a longer tradition in the UK. In France, Germany and Sweden there has been a public discourse on gender equality visible in media, politics and academia since the late 1970s or early 1980s. A number of women’s rights were fought for in the field of equal pay and public life.

Compared to other European Union countries, UK was very early in enacting laws against sex and race discrimination, with the SDA (Sexual Discrimination Act) adopted in 1975 and the RRA (Race Relations Act) in 1976. This means that these Acts have been in force for more than 30 years and thus that there is experience of their effects on race and sex discrimination in practice. However, the British report emphasises that protection through antidiscrimination legislation is not enough to ensure equal treatment of women and men in the labour market. For example, the pay gap between the sexes has not changed significantly over the years. Similarly, in Sweden an ombudsperson for women’s issues was established already in 1980. Despite the fact that this function has been active since then, it was only in the 1990s that it was successful in winning a number of legal disputes.

b. Equality measures with respect to gender

Reviewing the countries involved in the GendeRace study we observe that gender discrimination was most commonly addressed within the concept of equality. The motor behind this was the de facto concept that drawing up plans (i.e. positive measures) to further women’s occupational status, promotion and impact on hiring policies may make a greater
contribution to equality between women and men than individual efforts to fight discrimination in employment before court. This has also been a major premise in a recent publication (Schiek and Chege 2009) that refers to shortcomings in the enforcement of individual rights with respect to equal treatment. This book theorises the move from formal to substantive equality law and its interrelation to new forms of governance.

The first French law to promote professional equality was the Roudy Act of 1983,\textsuperscript{43} which introduces the principle of equal rights between women and men in the employment relationship, followed by the Guénisson Act of 2001 on equal treatment between women and men at work. The latter requires companies to draw up annual plans comparing women and men's positions. In Germany guidelines on women’s promotion in government administration entered into force in 1986. These covered specific measures to improve women’s recruitment and promotion opportunities and access to further education and training.

In 1994 the Women’s Promotion Act (Frauenfördergesetz) comes into force which governed the promotion of women’s employment in government administration. This Act and the amendment to Article 3 (2) of Germany’s Constitution (‘men and women shall have equal rights’) were two further milestones in employment opportunities, equal representation of women and men in government committees and the protection of women from sexual harassment at the workplace.

In Spain the creation of the Institute of Women’s Issues\textsuperscript{44} (an autonomous agency responsible for promoting and furthering gender equality in political, cultural, economic and social life at a national level) by the then Socialist government in 1983 broadened the array of instruments available for increasing and implementing women’s rights. There is a general awareness that the antidiscrimination movements still have a long way to go and a feeling that widening the scope and complexity of the struggle further at this point might be overly ambitious. The women’s movement is now well provided for in terms of modern and extensive legislation that appears to reflect a genuine consensus, that women’s rights and gender equality are an important priority in today’s Spain. Despite this consensus discrimination in the domestic and professional sectors is still prevalent and deeply embedded.


\textsuperscript{44} The Institute was placed within the Ministry for Work and Social Affairs (MTAS).
After the introduction of Gender Mainstreaming with the Amsterdam Treaty (1999) the German government followed up with a range of measures that had an impact on public administration and organisations receiving subsidies from the government at local and national level. This demonstrates the positive direct impact of Gender Mainstreaming in all EU-funded programs. In 2001, the Gender Equality Enforcement Act (BGleiG) in Germany replaced the 1994 Women’s Promotion Act in higher government administration.

c. Intersectional legislation and discrimination

In addition to the above, there have been certain special legislative enactments enforced with special attention to protect foreign women. In the German case this has been done where foreign women have unequal legal status with respect to their spouse in the case of marriage migration where the residential status of a marriage partner joining a legal resident in the country is dependent on the status of their partner. In hardship cases foreign women who suffer domestic violence may be granted their own independent right of residence in Germany. Undocumented foreign women involved in human trafficking may be protected if they are brought to court and are being exploited.

In most of the countries in our study, a number of empirical studies about the special cases of minorities or immigrants and migrants have documented their disadvantages with respect to the society as a whole and the discrimination of certain national or ethnic minorities, especially the Roma. With the exception of the UK, there is little indication that visible social movements that have created awareness of the need for specific legislation comparable to the experience of the U.S., Canada. The UK has been the country in Europe with the longest history of legislation that addresses discrimination based on gender and racial/ethnic origins.

As early as 1992, the discussion about how the law should deal with situations in which both sex and racial discrimination are targeted at the same individuals (black women) was initiated in the United Kingdom (Fredman and Szyszczak). Consequently, the issue of double and/or multiple discrimination and intersectionality became a focus for the academic and public debate. Recently the debates about discrimination have shifted from a focus on formal equality to a focus on a more substantive equality. This shift has been followed to some extent by the legislation establishing the Race, Disability and Gender Equality Duties. It has also led to calls for a more comprehensive and inclusive single equality act to replace the many acts
and regulations currently prohibiting discrimination, a call which has now been taken up by the Government and which should result in a Single Equality Bill in the foreseeable future.

Many organisations have also done research into intersectional discrimination such as the EOC (Mirza and Sheridan 2003 (done by the Centre for Racial Equality Studies of Middlesex University and the EOC and EOC 2007)), the Fawcett Society, (Moosa 2008a: this is the report of a project launched by the Fawcett Society to make visible the experiences and priorities of ethnic minority women) and 2008b, PRIAE (Policy Research Institute on Aging and Ethnicity, this organisation has done research on the intersection of ethnicity and age) and trade unions/TUC (TUC 2006). Research has focussed on minority ethnic women. Other research addresses issues of the discriminatory conditions facing women migrants.

Kofman, Lukes, D’Angelo and Montagna (2008) are undertaking a study for the EHRC on the equality implications of being a migrant in Britain, including managed migration scheme. Moon (2007) also underlines the significance of such studies for pointing to multiple or intersectional discrimination. Based on the legal context in the UK, Moon argues that the current procedures are not adequate. Moon proposes some possible options for law reform in the UK in order to respect the reality of multiple discrimination in antidiscrimination claims.

In Germany there also has been research on the discriminatory conditions facing migrant women and their female descendants in comparison with German women in education and the labour market. Germany was to some extent also involved in a debate about, differences and overlaps of the categories of sexual and racial/ethnic discrimination which were evolving, most explicit in the transnational gender research. The above research on gender discrimination of migrant women, however, did not enter the debate about intersectionality that was primarily taking place in a small area of feminist studies.

There has been a relatively strong feminist movement in Germany that has been active in feminist studies. This movement faced some confrontation with feminists with a third world background, but the academic debate was separate from a concern for the development of effective legislation that signalized protection to persons of immigrant background or Afro-

\[45\] See, for example, Patel, N, Black and Minority Ethnic Elderly: Perspectives on Long-Term Care (1999a: PRIAE); Patel, N, Ageing Matters, Ethnic Concerns (1999bPRIAE); and, Patel, N. and Traynor, P, Developing Extra Care Housing for Black and Minority Ethnic Elders: an Overview of the Issues, Examples and Challenges (2006 PRIAE and Housing Learning and Improvement Network). These reports are not on the Bibliographies, because they do look into the intersection of age and ethnicity, not of gender and ethnicity.
Germans based on racial/ethnic discrimination. Awareness about racism and racial/ethnic discrimination became stronger towards the early 1990s, specifically in relation to the inequalities created by other institutional and structural factors, especially the issue of rights to citizenship for non-German residents and other discrepancies that became more apparent with the issue of German unification. Positive for the potential impact of the concept of multiple discrimination is at least the German decision to draft a single comprehensive bill that goes beyond the EU Directives in the dimension that includes women and all other categories of discriminated groups with respect to goods and services as well as work, occupations, training and education.

Today, intersectionality is a serious topic among feminists in academic law and gender studies. This debate may also be empowered by the implementation of the EU directives in a more comprehensive way than foreseen by the original directives. It will take time to see how this ties in with the intersection of racial/ethnic discrimination and gender discrimination. In France attention to the overlapping of racism and sexism has only recently been addressed (Dorlin 2005; Poiret 2005). It has been argued that this is the result of the dominance of gender and class analysis during the 1970s (Fougeyrollas-Schwebel 2005). But it is also because French feminist scholars, whose education is based on the principles of universalism and egalitarianism, we have tended not to see women as a diverse group.

The author’s of the Spanish report emphasise that the discrimination of women continues to affect the Spanish and immigrant population in many different ways that have not yet all been taken into account by the relevant national bodies. The problem of double discrimination appears only to be marginally addressed within agencies at the national level. National women’s organisations, for example, do highlight the particular plight of immigrant women workers but do not fully address the intersectional nature of the discrimination suffered.

In Spain and Bulgaria, double discrimination and intersectionality are only now emerging as part of the current gender and racial discrimination debate. At present, the discussion is restricted to describing what double discrimination and intersectionality are, outlining the potential advantages of this approach over previously adopted analytical frameworks and suggesting possible practical applications for these concepts in the antidiscrimination struggle.

46 Although the term Intersectionality, coined by Crenshaw, is of crucial importance for the study we prefer to develop the concept at a later date since it is more of an analytical than a practical tool.
On the whole in the countries concerned, research on the issue of double/multiple discrimination and intersectionality are rather new, but have begun to attract the attention of many academics and some NGO activists. This is precisely the main issue that concerns the GendeRace project: To what extent is the antidiscrimination legislation implemented in the countries under study capable of addressing gender and race as a form of multiple and/or intersectional discrimination? It is our objective to critically view the development of this issue with respect to policies and practices as well as studies at the level of official publications of the European Commission. The initiators of the GendeRace research proposal have already pointed out that the new EU Equality Directives\(^47\) explicitly recognises the possibility of multiple discrimination, where sexual discrimination may be combined with any other form of discrimination covered in the Directives.

4.1.3 Structure of the Review

Since the enactment of the Directives, the European Commission has supported several important studies as part of the Action Program or in connection with other European Community programs or institutions in order to cast light on a number of problematic issues with respect to the implementation of the antidiscrimination directives addressed here. These include: an overview of equality bodies, a handbook on equality data, two publications on positive action and (of major significance for the GendeRace project) a preliminary study that presents a very pragmatic overview entitled “Tackling Multiple Discrimination”.

This chapter has the task of scrutinizing this material and other documents and publications of the European Union with respect to issues related to the implementation of antidiscrimination legislation with special regard to the concept of multiple discrimination within the member states. This includes, as far as possible, special reference to programs and studies funded by the European Union for the clarification of issues directly related to the policies and implementation of antidiscrimination measures.

On the one hand, theoretical literature from feminist and legal studies has contributed to our understanding of a methodological approach to multiple discrimination and in particular the concept of intersectionality has been treated in the GendeRace EU project proposal and in the overviews of the state of the art and background papers of the GendeRace project partners.

This document will draw on these, and on more recent publications when possible, for comparative analysis with respect to multiple discrimination and intersectionality when pertinent.

In summary this review addresses the following types of European material:

- Directives and commentaries of the European Union.
- Studies defined and funded by the European Commission to address the issues of comparative implementation of antidiscrimination legislation in the EU (sources of data, research needs with respect to multiple discrimination, good practice, the instruments of implementation (such as equality bodies) etc.)
- Conceptual and methodological advances found in publications that reflect on the applicability of the multiple discrimination and/or intersectionality approach for legal practice or for the purpose of empirical study.

### 4.2. Communications and studies commissioned by the EC

#### 4.2.1 Communication of renewed commitment to non-discrimination

In early 2008 the European Commission issued a communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions to underline a renewed commitment to non-discrimination and equal opportunities (European Commission) [SEC (2008) 2172].\(^{10}\) This document presents a comprehensive approach to “step up the action against discrimination and promote equal opportunities.” This has also been accompanied by: “a proposal for a new directive prohibiting discrimination on grounds of age, disability, sexual orientation and religion or belief outside the employment sphere.” This short document proposes further actions to give “a new impetus to the dialogue on non-discrimination policy and to make more effective use of the instruments available.”\(^{11}\)

Particular emphasis is given to implementing the existing legal framework especially through the work of the equality bodies in providing information and guidance in supporting the


victims of discrimination. Moreover, the Commission supports the development of the cooperation between and the capacity building of the equality bodies via the Equinet network. In this way, the Commission is also examining the effectiveness of national penalties and time limits to bring actions before national courts.

A major section of this document also addresses the further development of the current legal framework for tackling discrimination: The proposal for a new directive “will ensure that in all 27 member states all forms of discrimination, including harassment on the grounds of age, sexual orientation, disability and religion or belief are prohibited and victims have an effective redress. This should “bring to an end the perception of a hierarchy of protection.” On the other hand, the principle of “subsidiary” remains respected. This will leave decisions about selective admissions to schools, the recognition of same sex marriages and the nature of any relationship between organised religion and the state to the member states. This opportunity is also taken to point out the need for positive action, especially in the case of persons with disabilities. In general in this document the Commission makes a solid argument for strengthening policy tools for the active promotion of equal opportunities. These are summarized as awareness raising, mainstreaming, data collection and positive action.

This approach could also be extremely important for issues of multiple discrimination when it is stated in the section on stronger policy tools that “mainstreaming principles should apply across all grounds covered by Article 13 EC. Two of the grounds are already subject of …a well-developed set of mainstreaming actions”: the Disability Action Plan for 2003-10 and the Roadmap for Equality between women and men for 2006-2010. “The Commission will build on these achievements by promoting the systematic incorporation of non-discrimination and equal opportunity concerns on all Article 13 grounds into all policies…”

This proposed new directive has, however, received a number of criticisms from NGOs at the European level. In particular the European Women’s Lobby (EWL) has initiated a debate on the possibility of a gap between the treatment of racial, religious, disability, age, and sexual orientation and the European gender equality legislation (European Women’s Lobby Briefing 2. July 2008).

The EWL points out that not only does the proposed directive contain a great number of exceptions (11 in number) that leave much room for decisions within the states, but there are
also genuine concerns about the adequacy of “the material scope of Directive 2004/113 regarding equal treatment between men and women on access to and supply of goods and services, … social protection including social security and health care and social advantages.” For this reason the EWL urges the EC “to commit to a precise calendar to level up and complement the existing European gender equality legislation by 2010 at the latest.”

EWL addresses a number of concerns raised by other European Networks with different grounds of discrimination that also have either reservations or even criticism of the projected proposal. These refer to “preferential treatment based on age and disability; the exclusion regarding education; the exception on marital and family status and reproductive rights…lack of clarity regarding discrimination based on disability and the notion of “reasonable accommodation”, and difference in treatment based on nationality and legal status of third-country nationals. The proposed directive explicitly states that “The directive (art.3.4) is without prejudice to national legislation promoting equality between men and women.”

Although the Directive proposes that a modification of the legislation on discrimination on the ground of sex could be made in 2010, following the report on the implementation of the 2004/113 Directive, EWL states the concern whether this will be achieved. EWL stresses the need for the EC and Member states to commit to a calendar for this, to ensure that the revision takes place and to secure that sex discrimination legislation is put at the same level as the other discrimination grounds addressed by EC legislation.

Bell’s (2008) Report for the Ad Hoc Expert Group of the European Network Against Racism (ENAR) has made a number of recommendations for the proposed Directive to extend EU antidiscrimination law. One of the main points that this group identifies that has to do with multiple discrimination is: 1) the need to ensure effective protection from discrimination for all persons in all areas of life. “This requires the same level of protection with no hierarchy of rights between different grounds, including gender, race or ethnic origin, religion or belief, age, disability or sexual orientation.” 2) “The Directive should explicitly prohibit discrimination on more than one ground (multiple discrimination) and should require specific measures to ensure that this is dealt with effectively by national law ( e.g. in relation to equality bodies and legal procedures): 3) “No exception for difference of treatment based on discrimination status or nationality should be included in the directive.” 4) “The definitions of discrimination (….) should be consistent with that already existing in the Racial Equality
Directive and the Directives on gender equality. 5) The directive should include measures designed to promote equality (positive measures, mainstreaming).

In addition, important recommendations with respect to financial compensation, the value of equality bodies and their independent legal standing, as well as the prohibition of discrimination by association with persons of a certain religion, belief disability, age or sexual orientation.

The Commission has also undertaken a first study on data availability and needs has been contracted and published about the current state of the art and further needs. This document also stresses the low level of knowledge concerning the new antidiscrimination legislation among the population and that even with a good system of protection from outright discrimination this may not result in formal equality; thus more emphasis is being given to positive action.13

4.2.2 Studies on multiple discrimination, research needs and good practice

“Tackling Multiple Discrimination” is perhaps the most pertinent EC publication for the GendeRace study. This study was commissioned by the EC to bring clarity to the concept of multiple discrimination, to learn about good practice from experts in the field (from the EU and especially from countries such as Australia, Canada and the US that have a greater experience in antidiscrimination legislation) and to demand more attention for multiple discrimination. This publication reiterates the concern of the EU with the addition of new grounds of discrimination (‘race’/ethnic origin, age, disability, religion or belief and sexual orientation) to gender equality, adding that “the concept of Multiple Discrimination has grown in importance.” This statement is made with reference to the Communication of the EC adopted in June 2005 on “Non-Discrimination and Equal Opportunities – A Framework Strategy.” This Communication “recognised that the implementation and enforcement of antidiscrimination legislation on an individual level is not enough to tackle the multifaceted and deep-rooted patterns of inequality experienced by some groups. Despite [this]…, Multiple Discrimination as a phenomenon remains to be explored.”

The authors made the decision to work with the term multiple discrimination. “For the purposes of this report, Multiple Discrimination [is]... understood as consisting in any combination of discrimination on the grounds of gender, racial or ethnic origin, religion or belief disability, age or sexual orientation.” The communication also stresses that “Although it is recognised that grounds such as class or socio-economic status have a significant impact on an individual’s vulnerability to discrimination only the six grounds mentioned above will be explored in this study.” Class and socio-economic status are clearly excluded as grounds for antidiscrimination.\(^{14}\) Moreover, the authors concurred that Multiple Discrimination would be the umbrella term used throughout the publication, as this is the more common terminology in European as well as in human rights discourse.

“Tackling Multiple Discrimination” fills a knowledge gap with respect to supplying an overview that includes the theory and practice of employing two or more grounds with this kind of legal framework. This is a pioneering document of about 70 pages based on literature and a variety of empirical methods. It attempts to identify Multiple Discrimination cases, how the actors involved in antidiscrimination work to tackle the issue, highlight good practice and to make recommendations about how situations of Multiple Discrimination could best be addressed.

Generally, the document concludes that the EU antidiscrimination legislation recognises that different protected grounds can intersect, “but there is no explicit prohibition of Multiple Discrimination. Specific prohibition of Multiple Discrimination would create a greater awareness of the problem... in turn providing more effective protection for individuals and groups experiencing Multiple Discrimination.” Currently the concept seems somewhat obscure and there is the general impression that “minority women seem to be the most vulnerable.” But the authors also warn that there is a lack of research, of registered complaints and cross sectional data, which contribute to the continued invisibility of other disadvantaged groups as well, for instance: “older ethnic minorities, black persons with a disability, etc.”

With respect to the EU countries it can be concluded that not only is there no explicit prohibition of Multiple Discrimination, but that even the assumption that ethnic minority women /and black women may be the most vulnerable is not currently effectively addressed

\(^{14}\) This does not necessarily exclude their use as indicators when relevant for indirect discrimination of persons belonging to groups overrepresented in the lower sectors of the socio-economic hierarchy. This is not immediately relevant, however for this review.
due to the common practice of single ground proof of discrimination. Theoretically, multiple grounds for all the six grounds indicated might be possible to claim in the area of employment, but practice demonstrates that these grounds, in most cases, will be argued separately. This means that the combined experience/weight of discrimination risks being neglected.

As the authors conclude, there is a need for further research…” in order to determine how to process intersectional cases, how to carry out a comparison in cases of Multiple Discrimination and how awards of damages should be assessed” (OpCit, p.28). The study also concludes that only in Canada have “courts, tribunals and commissions” been instrumental in fostering the judicial system’s recognition of intersectional discrimination.”

Finally, “Tackling Multiple Discrimination” recommends action to increase the capacity to recognise and identify occurrences of Multiple Discrimination and awareness of the need to combat them as such. It is pointed out that the literature on this issue makes clear how important it is to contextualize, i.e. to examine the context in which discrimination takes place. Contextualizing sheds light on the historical, social, cultural, and political processes and developments which have significance for discrimination and which may be very specific for one society. Thus, the specific combinations of Multiple Discrimination may differ from one society to another. Nonetheless, this does not deny or neglect the observation that Multiple Discrimination is likely to be found in most societies. The “stakeholders” involved in the consultation for this study were able to identify several themes that could be applied to help contextualise Multiple Discrimination (p. 31).

Some of the themes are the relationship of multiple discrimination to the history of antidiscrimination work in the country and the felt need by countries only now beginning in this area to understand and work with the single ground antidiscrimination legislation. Others identified great challenges in their society to social inequality in general and the link between poverty and unemployment and the experience of discrimination. The authors point out that the experience of legal experts in the field, e.g. in the case of Britain, emphasise that they view work in the field of combating discrimination “as an evolutionary cycle that leads to a dynamic understanding” of discrimination and eventually of multiple discrimination.
Another point made by the stakeholders consulted was to suggest the giving of attention to the role of civil society and how well established and experienced the NGOs are in this context. Generally, the more involved the NGO community seemed to be, the more awareness on discrimination issues could be identified. Also the more cooperation across the board -with respect to the different kinds of discrimination, “the more developed was the understanding of Multiple Discrimination” (Op Cit. p.32).

Ultimately, the chapter puts forth a number of recommendations for advancing the knowledge and the implementation of the concept of Multiple Discrimination and the work in this field, in order “to monitor and track the unique ways in which people experience Multiple Discrimination through numerous tools and strategies”. These include: 1) research, 2) legislation, 3) awareness raising, 4) collection and dissemination of good practice 5) data collection, 6) training and education, and 7) the promotion of multiple-ground NGOs.

Several of these items have direct relevance for the GendeRace research. Others relate to specific studies, either completed or underway, that the EC has commissioned and deserve at least some brief attention in this overview. Obviously a number of research needs are clear; this is an area where the GenderRace study can make a contribution. But the whole area of the data collection process also deserves attention. Both of these areas are addressed in the European Handbook on Equality Data sent out previous to this chapter. A set of references made to other EC funded research may be found in the Bibliographic References section of this report, that may contribute to an understanding of the intersectionality issue with respect to GendeRace.

In addition to the specificity of intersectionality and Multiple Discrimination, the EC has commissioned other studies that do not address directly this issue, but which should be very helpful to enhance the creation of an antidiscrimination culture in the countries of the European Union. Some of the areas recommended in “Tackling Multiple Discrimination” have already received the attention of studies promoted by the EC, for instance, point 4); promoting good practice refers to case studies of good practice in employment and service provision. Definitely falling within this category are two EC commissioned publications
(Beyond Formal Equality\textsuperscript{15} and Putting Equality into Practice\textsuperscript{16}) that were published in 2007 addressing the issue of positive measures / positive action.

This is an area that could have direct relevance for cases of Multiple Discrimination and indirect discrimination. For instance, in the course of identifying subgroups that may particularly suffer from Multiple Discrimination within the various national contexts an excellent measure might be the establishment of positive measures for these groups of persons.

Moreover, in 2006 the EC published a study on the equality bodies, “Catalysts for Change?” written by Rikki Holtmaat\textsuperscript{17} from the European Network of Legal Experts in the non-discrimination field. This is both an overview of the few experienced National Equality bodies at that time, before all the member states had passed legislation or instituted such bodies, and also a discussion of a study of the potential of a good functioning National Equality body. Moreover, for the work of the GendeRace project, it also could provide a good working document for the kinds of expectations and questions researchers could raise vis-à-vis the experts in the National Equality bodies that the GendeRace teams interviewed.

4.3. European publications on intersectionality:

Research on the gendered use of antidiscrimination legislation and resources.

4.3.1 Multidimensional equality law and beyond intersectionality

The enactment of antidiscrimination legislation in the countries of the European Union has stimulated a vast array of publications and work by feminists and experts in legal studies to address the theoretical and practical levels of the debate within Europe at times in a comparative perspective. Two extraordinary edited volumes have become available in 2008 (Grabham, et al and Schiek and Chege). Both publications are particularly significant for the issue of intersectionality and the implementation of antidiscrimination legislation within the member states of the European Union. Schiek and Chege emphasise multidimensionality in


\textsuperscript{16} European Commission, DG for Employment, Social Affairs and Equal Opportunities, Unit G4, March 2007, as part of the Community Action Programme, For Diversity Against Discrimination, ISBN 978-92-79-04965-1

\textsuperscript{17} Holtmaat, R. Catalysts for Change? Equality bodies according to Directive 2000/43/EC – existence, independence and effectiveness, European Commission, DG for Employment, Social Affairs and Equal Opportunities, Unit G2, March 2006.
the specific context of the development of the legal perspective of European Union discrimination law. Grabham et al (2008) address issues not only theoretical approaches beyond intersectionality, but also beyond a legal framework. Because of their broad overview and depth of inquiry the following section focuses on a pertinent selection of the issues that are raised in chapters in these two volumes.

Schiek begins with the view that EU Equality Law is multidimensional, based on different rationales and concepts. “Multidimensionality is meant to capture both the present state of EU non-discrimination law and the perspectives of developing it towards a body of equality law that will meet the challenges ahead.” Schiec finds particularly critical that the concept of discrimination has become fragmented due to the splitting up of the directives. She points out Directive (2000/43/EC) addressing racial/ethnic discrimination is more comprehensive, “elevating non-discrimination law to a policy in its own right”. Whereas the Framework or Employment Directive (2000/78/EC) is restricted to employment, “at the exclusion of social security which had always been covered by Community gender equality legislation.”

Nonetheless, this directive has “more daringly” expanded the number of grounds to religion and belief, sexual orientation, disability and age. Schiek also points out that the new Council Directive 2004/11/EC provides a narrower scope with respect to gender discrimination than the non-employment’ provisions in the racial and ethnic discrimination (Directive 2000/43/EC).

a. From formal to substantive equality law

Extremely insightful is the contribution of this publication to the reflections on the historical move from formal to substantive equality law and its interrelation to new forms of governance, demonstrating the specific combination of non-discrimination law with welfare state models. A major premise the authors put forth argues that as a result of gender equality law, a debate was activated that highlighted the tension between formal and substantive equality. This refers, for example to shortcomings in the enforcement of individual rights to equal treatment, that lead to demands for effective remedies, institutional support and the encouragement of associations. According to Schiek the European Court of Justice had already taken steps in developing the principle of “effective remedies, acknowledging pregnancy discrimination as sex discrimination, allowing for some positive action and to the implementation of a ‘gender mainstreaming clause’ into the EC Treaty.
The discussion in the UK has been very important for the furtherance of a discussion on how to overcome complaints-based approaches in favour of positive obligations for institutions. Schiek mentions the potential of a fourth generation of Equality law with the main feature of improvement to be a “group social justice model” that creates positive obligations (for primarily public actors) to establish institutional preconditions for equality in social reality.” This is to date not foreseen in Community law. A major theme of this publication is the vision that there is a much needed move from the complaint based approach of non-discrimination to a positive approach of equality and “new governance or “mainstreaming” in some cases gender mainstreaming. Fredman (2009) takes these observations a bit further in her chapter on “Positive Rights and Positive Duties” and the contribution of new policies protecting from multiple discrimination.

b. Addressing multiple discrimination and intersectionality

The EC Directives in themselves raise the additional central theme of multiplying grounds of discrimination and the implications this has for the intersection of two or more grounds. For Schiek, intersectional discrimination is a process that occurs whenever different exclusionary mechanisms are at work. Grabham (2008) has a slightly different interpretation of intersectionality seen as a method of interrogating the institutional reproduction of inequality (state, family, legal structures, professions, educations). This dual function of intersectionality, comes forth continuously. In one case, as the introduction of an added value in understanding identifications of unique combinations of group characteristics that contribute to substantially different discrimination processes. In the second case it is seen as a sociological analytical method for interrogating the institutional reproduction of inequality. These are not contradictory interpretations but rather approaches that serve slightly different purposes. The first purpose could be more practical if there would be the proper conditions in legal procedures that would allow for this to be useful. The conditions that will need to be met are proposed by some of the contributors in the Schiek volume and the Bell (2008) ENAR paper.

With respect to intersectionality, Schiek criticises the latest EU-funded publication on multidimensional equality (Cf. Section 2) that claims a simple answer to the question “who is vulnerable to multiple discrimination?”, that “all individuals are potentially vulnerable”. Schiek finds this response much too simple. Each single ground delimits individuals who are potentially vulnerable. Each delimitation allows for another category of person who may not
be categorised on that ground. For example, ethnic minorities vs. ethnic majorities, women as opposed to men, lesbians/ or gays as opposed to heterosexual persons. These may be further complicated by persons suffering discrimination in one area but profiting from more opportunities in another area.

Nielsen (2009) discusses whether EU equality law is capable of addressing multiple and intersectional discrimination? This chapter suggests that in the legal literature the term multiple discrimination usually covers both compounded discrimination (additive) and intersectional cases. The latter is also interpreted to be where the “combination of discrimination on various grounds produces something distinct from any one form of discrimination. Nielsen further on cites the definition of intersectional discrimination according to the Ontario Human Rights Commission (2001):

“….intersectional oppression (that) arises out of the combination of various oppressions which, together, produce something unique and distinct from any one form of discrimination standing alone.”

Fredman, a professor of law, (Fredman and Szyszczak 1992) was one of the first to argue for recognising multiple discrimination in the UK referring to the case of black women who have been targeted for sex and racial discrimination. Fredman (2005) believes that it is “well known” that the most advantaged of disadvantaged groups may make best use or even capture the benefits of positive measures. If, however, groups suffering multiple discrimination would be identified and recognised on that basis, these would “by definition comprise the least advantaged in each of the relevant groups”.

Addressing intersectionality, Fredman (2009) pursues how and why we identify group inequalities. She examines the relationship between the definition of group identities and the conceptualisation of the goals and meanings of equality. It is not just gender, racial or other status of a group that is at stake, but the ways in which “these status markers create or perpetuate disadvantage or power imbalances, obstruct participation, and undermine dignity and mutual respect”. She also believes that groups should be defined not only in relationship to their status markers, but also with respect to the aims of equality. This is logically the basis for her objective to find satisfying remedies for cases of multiple discrimination that to date prove more difficult to achieve through individual complaints.
4.3.2 Weaknesses of EU law confronting cases of multiple discrimination

For the purpose of the GendeRace study, special attention should also be given to three chapters that focus on the application of intersectionality within European Union Law. Fredmann addresses intersectionality in the context of positive rights and duties. Vieten addresses research strategies with respect to intersectionality and social complexity as well as the meaning of social categories and the re-emergence of social class. Solanke proposes a new approach to intersectionality via the concept of stigma. The added value of this chapter is the focus on the deliberating questions that have influenced court decisions in the U.S. These questions are then applied to a case.

Despite the reference of EC Directives in Preambles and other documents Fredman sees shortcomings with respect to the recognition of multiple discrimination inherent in EU Law. The EU Directives accordingly privilege single source identity theory. This is reflected in EU Law which has first privileged gender identity and since 2002 race and ethnic origin are privileged over gender, this privileged over age, disability, sexual orientation and religion or belief. As a result the single identity approach implemented through the EU Directives is inadequate.

Critique of single identity approach

- Ignores issue of multiple identities
- Assumes that groups are internally homogeneous
- Ignores the role of power in structuring group relations

Discrimination is not symmetrical (Asymmetrical)

- Power relations can operate both vertically and diagonally
- Power operates at a fundamental level i.e. to construct identity categories
- Race is a social construct a marker for oppression / ethnicity is also framed by power relations e.g. case of black women in U.S: application of employer’s seniority system – “last to come first to go” (indirect discrimination / multiple discrimination)

This example applies equally to migrant women in Europe: (Cf. intersectional discrimination in the Spanish and German cases Sec.) gendered occupational structures, women’s work situated at the lower levels in production, automation, and the reduction of hundreds of jobs
for those considered semi or unskilled. Moreover, even in vocational training in the German case when the descendants of immigrant women achieve equal secondary school certificates, they are less likely to enter the gendered vocational training schools because limited number of places (Wilpert 2005). Fredman also adds “women bear the brunt of cuts in public services and welfare, but this burden is disproportionately born by immigrant, minority, disabled and indigenous women.”

Another dimension of gender discrimination is the additional burden of internal discrimination of migrant women in cases of domestic violence and patriarchy that “could be seen in terms of the synergetic impact of gender combined with racial or religious discrimination. Many black and minority women find it difficult to speak out against domestic violence, for fear of direct racism by police, or they are concerned to reinforcing negative stereotypes exposing their own communities to racist treatment, including deportation or injury. “Migrant women whose status depends on marriage are particularly vulnerable, since they face deportation if they leave an abusive relationship…..” This vulnerability is compounded by language difficulties, lack of knowledge of sources of protection, difficulties of finding work or income to support themselves and their children. She refers as well to the particular case of Roma and Sinti women, a group who may be among the most discriminated but the women and girls more so than the males due to abandonment of school and early marriages and the resulting child care and employment problems. Available training projects often do not service this group. Single dimensional grounds based either on gender, racial/ethnic or religious discrimination all fail to meet the needs of those in the “complex confluence” of intersectional discriminatory currents (Fredman 2009:76).

Fredman cites the difficulty of framing policy and law in such a way as to capture the synergistic nature of multiple discrimination. The US examples demonstrate the problem. In the case cited previously, black women could not be recognised as being disadvantaged as women, since other (white women) were not affected or as black people, since black men were not laid off. At that time the US Federal Court of Appeals categorically refused to accept that black women formed a separate category, arguing that this would give them a “super remedy” with “greater standing” than black men or white women.

Finally, other US courts recognised that discrimination against black women can exist even in the absence of discrimination against black men or white women. This led to the arguments
that multiple discrimination should be restricted to a combination of only two of the grounds.”
To date the impact of the other grounds for discrimination have been ignored. “The result is
both artificial and paradoxical. The more a person differs from the norm, the more likely is
she to experience multiple discrimination, the less likely is she to gain protection.” (Fredmann
2009:77)

4.3.3 Conceptual and methodological contributions to address intersectionality

a. Traversing national boundaries and the historical embedding of group struggles

Vieten’s (2009) chapter is important for the GendeRace study because it addresses precisely
the scope of intersectionality and multi-dimensional equality within the European Union and
makes some observations that could have direct implications for the transnational
methodology of the research process and implications for later interpretations of the findings.

Within this framework, Vieten raises the problem of traversing national boundaries of
inequality with a purist view of Multiple Discrimination. Vieten points out the tension
between the analytical approach to intersectionality (that argues against an essentialist view)
and a more pragmatic approach defining discrimination according to certain group
characteristics. She points out the difference between research that challenges any fixity of
classification and more strategic (political) approaches relying on defined categories that are
based on historically constructed group hierarchies.

Vieten argues that intersectionality provides a tool for identifying analytically complex layers
of individual subordination. She asks how the most can be made of an analytical
understanding of overlapping social categories while still keeping a “political eye” on the
balance between individual subjectivity and social groupings? (Vieten2009:93).
This author points out the reason why we have this “political” eye: there is an explicit
political dimension to public dispute and collective struggle. “It stresses that legal, social and
cultural spaces in which group representations can be articulated are contingent and open to
contestation…this historical embedding of group struggles, are at the core of feminist debates
how the concept of intersectionality engenders meaning.” (Vieten 2009) She underlines the
difference between the academic subfields where conceptualising and theorising social
divisions evolve and the legal arena where the concrete cases of injustice and discrimination
try to find remedies.
Vieten begins with the arguments put forth by Leslie McCall (2005) who underlines the need to be clear about the purpose of the specific knowledge research needs to obtain. The approach to intersectionality will depend on our purpose. McCall emphasises the salience of social class for mapping the impact of group subordination and individual discrimination. Vieten clusters the three main intersectionality approaches identified by McCall (1) anti-categorical (3) inter-categorical and (2) intra-categorical complexity approach in an attempt to mediate the deconstruction of the classic “holistic” groups such as class, gender and ‘race’ while insisting on political strategies. As a result Vieten finds that in McCall’s research, “the inter-categorical complexity” approach, “focus[es] on structural relationships that reflect social positions as an outcome of group hierarchies across different categories”.

<table>
<thead>
<tr>
<th>Scope/intersectionality</th>
<th>Anti-categorical complexity</th>
<th>Intra-categorical complexity</th>
<th>Inter-categorical complexity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Characteristics</td>
<td>Deconstruction of ‘master categories’: argues against fixed ascriptions: this approach is often linked to (white) postmodern feminism</td>
<td>Analysis of narratives or ‘single case studies’, focuses on particularly neglected intersections i.e. race, gender and class. Supported by (black ) feminism.</td>
<td>Focus on relationally McCall favours this approach looking at the relationships and tensions of existing social categories</td>
</tr>
<tr>
<td>Problematic aspects</td>
<td>This approach creates and multiples categories: for example ‘trans-gender’, ‘bisexual’, ‘multiracial’ identities though rejecting ‘stable categories</td>
<td>This approach works on and accepts ‘relatively stable social categories’ while interrogating boundary making and condemning explicit definitions.</td>
<td>This approach requires provisional definitions of analytical categories in order to denounce group relationships. It contains the danger of re-essentialising group belonging.</td>
</tr>
<tr>
<td>Scope of knowledge</td>
<td>Its anti-essentialism fosters a permanent re-drafting of group categories and boundaries</td>
<td>Its middle way approach announces a political challenge to specific hegemonic group hierarchies</td>
<td>Its insistence on hierarchical meaning of social categories asks for an evaluation of concrete dimensions. This approach could be applied to comparative multi-group studies.</td>
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This approach supports the notion that “meaningful inequalities” matter and should be measured quantitatively”. She raises the question of how to gather data to catch
multidimensional layers of social locations supporting distributive justice that prioritise, group compensation strategies.

Vieten reflects very specifically the ongoing discussion about the continued relevance of social class for social categorisations and the interactions of these. Looking at the disappearance and re-emergence of social class, Vieten stresses with the objective of intersectionality in mind there is good reason “to look at the becoming of social categories as well as at the becoming of social identities.” (Vieten 104) There is a brief overview of some contemporary reflections on the interaction between class and other relevant social categories in particular Yuval Davis, and Anthias and Yuval Davis’s reflections on gender, ethnicity and class as operating and constructed in distinctive realms, as well as Verloo arguing for structural and political dimensions of individual discrimination. These are confronted with Walby’s more system oriented analysis of interwoven institutional layers. Vieten also recognises the contribution of instances of historical disadvantages and privileges (Amoah), where colour and class play a role in oppression and reminds us of the need to re-politicise “the historically specific embeddings of group recognitions and group exclusions.” (p.106).

Makkonen (2002) has gone into depth in an analysis of intersectionality particularly about the complexity of the self, not alone with respect to suffering from multiple systems of oppression. But also what he called traits to help define who we are. But he did not focus on this aspect of belongingness. Problematic, however, is the focus on the “sense of self” and identity that often appears as a state of being where we have a variety of choices. Discrimination is a state of being where the person due to their group membership has few choices. On the other hand, Makkonen’s contribution to a comprehensive analysis of the historical development and construction of group memberships in the civil rights struggles. Civil rights struggles in their first steps had to do with the basics between larger collectives, e.g. colonised and coloniser, blacks and whites as belonging to the oppressed and dominant master ‘race’. These were the larger struggles.

Makkonen refers to this in this historical development in his paper as single issue movements: anti-racist and feminist movements. Makkonen interprets this as a “narrow and essentialist understanding of group formation and group interest”. Makkonen gives the example of feminist theorists that felt that they could “isolate” the variable of sexism from the variable of
racism and so better understand it. This has lead to the critique of “multiracial” feminism. On the other hand from the perspective of racialised lives in the U.S. ‘race’ is often the predominating factor as an explanation of inequalities. Makkonen cites that this “generalized particularized experience is that of young African American men. He cites Cohen, who interprets this as the group from whom the whole black American community is judged. This refers specifically to the crime and imprisonment rates of young African American males. Makkonen’s interpretation and the development of his argument varies substantially from Solanke, who might identify this sub-group among the most disadvantaged for whom equality measures need to be developed.

In the end Vieten’s response is that historical processes have created a situation that nation-state legacies in the different European Union countries “confront us with specific forms of prejudices, varying standards of equity and, consequently, uneven terms of (minority) recognition and rights.” But, on the other hand, “the overall framework to harmonise different legal standards also give way to new intersecting social and political identities that are going to boost equality efforts transcending the yet (to be) \(^{18}\) achieved EU framework. Most important of all, Vieten has a political message: to learn from history, to advance the contemporary debate on intersectionality and multiple equality law while re-politicising the historically specific embeddings of group recognition and encouraging those who are disadvantaged to air their voices, collectively.

*Stigma and Intersectionality*

In this same publication, Solanke (2009) addresses the study of race, gender, and age discrimination in the UK using the concept of stigma. According to Solanke intersectionality is limited because the language of grounds rests on the logic of immutability. Immutability creates limited categories. It entails the concept of the permanence or inability to change the trait which causes or is the basis for discrimination, e.g. skin colour, sex, disabilities….age…

Instead, Solanke suggests stigma, because stigma draws on a spectrum of characteristics, only one of which is immutability. Crenshaw has already noted that legal prohibition by itself does not remove stigma or undermine the underlying assumptions. This contribution is especially valuable because as a lawyer Solanke has researched and found the indicators and questions

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\(^{18}\) Comments in brackets are authors’ own additions.
that have been applied especially in the U.S. with respect to Supreme Court decisions involving intersectionality and racial discrimination. It is her hypothesis that the concept of stigma could be a significant intervening variable in the elaboration of the likelihood of intersectional discrimination.

“Stigma sticks in spite of antidiscrimination law, because it rests upon ‘assumptions so entrenched and so necessary to the maintenance of interlocking, interdependent structures of domination that their mythological bases and political functions have become invisible.”

Solanke discusses a UK case about school exclusion and young black men. She indicates that a set of negative stigmas attached to this specific social group which are historical, social and political and have a long term economic impact. She argues that it also operates at the international level, i.e. African American men. Solancke demonstrates, that it is not just race, but the combination of race, age and gender that makes young black men subject to unique treatment. She points out in this case, that if the courts had used the concepts of stigma they may have reached a different conclusion.

Immutability is the most relevant criteria for making decisions in British and American law. The original argument was that the law should ‘protect those attacked for what they are, not for what they may believe or do.” For this reason religious groups per se were not included.19

To determine whether a classification is “suspect” and subject to a strict rather than standard level of scrutiny depends on a number of factors. Court asks whether the group so defined has suffered a history of purposeful discrimination, whether it lacks political power to redress, and whether the discrimination constitutes a level of unfairness invidious to the ideal of equal protection”. This final characteristic is determined by immutability. Immutability also applies to gender and national origins all characteristics over which a person has little control.

According to Solanke, if we start with stigma, we end up with a spectrum of characteristics which also include immutability rather than a list of grounds determined by immutability.

“Stigma brings into focus the complex forms of discrimination which blight individual lives and social cohesion. It can travel alone or in packs: black women are burdened by the stigma of race and sex; black women can be disabled; the disabled may also suffer from the stigma

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19 Race would be considered an inherent attribute and religion seen as chosen.
attached to sexual orientation and/ or age. It is this interaction between various forms of stigma to which multiple consciousness points.”

What is stigma? Stigma does not refer to individual attitudes but focuses on negative meanings which are socially inscribed on arbitrary attributes, such as skin colour, sexual orientation, gender, pregnancy, disability or age. Stigmas have different kinds of characteristics and consequences, some permanent (immutable) others temporary.

Stigmas can be racial, physical, behavioural or biographical, acquired or inherited, or in-born. They can change from place to place and can operate at local, national, regional and international levels. e.g. the stigma attached to being a Dalit may be poignant only in Asia, but the stigma attached to black skin operates at a global level.

Stigma goes beyond name calling. Stigma is never neutral – it is used for a reason – for social structure and for social control. “Tells you your place and tells you to stay in your place”. Stigmas develop over time: most are crystallised taboos and myths “long in the making and difficult to acknowledge and confront. They are myths and stereotypes that do their damages subconsciously. Insidious…the dehumanisation of an individual is the key to the operation of stigma. Stigma provides a reason to withhold the presumption of equal humanity that underpins discrimination. Stigma provides the social context and justification for doubting the person’s worthiness.”

Stigma always excludes, but does not always result in political powerlessness, social and economic degradation. Not all warrant a legal remedy. Solanke suggests that in order to ascertain the merits of a complaint, a legal analysis would proceed by a general examination of the social, political and economic consequences of the stigmas involved.

The questions raised would be similar to those raised by the U.S, Supreme Court in relation to the 14th Amendment, such as:

- Has the so defined group suffered a history of purposeful discrimination?
- Does it lack political power to obtain redress?
- Does the discrimination constitute a level of unfairness invidious to the ideal of equal protection?
In a stigma led analysis it would be necessary to ascertain the stigmas attached to the group. More specific questions could be asked about the specific stigma. “What do they target? What are their characteristics? Can the group that these stigmas relate to be described as, discrete, insular and powerless? Second, the consequences of these stigmas would need to be clarified. Does anyone or combination of them, result in social, political or economic degradation? Third, a causal relationship would need to be identified. Is there any indication that these stigmas have contributed to the treatment complained of? (Solanké 2009: 122)

This approach is certainly innovative and deserves some attention. One has to view the concept of stigma at the intersection of gender and racial discrimination. Behind stigmas that may be identified are prejudices and stereotypes, beliefs and judgements about the so identified groups. Solanké believes that the stigma approach facilitates a broader and deeper identification of discrimination. It also requires a more thorough examination of the role that stigma and stereotypes play in society. “This is important because society is complicit in discrimination – social mores are a repository of stigma providing justification for everyday discriminatory actions and decision making.”

Solanké proceeds to analyse a case study involving two black teenagers discriminated against on the specific combination of race, gender and age discrimination. The case involved the exclusion of the two black teenagers who became involved in a fight with two white boys from school. The conclusion is reached that young black boys as a group need protection of the discrimination law because they are stigmatised in society in general, and the school educational system in particular.

In conclusion, Solanké goes so far as to argue that a single ground focus is no longer adequate for antidiscrimination law. There are a number of groups in society that are among the most subject to discrimination based on the constellation of categories that make them a unique Group. The logic of a single category being the object of discrimination (e.g. women or black people) is not sufficient to reach the most discriminated constellations. Also the logic of immutability at the basis of antidiscrimination law is not adequate to reflect the complex reality of discrimination. The author suggests incorporating immutability into a spectrum of stigmatised characteristics that are related to the multiple categories that make up the entity of the stigmatised discriminated group, for instance, black, adolescent, males. Solanké argues that in the case at hand these young men are as well a discrete, insular and powerless group.
Unfortunately in the U.K, this confluence of race, gender and age cannot be recognised as creating a discriminated group, a claim with this configuration could not be brought. The choice would be between the gender claim under the discrimination due to sex law or a claim based on racialised group membership under the race relations act. Since the case does not fall into the employment area, age could not be a ground for a claim. (Age would not differentiate them anyway from the white boys, who were not excluded.) It is only the combination of association as a black (racialised) membership with a male gender and adolescence (age) that creates the unity of black young men who are violent / dangerous, etc.

As a legal scholar, Solanke argues that in this case the opportunity was missed to challenge the social stigmas which blight these young men. The court disregarded the empirical data on rates of exclusion of black boys from school as well as the evasive response to a questionnaire required for such procedures. Solanke’s argument is that together these factors would have been sufficient to shift the burden of proof to the school authorities and may have led to saving the exclusion of the boys from the school.

Behind this approach is the clear idea that the justification for discrimination of persons belonging to groups that are among the most disadvantages stems from their multiple stigmatized group belongingness. This is why multiple discrimination in the sense of a configuration of group memberships/ belongings can more easily identify the most discriminated groups.

The Schiek and Chege volume devotes as well four chapters to the headscarf as a symbol of intersectionality in legal discourse. One chapter looks directly at the intersectionality of sex, religion and ethnic (race) discrimination with respect to the European Convention of Human Rights and the EC Equality Law. The last two chapters focus on the Danish (Roseberry) and the German case (Sacksofsky) in detail. The authors of these two different cases and approaches in the end concurring conclusions, that “the reluctance to accept headscarves worn by Muslim women, by feminists and others, amounts to a new recourse of ‘white womanism’. (op cit p363) Based on the German case the author points out that gender discrimination may take different forms, with respect to religious Muslim women, “they are believed to have a ‘false consciousness’... their discrimination as Muslim women ignored.”

20 The assumption is that to wear a headscarf is a political decision and in that sense anti-democratic / authoritarian, or patriarchal.
4.3.4 An empirical study of the use of antidiscrimination legislation in a gendered perspective

Carles (2008) has published the first research concerning the issue of the use of Antidiscrimination Laws with respect to the intersection between ‘race’ (or ethnic origins) and gender (Carles 2008). This study examines the use of Antidiscrimination Laws grounded in ‘race’ or ethnic origins from a gender perspective. This study is based on the hypothesis that men and women experience different kinds of discrimination and react in different ways to the phenomenon. Furthermore, it suggests, the institutional framework provides different responses according to gender, in terms of action and conflict resolution. After a short review of those dimensions of feminist theory found to be applicable to this research, in addition to recognition of the multi-level analysis of Yuval-Davis (2006), Carles gives attention to the debate existing within French feminist literature. Starting with the universalism of the French feminist perspective that originally viewed little diversity among women, Carles goes on to discuss the more recent view (Delphy 2006) that racism in France reflects a more “value cultural comparison” between men and women, that is often used to legitimise the differential treatment of “black” and “white” members of the population. This compounded legislation in France with respect to the law on Secularism relating to the wearing of the veil that “was justified in part by the need to protect Muslim women’s rights against their men, who were seen to be more violent and sexist than white men.” An additional dimension is brought out that argues that the culture transmitted to young French women of a North African background is largely dependent on social relationships generated by sexism and racism in a French social context rather than being a direct heritage from their parents and communities (Hamel 2005).

This background debate could be considered relevant not only for this study but also for much of the debate addressing the gendered aspects of behaviour, discrimination and sexism in countries of immigration vis-à-vis a number of immigrant groups from Muslim backgrounds. Mohanty (1988) has argued that Western feminists have created the category of the “third world woman” vis-à-vis the Western model of woman seen as the primary, and supposedly superior, point of reference. Carles continues with a discussion of the gender pluralist approach to the concept of citizenship (Mouffe 1992): She finds that the advantage of this approach is that “it makes visible the range of social divisions such as race, gender and class, which intersect with gender to shape the citizenship of women and men” (Lister 2003).

21 This article is based on research of the evaluation of the antidiscrimination laws in Belgium. The project has been funded by the EU’s 5th Framework Programme (Marie Curie Mobility Action n MEIF-CT 2005-024890).
Without detailing here the methods employed in Carles’ study, attention should be given to the most important findings that can have a role in the research of the GendeRace Project. These findings stem primarily from studying cases of complaints brought to the Belgium Centre for Equal Opportunities and the Fight against Racism which has long standing experience with antidiscrimination based around race and ethnicity.

Generally, the study found that gendered differences could be observed with respect to how both men and women react when they face discrimination. Discrimination was found in this study to be differently constructed by men and women. Men perceive and respond more often to ascriptive racism, verbal and physical violence. “Women encounter more difficulties in their day-to-day life, in their interaction with people.” Based on this study, Carles concludes that discrimination is not only a result of the adding together of two sources of discrimination, but that it is also multi-layered. This applies to both sexes, each in a different way, and to different experiences of discrimination. Carles stresses that this is not necessarily hierarchical.

The findings also conclude that men and women also use resources, including legal ones, differently. Although in this case study women made more complaints than men, the study finds that they use resources more effectively than men do. This has to do with their “attitude toward the legal framework” as well as to “the protection from which they benefit”. Reference is made to both private individuals and public services, perhaps because they are seen as victims to be protected.22

This could be a subject for further research, whether certain groups of immigrant women have, de facto, not only better involvement in their own organisations but also more often have ties to larger women’s networks for support. Finally, Carles points out that a Centre such as the one studied in Brussels is reached by only the tip of the iceberg and that this research says nothing about persons who experience gender/race based discrimination but are not aware of their rights and do not have access to protection. “It is now necessary to go deeper: interviews of both lawyers and victims will help to discover the importance of the representation of law and institutions and how they can determine the use or not of the legal system.”

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22 At an earlier point the author pointed out the greater embeddings of minority women in supportive social networks than men more often referred to the perhaps less reliable organisations of shop-floor bodies /unions.
4.4. Conclusions

→ New Norms: Official recognition via antidiscrimination law sets new norms with respect to the major grounds for discrimination of categories of persons due to (gender, racial/ethnic origins, religion/ beliefs, sexual orientation, age.

The fact that the EU has recognised antidiscrimination law with Article 13 of the Amsterdam Treaty as a field in its own right especially with respect to the racial and ethnic discrimination and the employment directives is itself a norm setting event worth recognition. The majority of the 25 EU countries did not have effective legislation in these areas. In addition these directives have in connection with the extended protection against discrimination thus widened the variety of groups\textsuperscript{23} that may make claims in employment.

→ Multiple Discrimination receives greater recognition through the new EU directives; need to eliminate hierarchies of discrimination

This also signals a potential for the interaction of categories and for recognition of multiple discrimination within the application of EU law. Multiple discrimination is mentioned as pointed out in a variety of scattered provisions and preambles in EU laws, but it is not defined in binding legal texts at the EU level. One of the main findings of this overview, however, is that with the exception of the UK the European Union member states have little experience with the application of multiple discrimination claims or intersectionality in the practice of antidiscrimination legislation within the EU. And, even in the UK multiple discrimination remains more alive in theory than in praxis. This has to do with the practice of legal procedures that rely primarily on one ground of discrimination on the basis of gender or racial or ethnic ascriptions.

→ The references to multiple discrimination are not adequate enough. There is a need for binding regulations to put multiple discrimination in practice

\textsuperscript{23} These include other potentially discriminated categories of persons beyond sex and racial discrimination to include age, disability, religion and beliefs, and sexual orientation.
One of the most important finding in this selected overview is the general consensus in all papers that although multiple discrimination in the majority of cases is impossible to implement, it remains an essential element for successful protection of the most discriminated in society. The methodological studies of multiple discrimination and intersectionality enlighten our insights about how these groups may be constructed and identified. The solutions to implementation within antidiscrimination-proceedings requires explicit and binding regulations in the legal system that would make application feasible (Nielsen, Solanke, Vieten).

→ Difficulties exist in the implementation of the enforcement of individual rights to equal treatment, thus, a need for equality goals and mainstreaming

Other authors, particularly in the Schiek and Chege volume, visualise a move from formal to substantial equality law and in the design of new forms of governance. This stems from especially the UK and the German experience (with respect to gender) with the shortcomings experienced in the enforcement of individual rights to equal treatment that lead to demands for effective remedies and institutional support. Gender mainstreaming is undoubtedly an important concept in this direction. In the UK they speak about the fourth generation of equality law with the main improvement to be a “group social justice model” (Schiek 2009). This requires positive obligations, for primarily public actors, to establish institutional preconditions for equality. Fredman (2009) takes up this line of thought up in her piece on “Positive Rights and Positive Duties: Addressing Intersectionality”. She suggests that the implementation of intersectionality can best be achieved not through individual complaints of discrimination, but much more effectively through planning and setting equality goals.

→ Intersectionality is a conceptual tool for grasping the impact of multiple memberships in discriminated groups on formation of unique lived locations in social space.

The concept of intersectionality is a useful tool for grasping how to understand because it attempts to locate persons where they meet on an interaction of discriminating factors with respect to their situated belongingness to multiple groups. In this process they form a new configuration and reflect very specific needs. Intersectionality is a tool that when properly studied and evaluated helps to understand the impact and significance of multiple discrimination. This creates a new unique case. The examples of special groups given in the
publications at hand who exemplify intersectionality are special who are identified with
overlapping forms of discrimination are the following:

- **External multiple discrimination.** Categories of gender and race: women with
  racialised collective identities (migrant women and ethnic minority women) more than
  men belonging to racialised collective with respect to legal rights as individuals or
  within their membership group: (undocumented women / no legal status / marriage
  migrants / involvement in human trafficking, Muslim women, Roma women).

- **Internal discrimination.** Categories of gender and race who are excluded due to
  ethnic membership, discriminated because of gender, and may be further
  discriminated within their own group because of cultural or religious values and the
  social controls that emanate from that.

→ Intersectionality as an analytical tool enables us to grasp the most discriminated against
   groups

The term multiple discrimination, however, is the more general expression that is used in the
international legal texts where reference is made to multiple discrimination. Stated simply,
there can be groups whose lives are impinged on by different forms of discrimination and
exclusion.

In the sense of a configuration of group memberships/ belongings to identify a unique case
can more easily serve the most discriminated groups. Behind this approach is the clear idea
that the justification for discrimination of persons belonging to groups that are among the
most disadvantages stems from their multiple stigmatized group belongingness (Solanke
2009).

→ The criteria whereupon the decisions about the extent of discrimination articulated in the
   grounds need to be clearly established

This will be dependent on historical experience. Solanke demonstrates how the minute study
of discrimination decisions and the steps involved can be useful for creating a systematic
approach. Solanke refers to questions applied in the U.S. Supreme Court deliberations to judge the extent of discrimination facing the complainants.

→ All studies of multiple discrimination need to be grounded in the local reality, contextualized and firmed with historical knowledge

Vieten’s work reminds us of the need for contextualisation and historical knowledge of the very specific groups that may be facing intersectional and or multilayered discrimination with different dimensions and significance in each country.

→ Women and men ethnic minority background experience different form of discrimination and they respond differently to immigration.

Carles’s work indicates that in the Belgium case, not only do women and men experience different forms of discrimination, but they also respond differently to discrimination. In the Belgian case, there are also indications that the institutions and/or legal counsellors may also respond differently to the forms of discrimination that women and men ethnic/ racialised minorities receive.
Chapter 5: The impact of gender and racialised identities on the experience of discrimination

by
Eleonore Kofman, Erika Howard, Elena Vacchelli and Helena Wray
5.1. Main objectives

The chapter on the impact of gender and racialised identities on the experience of discrimination explores the differential experience of different forms and sectors of discrimination by women and men and in particular the extent to which gender and racialised identities are perceived by individuals and authorities as playing a part in the nature of discrimination. It secondly examines the extent to which complainants are aware of multiple discrimination as applying to themselves and whether bodies dealing with discrimination are taking multiple discrimination into account.

5.2. Methodology applied

The analysis of the theme was largely based on the files collected in each country, individual interviews with stakeholders about their views, in the stakeholder workshop to discuss general conclusions, and in above all the semi-structured interviews with individual women and men recounting and reconstituting their experiences of discrimination. The latter provided the major source in arriving at an understanding of how women and men experienced discrimination, the different forms, sectors and consequences of discrimination and the extent to which they considered the discrimination they had faced as constituting multiple discrimination. The information from the national reports has been used to provide background information on each partner country.

Except for Sweden, the interviews in were not drawn from the files studied for this investigation. In most instances the sectors and groups discriminated were not radically different between research on case studies and interviews, and there was an overlap of local and national gatekeepers, for example HALDE and MRAP in France or a local London law centre and citizens advice bureau in the UK. An exception arose in the Spanish case where the gatekeepers enabling access were quite different.
5.3. Comparative analysis

The main variables considered across the six countries were the different forms of discrimination encountered by women and men, the sectors in which claims were made (employment, health, education, housing and recreational services, such as restaurants and nightclubs), whether it was in the public or private sector, who the author of the discrimination was, (for example their manager or colleague at work, a public official or the police); whether they understood their experience as discrimination and what their understanding of discrimination was, and especially whether gender and racial discrimination were recognised, the consequences for individuals of having experienced harassment and discrimination and general hostility; whether they understood their own discrimination as a involving multiple discrimination. Most claims were made on the basis of race, origin or nationality, which is more clearly understood by individuals and authorities alike, rather than gender which was often overlooked or ignored by the organisations dealing with discrimination, as in Bulgaria. Men may use race more because gender grounds are not so accessible to them.

Our study has also looked at the different groups which made claims and which groups, though discriminated against, tended not to complain because they either thought discrimination was a normal part of their existence or that they would not gain any redress. Across the six countries, two characteristics stood out. Many of those making claims were either born in the country, a citizen or with a long term residence permit, and were relatively highly educated. Higher levels of education increase the perception of being discriminated against. The latter aspect would suggest that class or socio-economic status plays a part. In nearly all of the countries, Muslims from Africa, North Africa and Turkey were often stigmatised and discriminated against, especially Muslim women wearing headscarves in places of employment or education (France, Germany and Sweden). So, too were the Roma heavily discriminated against, but they tended not to seek redress, with some exception in Spain. Both groups encountered high levels of discrimination on the basis of visible markers. The characteristics of the UK population were different in that it included a wider spectrum of nationalities, ranging from white Europeans to non-British, and no claims based on discrimination against Muslims, especially against women, were made. There is no ban in the UK against women wearing headscarves and head covering by different groups (Muslims and Sikhs) has generally been accepted.
From our research, it is clear that five out of the six states under investigation – France, Germany, the UK, Spain and Sweden – identify ‘immigrants’ as those being most vulnerable to discrimination. We noted then that a significant part of those persons marked out as immigrants are actually (already) citizens of the respective state in question, but that this did not make a difference as discrimination takes place because of visible markers such as appearance, language or religion, and whether the person is a citizen or not does not play a role. That this is the case, was borne out in the subsequent research tasks. In Bulgaria the most discriminated against people are the Roma population, and this is often based on negative stereotypes.

5.3.1 Experience of (multiple) discrimination (from a life course perspective).

a. Description of specific discrimination experienced by complainant

The experience of multiple discrimination in Bulgaria is polarised between a majority of women who experience discrimination on the basis of their gender and a minority who does on the basis of their ethnic origin. In general, there is little awareness of intra-group discrimination, discrimination within a minority group against members of that group, often women. The research from Bulgaria, the UK, Germany and Sweden, shows that higher education status clearly increases the individual perception of discrimination and the willingness to report it.

In France, a diffused experience of discrimination concerns the racialised and gendered connotation of ethnic minority men as terrorist, violent and sexist. On the other hand, the stereotyping which affects ethnic minority women defines them as submissive, incompetent and unsuitable for public positions. Specific to the experience of Muslim women’s discrimination in France is the wearing of headscarves outside the sectors where this is already prohibited (wearing of headscarves by both teachers and pupils in educational establishments and by employees in public sector employment is prohibited in France). In Sweden, it was also found that Muslim girls are discriminated against in education when headscarves are banned.

The research in the UK showed that men often feel threatened by highly qualified women and, as a result, they may discriminate against them. In the UK, as in the majority of other
partner countries, except Sweden, in general there is very little perception of multiple discrimination among the victims of discrimination as was shown by the interviewees throughout the research. Most did not recognise their experience as multiple discrimination even in cases where clearly more than one ground led to the discrimination, unless prompted by the interviewer. From the sample of interviews, some intra-group discrimination emerged, while the research showed that intra and inter-group harassment and bullying were mainly experienced by women. Also, the research in Spain and in Sweden showed that harassment and victimisation was experienced mainly by women within their work environment and in their neighbourhoods.

In Spain, the ethnic background as a ground of discrimination is predominant for migrants if compared with the gender ground which is overlooked. As in Germany, visible markers such as clothing, skin colour and language play a relevant role in the experience of everyday discrimination. This is confirmed by the experience of a Roma widow in Spain who was dressed in black and who was accused of shoplifting because of the way she was dressed. In many cases the incident which led the victim to report the discrimination was the last incident of a string of complex and no longer sustainable discriminatory practices.

In Germany, cultural and religious symbols are conducive to stereotyping and subsequent discrimination as they are in many other partner countries. Outward symbols, such as language, clothing and features, often give rise to discrimination. In Sweden ethnic minority men experience discrimination in leisure services such as discos, bars and restaurants and are heavily identified with school failure, violence and religious conservatism. In France, men also experience such discrimination in leisure services and

In Sweden, mainly individuals of African background are subject to racist language and other forms of racism, stereotypes, criminalisation and violence, while Muslims suffer discrimination in provision of goods and services. Proportionally, women suffer more harassment than men.

A number of common elements emerge if we compare the partner countries in relation to the description of specific discrimination experienced by complainants. These common factors are:
(i) Women are much more often victims of racial or sexual harassment than men;
(ii) Multiple discrimination is only rarely identified as such by the victims;
(iii) Intra-group discrimination is often not recognised or identified as such. Moreover, intra-group discrimination which is considered discriminatory by the outside observer remains very often hidden, because it is not recognised by women as such, or at least there is no readiness on their part to declare these publicly and expose them to the outside community. These cases are not perceived as discrimination by most members of minority groups, including the persons discriminated against. The problem on intra-group discrimination was discussed in some of the expert workshops. Many women in Europe are discriminated for wearing headscarves or other clothing that sets them apart as members of a minority group;
(iv) Men are facing discrimination in leisure areas such as bars, nightclubs and restaurants, based on stereotypes of them being violent and aggressive; because men are stereotyped as violent and as having links with terrorism, they experience more violence from public authorities like the police;
(v) There are common gender based stereotypes of ethnic minority men as sexist and aggressive and of ethnic minority women as passive and submissive.

b. Other experiences of discrimination in everyday life at individual and community levels

Analysing other experiences of discrimination, we find that in Bulgaria there is concern about intra-group discrimination, which is identified as discriminatory by outside observers, however is not perceived as discriminatory by most members of minority groups. Also in Bulgaria, Roma and Turkish interviewees firmly believe that discrimination against people from their ethnic group is widespread. In particular, given the widespread stereotyping against them, Roma, because of being Roma, feel discriminated in cases where other citizens do not feel discriminated against, and have probably internalised the bias.

In France, half the persons interviewed reported no other experiences of discrimination and found it all the more shocking because they saw themselves as fully integrated. Everyday life racism at both individual and community level is a diffused experience among the
interviewees and women wearing headscarves experience general disapproval including from feminists.

In the UK, there is no consistent picture as to whether interviewees had experienced discrimination before. Several people had experienced a number of acts of discrimination over the years and in one case for different grounds in different situations. One interviewee told of discriminatory experiences of others which she had witnessed, including the long drawn-out process of taking a case to court and the toll this took out of the victim. The interviewees who said that they had previously experienced discrimination were often well educated. But even educated people were unsure about what they had experienced.

In Spain, many interviewees suffer daily discrimination, particularly when visibly different. Their visible difference is directly proportional with the level of discrimination they are subjected to. Some interviewees are aware that they are especially sensitive to discrimination, where others have naturalised these experiences, as they don’t trust that their situation will change. In general, Roma feel the most discriminated against in comparison with other groups. However, other groups seem to feel the same about their own group (Moroccan and Sub-Saharan). In the case of the Roma middle class, which form the majority of interviewees, their specificity appears to be invisible so they are often assigned the negative stereotypes associated to their ethnic group with a lack of sensitivity to the diversity within such groups. The latter is often the case, as the research in the other partner countries has borne out.

The largest group of migrants in Germany are those of Turkish origin. They are seen as difficult and not capable of integration because of their rural and Muslim origins. This is particularly so recently because of their identification as Muslim due to increasingly Islamophobic feelings. Many interviewees reported a constant underlying level of discrimination as a continuous factor adding up to severe discrimination and this is recurrent in their everyday life.

As already mentioned, over and above the recurrent features of everyday discrimination in Sweden are racist language and other forms of racism against racialised and gendered identities carrying the signs of their differences (skin colour, clothing) which leads to criminalisation and violence.
A comparison of the GendeRace partner countries in relation to the experiences of discrimination in everyday life exposes mixed reports as to how much discrimination people experience: some groups report frequent occurrences and experience discrimination as part of their everyday life; others were shocked when they realised they were perceived as different.

The comparison showed that:

(i) Groups become habituated to daily discrimination (e.g. Roma, Turkish in Germany, Roma in Bulgaria) to the point where they interiorise the stigma and interpret most facts through the prism of discrimination with little expectation of being able to change anything about this situation;

(ii) Especially Muslim men and women were discriminated against in different ways: men are seen as aggressors and sexist while women seen as oppressed and victims. This was confirmed by some of the stakeholder interviews;

(iii) In most cases visible difference seems to be a important trigger of discrimination on a daily basis, another point confirmed all of the research work tasks.

c. Consequences of discrimination

In Bulgaria, it was found that Roma victims tend not to complain as they have a perception that nothing will change and that there is no remedy to discrimination. They do not expect the means available to complain to be effective. It was also found that intra-group discrimination against women/girls is often not tackled, but has relevant consequences for girls’ education. For example, the experts workshop discussed this and mentioned that intra-group discrimination within groups of Muslim refugees from the Middle East took place against women but frequently this behaviour was not seen as discrimination. These groups treat girls and boys in the family very differently, but do not see this as discrimination. This influenced the education of girls, because, as the experts remarked, ‘they try not to send girls to school’.

In France, an important consequence of discrimination is that women do not participate in the labour market because of headscarf discrimination. This may lead to increasing individual trauma, depression and negative psychological consequences which women mentioned during the interviews. In the UK interviews this was reinforced where women interviewees mentioned the emotional toll of taking a case further and their fear of the impact of personal
stress on their families. As a consequence of this, in the UK women tend to settle more easily than men. One interviewee, a barrister, also mentioned that men are more single-minded and can focus on taking a case to tribunal, whereas women have too many other things going on in their lives to concentrate solely on a discrimination case. In Spain, emotional consequences are also particularly emphasised by women.

In the UK, people are reluctant to bring proceedings as they do not want to be seen as whiners and trouble makers. This is mainly the case of men who, for instance in Spain, tend to minimise the consequences of discrimination although, on the other hand, seem more determined to protect their rights. A diffused way of coping with discrimination is opting for avoidance of the discriminatory situation. Victims of discrimination in Spain tend not to go back to places where they experience discrimination like shops, workplaces with the exception of two women. In Germany, many interviewees reported an underlying discriminatory attitude as a continuous factor adding up to severe discrimination.

Looking at the common factors between the GendeRace partner countries in relation to the consequences of discrimination, we can distinguish the following:

(i) The emotional stress of taking a discrimination claim further appears to affect women more than men and appears to lead women to decide not to take a case further; This was also stressed by some of the advisors/practitioners interviewed for the experts interviews;

(ii) There is sometimes a tendency to deal with discrimination by avoiding the situation in which the discrimination occurred;

(iii) There is often a reluctance to bring proceedings for reasons such as lack of faith in remedies;

(iv) Others are reluctant to bring proceedings because of a desire not to be seen as whiners or troublemakers.

d. Personal understanding and articulation of discrimination

In this part we analyse how people personally understand and articulate what happened to them. In Bulgaria most victims of discrimination do not articulate their experiences as discrimination, even when they are aware of the cause. For instance, women did not always see the gender-related aspects of discrimination. On the other hand, in general, Roma are very
conscious of discrimination. Many interviewees in Bulgaria saw discrimination as unavoidable and did not take action because of lack of faith in a positive outcome which would change the situation.

In France, more men than women brought race discrimination complaints. Women tend to identify the race aspect more easily then gender and there is an overall lack of gender claims in the samples of the study. With regards to the personal understanding of discrimination, both victims and perpetrators of discrimination because of the wearing of the headscarf, believed that the law banning headscarves is more widespread and covers more areas than it actually does. This is the case for both employers and victims who believed that women wearing headscarves are not entitled to protection.

In the UK, the interviewees often did not articulate what happened to them as discrimination, although men seemed to conceptualise it more easily than women. Women tended to blame themselves and think that they themselves are at fault and that this is the cause of the unfavourable treatment rather than discrimination. In most of the cases, more educated interviewees were quicker to recognise discrimination. In the UK, like in Spain, race discrimination is more stigmatised than gender discrimination and there is a reluctance by victims to identify it.

Spain offers a mixed picture in relation to the personal understanding and articulation of discrimination. While many interviewees used the term discrimination after they were prompted by the interviewer, some provided an elaborated discourse on discrimination and related their experiences to the existence of stereotypes affecting their whole community although these individuals were often involved in support organisations. So the cases of people who fail to articulate discrimination even in blatant circumstances neatly contrast with those people who are articulate and often involved in support organisations.

Personal experiences of discrimination also range from difficulty of articulating the nature of the experience, as it happened in Germany, and the fact that the realisation of the discriminatory experience takes some time to be rationally understood and articulated as it happened in Sweden.
Common factors between some or all GendeRace partner countries concerning the personal understanding and articulation of discrimination in more than one country follow:

(i) Many interviewees had difficulty articulating the nature of their experience as discrimination. Often it is only when they seek help that the problem experienced is recognised as discrimination through the advisor. This was very clear from both the interviews with experts, and that with claimants and complainants;

(ii) More educated interviewees were quicker to recognise discrimination and often were also more knowledgeable about possible organisations who could provide help and about remedies.

e. Identification of their experience as multiple

In Bulgaria, most victims of discrimination did not articulate their experiences as multiple discrimination despite the existence of a separate Panel for Multiple Discrimination in their equality body. Moreover, intra-group aspects of discrimination are often not seen as contributing to wider discrimination due to a lack of education on the part of the victim.

In France, both men and women seem to be aware that they are victims of double stereotypes although none of the complainant interviewees brought up the need for multiple discrimination frameworks and most do not even mention the concept. Even if they are aware of more than one ground as the basis for being discriminated against, most complainants proceed mainly on race grounds.

In the UK, most interviewees did not mention multiple discrimination even where it was present, and normally the legal decision was taken by an advisor/practitioner for strategic reasons, taking into consideration which ground was stronger, could be proven more easily and thus was more likely to be successful.

Again, in Spain, none of the interviewees identified their specific experiences as multiple and none did recognise any element of gender related discrimination. This is considered to be due to a lack of public debate on gender issues on television, newspapers and other media. In Spain it is commonly accepted that Roma women suffer more discrimination than Roma men, although not every interviewee was ready to agree on this point.
Interviewees in Germany presented a similar difficulties in articulating the nature of their experience of discrimination as multiple and, in general, the cases were brought forward on single grounds for obvious reasons (the fact that they did not perceive the multiple dimension of discrimination and the fact that a legal framework to address it is missing).

It is worth noting that Sweden represents a noticeable exception to this general trend because nearly all of the complainant interviewees were able to articulate their discrimination as multiple.

From the comparative analysis between the GendeRace partner countries on how victims of discrimination identify their experience, it emerged that:

(i) In every GendeRace country except Sweden there is a difficulty in articulating discriminatory experiences as discrimination and this difficulty is even greater in relation to recognising instances of multiple discrimination;

(ii) With the exception of the UK, race seems to be more easily articulated than gender. In the UK, the number of sex discrimination claims brought far exceed the number of race discrimination claims brought although it is possible that race discrimination claims are more heavily contested.”

(iii) Multiple discrimination cases are mostly recognised as such by advisors or organisations involved in assisting victims of discrimination but not by the victims themselves unless this is pointed out by advisors or interviewers.
5.3.2. Context of discrimination

a. Sector of discrimination

In Bulgaria, France, Germany, the UK and Sweden the principal sector of discrimination, in both case files and interview work, is employment. In France and in Germany complaints by women are predominant and this has some relation to the wearing of a headscarf. The research reveals that the public sector is not immune from discriminatory practices in the workplace. For example, a number of the interviewees in the UK sample from interviews were discriminated against in the public sector, by public employers. In Spain however, the principal sector of discrimination is different for case files and interview work as this depends on the different gatekeepers of the case files and the interview work, where the latter was dominated by cases of discrimination against Roma.

Another important sector of discrimination is the area of goods and services where discrimination takes place by refusing access (Bulgaria, France, Spain and Sweden). In Spain, the public sector often subcontracts from the private sector, a crucial sector for gender discrimination. On the other hand, in Spain the sector of private goods and services presents more discrimination cases than employment, especially for males. Refusal of access to goods and services in Bulgaria was addressed by Roma people whose main cause of discrimination is usually related to illegal dismissal. In Bulgaria the grounds of complaints submitted by Roma women are similar to Roma men.

In France, housing is the sector where the highest number of complaints comes from men. Education is a relevant sector of discrimination in France, the UK, Germany and Sweden. In France, Germany and Sweden the majority of victims are women and they are often discriminated against for wearing the headscarf.

In general, for all the GendeRace partner countries the sector of employment is often the arena for discriminatory behaviour, followed by the provision of goods and services. Both sectors encompass both public and private employers/service providers.
b. Relation to author of discrimination

As much discrimination takes place in the employment sector, the authors of the discrimination are usually superiors, managers, employers and persons in position of authority and power over the victim. And as we have seen, both private and public employers are often the authors of discrimination. In some cases where violence is involved, the authors are law enforcement officers. In two cases in Bulgaria involving street violence the authors were skinheads. In the area of access to goods and services the author is most often the service provider, and in discrimination in health provision it is a doctor or nurse.

In Spain, employers within private or public goods and services sectors are the main authors of discrimination and they are mainly males when victims are s.

The research suggests that in nearly all complainant interviews in all GendeRace partner countries, the perpetrator of the discriminatory action was a person who had a dominant position vis-à-vis the victim. That this is the case was confirmed by the stakeholder interviews and in the expert workshops.

c. Grounds of discrimination

The grounds of discrimination in the UK depend on the sample of case studies. In advice centres, disability is dominant with also sex, race and sexual orientation. Among Tribunal cases the grounds of discrimination are race, sex and multiple discrimination brought forward as single grounds as the law do not allow multiple grounds. In the UK, other relevant grounds include social class and age.

In France, grounds are mainly race-related and ethnic origin; this is particularly diffused amongst men. Race discrimination is more commonly used than gender discrimination. Another important ground of discrimination is religion. Among discrimination due to origin, cases of multiple discrimination were mostly based on gender and health.

In Spain, race and ethnicity are the main grounds of discrimination. None of the organisations dealing with issues of discrimination with a gender specific focus have formal complaints offices, and they deal more with victims of domestic violence and sex workers than with discrimination. Cases of sex or gender have mostly been private conflicts in which women
were abused on the basis of their sexuality and gender. Other relevant grounds of
discrimination are social class, socio-economic and legal status.

In Sweden, the main grounds of discrimination are gender (pregnancy) and ethnic background
in education, while other grounds concern age, which affects women in different ways, and
religion. In Germany, the grounds of ethnic and racial discrimination are easier to identify (as
in cases of direct discrimination) if compared to gender grounds (identified as areas of
indirect discrimination).

From a comparative analysis of the six GendeRace countries in relation to the grounds of
discrimination, it emerged that:

(i) Grounds of discrimination are mainly race and gender but race is more used as a
ground commonly in all member states as it may be easier to identify and because
the law only allows one ground at the time. The UK represents an exception as the
high number of sex discrimination claims may reflect the preponderance of
employment-related claims where sex discrimination claims are a well-developed
legal tool. Moreover, the stigma attached to accusation of race discrimination may
also be a factor and the UK’s analysis included intra-categorical cases. The UK also
had cases of racial practices between two subordinate groups.

(ii) Multiple discrimination appears to take place on a combination of two or often
more grounds, and gender and/or race can be combined with each other, but also
with age, disability nationality, national origin etc;

(iii) Social class was another ground that was a factor in some cases.

d. Type of discrimination

The Bulgarian research on case studies reveals that both women and men suffer much more
direct discrimination than indirect discrimination. However, women suffer more harassment
than men. Both suffered almost equally of multiple discrimination. Both the complaints and
the decisions of the CPD, the Bulgarian Equality body, often do not mention if the concrete
case represents direct or indirect discrimination. In approximately a quarter of the cases, the
discrimination is defined as harassment as well. Most of these cases are related to
employment relationships.
In France, around 75% of cases studied, involved direct discrimination and fewer than 6% involved indirect discrimination. The other large category involved harassment. The results were very similar for interviews with claimants and complainants.

In the UK, the data from case studies on this is only available for a small part of the cases, namely those of advice centres. Almost half of the cases there involved direct discrimination, followed by harassment and indirect discrimination. There was one case on victimisation and one on instruction to discriminate. What was clear from interviews with claimants was that women suffer more from harassment than men. One interviewee with an expert suggested that men do not claim harassment very often because it involves a subjective test on how it affected the victim and men tend not to want to talk about this.

In Sweden, women are more often subject to a combination of direct discrimination and harassment. Women suffer more harassment than men, while men tend to suffer more direct discrimination.

The types of discrimination are not always clearly recorded in the GendeRace partner countries, but both direct and indirect discrimination as well as harassment and victimisation claims are made. Harassment seems to affect women more than men in all countries.

A ground that has commonly emerged as a ground together with gender and race and other grounds is social class. Social class and educational attainment which is often linked to social class, also appears to have a significant impact on the personal understanding and articulation.

In Bulgaria, social status was mentioned in three cases studied, but the Bulgarian team concluded that the feeling of discrimination is stronger among better informed groups, with more tradition in asserting their rights. It could be assumed that the higher educational status and prestigious profession (like teachers and nurses) increase the sensitivity to discrimination practices and provides self-confidence for defending and protecting one’s rights. If educational level has something to do with social class, then it does play a role. From the interviews results, the Bulgarian team concludes that it should be noted that the survey conducted has reached only to cases where the women – especially the women belonging to minorities – have relatively good social status and education, and know where to look for assistance and have received such by NGOs.
In France, religion, and particularly Islam, was a common ground, but this may be a proxy for race. Physical appearance was also identified as a causal factor, but again this might be a proxy for race. Class seems to have been a factor, although it may have been connected to race/migrant status, as the same experts interviewed referred to well-qualified migrants being subject to discrimination. A complainant interviewee believed he suffered discrimination both because of his ethnicity and his social background.

In Sweden, age and religion are mentioned, and age discrimination is said to affect women differently. Also (young) Muslim women are particularly affected by discrimination. Violence and criminality is associated with class. In Spain, social class is said to have significant impact on the experiences of discrimination, and experts think it is a mistake not to treat socio-economic status as a ground for discrimination. Although stakeholders do not agree with including discrimination due to socio-economic status within the concept of social exclusion and, according to them, the latter should be understood and treated as something different from discrimination.

In the UK, social class was found to have an impact on discrimination and discrimination claims. What also influences the decision to take a case further is, what one participant in the workshop called ‘social capital’: A person has to be quite articulate to even voice something like a discrimination claim. The UK team also found that age often plays a role, for example where younger girls are intimidated by managers. On the other end of the scale, older people experience gender and age discrimination (in interviews with claimants and complainants sample: 3 people of 60, 59 and 57 respectively).

In Germany, Islamophobia was mentioned as a reason why Muslim people were discriminated against. Muslim women were discriminated against because of wearing the headscarf, while young Muslim men were identified with failures in school, violence and religious conservatism. This suggests that religion plays a role here as well.

Thus, social class was a ground that emerged as a ground for discrimination in many of the GendeRace partner countries, both together with other grounds and on its own. Religion was mentioned by three countries (Germany, France and Sweden), while age was mentioned by two (The UK and Sweden).
### 5.4. Socio-demographic data on claimants / complainants

#### a. France

**Women**

<table>
<thead>
<tr>
<th>№</th>
<th>Age</th>
<th>Nationality</th>
<th>Origin</th>
<th>Residence</th>
<th>Present occ</th>
<th>Last occ</th>
<th>Family</th>
<th>Education</th>
</tr>
</thead>
<tbody>
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<td></td>
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<td></td>
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**Men**

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<th>Family</th>
<th>Education</th>
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</tr>
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<td>Origin</td>
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<td>Last occ</td>
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**b. Spain**

<table>
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<th>Origin</th>
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<th>Present occ</th>
<th>Last occ</th>
<th>Family</th>
<th>Education</th>
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<tbody>
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<td>Spanish</td>
<td>Roma</td>
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<td>Employmente assistant</td>
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<tr>
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<td>Roma</td>
<td>Spanish</td>
<td>Employmente assistant</td>
<td>Shop assistant</td>
<td>Lives with parents</td>
<td>Secondary level</td>
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<td>Unknown</td>
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<td>Spanish</td>
<td>Institutiona l liaison in an NGO</td>
<td>Secretary and accountant</td>
<td>One daughter</td>
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</tr>
<tr>
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### Men

<table>
<thead>
<tr>
<th>Code</th>
<th>Age</th>
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<th>Origin</th>
<th>Residence</th>
<th>Present occ</th>
<th>Last occ</th>
<th>Family</th>
<th>Education</th>
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</thead>
<tbody>
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<td>Roma</td>
<td>Spanish</td>
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### c. United Kingdom

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<th>Mdx 3</th>
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<td>M</td>
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</tr>
<tr>
<td>4. Place of residence</td>
<td>North London</td>
<td>London</td>
<td>London</td>
<td>London</td>
<td>Belfast</td>
<td>Nottingham</td>
</tr>
<tr>
<td>5. Citizenship</td>
<td>Ghana</td>
<td>British</td>
<td>British</td>
<td>British</td>
<td>British</td>
<td>British</td>
</tr>
<tr>
<td>6. Current Occupation/Employment</td>
<td>On maternity leave</td>
<td>Sustainability Project Officer</td>
<td>Self employed child minder</td>
<td>Senior Lecturer</td>
<td>Associate lecturer in computing University of Belfast</td>
<td>Senior Lecturer in Policy Criminal.</td>
</tr>
<tr>
<td>7. Last Occupation/Employment</td>
<td>Chef</td>
<td>Bank cashier</td>
<td>Secretary in nursery</td>
<td>Programme Leader</td>
<td>Associate lecturer in computing University of Belfast</td>
<td>Recruitment for part time adm work</td>
</tr>
<tr>
<td>8. Education</td>
<td>Diploma in Business Studies and Accounting</td>
<td>Degree, doing an MSc</td>
<td>A levels</td>
<td>2 masters, now enrolled in a PhD</td>
<td>Degree</td>
<td>PhD</td>
</tr>
<tr>
<td>9. Family/Dependents</td>
<td>Married two children</td>
<td>Lives with mother and brother</td>
<td>Single mum w 1 kid</td>
<td>Married with 2 adult children</td>
<td>divorced with 1 kid</td>
<td>Partner and 2 children</td>
</tr>
</tbody>
</table>

---

58 UB-CL3 appears two times because it is a couple
<table>
<thead>
<tr>
<th>10. Against whom complaint is being made</th>
<th>White male restaurant’s GM</th>
<th>Former manager’s (black female) bad reference</th>
<th>Nursery employer</th>
<th>Line manager white American female</th>
<th>Line manager</th>
<th>NA</th>
</tr>
</thead>
<tbody>
<tr>
<td>11. Nature of the complaints</td>
<td>Gender and race resolved as gender</td>
<td>Disability discrimination (dyspraxia)</td>
<td>Gender discrimination for pregnancy and possible race</td>
<td>Being a while middle class woman, knowledge</td>
<td>Religion</td>
<td>Sexual harassment and more</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Interview reference</th>
<th>Mdx7</th>
<th>Mdx8</th>
<th>Mdx9</th>
<th>Mdx10</th>
<th>Mdx11</th>
<th>Mdx12</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Gender</td>
<td>M</td>
<td>M</td>
<td>M</td>
<td>M</td>
<td>M</td>
<td>M</td>
</tr>
<tr>
<td>2. Age</td>
<td>41</td>
<td>33</td>
<td>53</td>
<td>32</td>
<td>57</td>
<td>58</td>
</tr>
<tr>
<td>3. Ethnic Background</td>
<td>White Italian</td>
<td>Nigerian Black</td>
<td>Black</td>
<td>Mixed race (black father, white mother)</td>
<td>White Jewish</td>
<td>White other</td>
</tr>
<tr>
<td>5. Citizenship</td>
<td>Italian</td>
<td>British</td>
<td>British</td>
<td>British</td>
<td>British</td>
<td>Polish</td>
</tr>
<tr>
<td>6. Current Occupation/Employment</td>
<td>Project Manager in Research office of UCL</td>
<td>School Lecturer in Business at College</td>
<td>Not in employme nt at present</td>
<td>Student</td>
<td>Full time care for her daughter (mental health problems) and her 15 months grand daughter</td>
<td>Unemployed</td>
</tr>
<tr>
<td>7. Last Occupation/Employment</td>
<td>NA</td>
<td>School Lecturer in Business at Hopkinton College</td>
<td>NA</td>
<td>NA</td>
<td>Secretary</td>
<td>Frying chips in restaurant</td>
</tr>
<tr>
<td>8. Education</td>
<td>PhD in Soil Science; Diploma in Intl. Studies; Master in Law; enrolled for a PhD Law</td>
<td>Graduate certificate</td>
<td>Secondary education</td>
<td>Secondary education, studying for higher degree</td>
<td>Left school at 15 years old after secretarial college</td>
<td>Bachelors degree in Poland</td>
</tr>
<tr>
<td>10. Against whom complaint is being made</td>
<td>Line-manager</td>
<td>Manager and racist teacher</td>
<td>Mental health service care worker/s</td>
<td>White and black fellow students</td>
<td>Her employer also Jewish</td>
<td>Asian employer</td>
</tr>
<tr>
<td>11. Nature of the complaint</td>
<td>Case of educational credentials dealt with as case of gender discriminatio n</td>
<td>Race and gender in employme nt and education</td>
<td>Race, “ethnic minorities” as in the quote</td>
<td>Race</td>
<td>Constructive Dismissal (intra-race)</td>
<td>Disability discrimination</td>
</tr>
<tr>
<td>Interview reference</td>
<td>Mdx 13</td>
<td>Mdx14</td>
<td>Mdx15</td>
<td>Mdx16</td>
<td></td>
<td></td>
</tr>
<tr>
<td>---------------------</td>
<td>--------</td>
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<td>-------</td>
<td>-------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Gender</td>
<td>F</td>
<td>M</td>
<td>M</td>
<td>F</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Age</td>
<td>40</td>
<td>26</td>
<td>34</td>
<td>40</td>
<td></td>
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</tr>
<tr>
<td>3. Ethnic Background</td>
<td>Indian</td>
<td>Iraqi</td>
<td>Black African</td>
<td>White British</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Place of residence</td>
<td>London</td>
<td>London</td>
<td>Croydon</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Citizenship</td>
<td>British</td>
<td>NA</td>
<td>British</td>
<td>British</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7. Last Occupation/ Employment</td>
<td>NA</td>
<td>NA</td>
<td>Working for NHS (mental health?)</td>
<td>Office manager/document controller in a site office of a construction firm</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8. Education</td>
<td>University and professional exams</td>
<td>Secondary Education</td>
<td>(?)</td>
<td>5 ‘O’ levels; left school at 16</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10. Against whom complaint is being made</td>
<td>Asian male and white male</td>
<td>Female line-manager</td>
<td>(?)</td>
<td>Senior Project Manager</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11. Nature of the complaint</td>
<td>Gender in the specific case and usually race</td>
<td>Sexual harassment</td>
<td>Homophobia and racism</td>
<td>Sexual harassment, sexism</td>
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<table>
<thead>
<tr>
<th>Interview reference</th>
<th>Mdx17</th>
<th>Mdx18</th>
<th>Mdx19</th>
<th>Mdx20</th>
<th>Mdx21</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Gender</td>
<td>F</td>
<td>F</td>
<td>F</td>
<td>F</td>
<td>F</td>
</tr>
<tr>
<td>2. Age</td>
<td>38</td>
<td>52</td>
<td>60</td>
<td>57</td>
<td>30</td>
</tr>
<tr>
<td>3. Ethnic Background</td>
<td>Afro-Caribbean</td>
<td>White British</td>
<td>British Indian</td>
<td>White Australian</td>
<td>Black African</td>
</tr>
<tr>
<td>4. Place of residence</td>
<td>Leeds</td>
<td>Scotland</td>
<td>North London</td>
<td>London</td>
<td>Manchester</td>
</tr>
<tr>
<td>5. Citizenship</td>
<td>British</td>
<td>British</td>
<td>British</td>
<td>Australian</td>
<td>Nigerian</td>
</tr>
<tr>
<td>6. Current Occupation/ Employment</td>
<td>Mentoring coordinator in Refugee Council</td>
<td>Being paid as a GP but not working</td>
<td>IT Support Officer</td>
<td>Postdoctoral fellow at UCL</td>
<td></td>
</tr>
<tr>
<td>7. Last Occupation/ Employment</td>
<td>Working part-time in admin</td>
<td>GP in a practice</td>
<td>Systems Manager (more senior post than her current post)</td>
<td>Postdoctoral fellow at UCL</td>
<td>Project coordinator in University</td>
</tr>
<tr>
<td>8. Education</td>
<td>BSC in Psychology</td>
<td>Medical studies</td>
<td>Postgraduate Diploma in Business Management, Member British Computer Society, other IT-related training courses</td>
<td>PhD in natural sciences</td>
<td>Project coordinator in University</td>
</tr>
</tbody>
</table>
10. Against whom complaint is being made
- Recruiter during job interview
- Members of staff of three (!) different practices
- Finance Director
- Her colleagues in the Lab
- Her boss

11. Nature of the complaint
- Race discrimination (possibly also age and gender)
- Bullying
- Gender and age
- Bullying (gender and age)
- Bullying (race and gender)

<table>
<thead>
<tr>
<th>Interview reference</th>
<th>MdX22</th>
<th>MdX23</th>
<th>MdX24</th>
</tr>
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<tbody>
<tr>
<td>1. Gender</td>
<td>M</td>
<td>F</td>
<td>M</td>
</tr>
<tr>
<td>2. Age</td>
<td>42</td>
<td>35</td>
<td>58</td>
</tr>
<tr>
<td>3. Ethnic Background</td>
<td>Black Caribbean</td>
<td>White British</td>
<td>White Australian</td>
</tr>
<tr>
<td>4. Place of residence</td>
<td>Leeds</td>
<td>London</td>
<td>Bornemouth</td>
</tr>
<tr>
<td>5. Citizenship</td>
<td>British (?)</td>
<td>British</td>
<td>Australian with indefinite permit to stay</td>
</tr>
<tr>
<td>6. Current Occupation/Employment</td>
<td>Senior regeneration officer</td>
<td>Unemployed</td>
<td>Full-time lecturer</td>
</tr>
<tr>
<td>7. Last Occupation/Employment</td>
<td>Senior regeneration officer</td>
<td>Classroom assistant</td>
<td>Head of Department (managerial position)</td>
</tr>
<tr>
<td>8. Education</td>
<td>NA</td>
<td>Special school (for learning disabilities children) NVQ in catering at Further Education college/</td>
<td>University Degree</td>
</tr>
<tr>
<td>9. Family/Dependents</td>
<td>NA</td>
<td>Daughter</td>
<td>Married with 4 grown up children</td>
</tr>
<tr>
<td>10. Against whom complaint is being made</td>
<td>Racist working environment, a man in particular who offended him in a meeting</td>
<td>Management of after school club</td>
<td>Interview panel for redundancy interview</td>
</tr>
<tr>
<td>11. Nature of the complaint</td>
<td>For sure race may be also gender</td>
<td>Disability discrimination</td>
<td>Gender and age</td>
</tr>
</tbody>
</table>

e. Germany

<table>
<thead>
<tr>
<th>Code</th>
<th>Gender</th>
<th>Age</th>
<th>Ethnic Background</th>
<th>Citizen ship</th>
<th>Education</th>
<th>Current Occupation/Employment</th>
<th>Family/Dependen ts</th>
<th>Grounds of complaint/claim</th>
</tr>
</thead>
<tbody>
<tr>
<td>CL1</td>
<td>Male</td>
<td>32 yrs.</td>
<td>Turkey</td>
<td>German</td>
<td>University degree</td>
<td>IT-specialist</td>
<td>single</td>
<td>Access to public space (bars, discos)</td>
</tr>
<tr>
<td>CL2</td>
<td>Male</td>
<td>23 yrs.</td>
<td>Palestini an</td>
<td>German</td>
<td>Electrician</td>
<td>Electrician</td>
<td>single</td>
<td>Examination for the master craftsman's certificate</td>
</tr>
<tr>
<td>CL3</td>
<td>Male</td>
<td>41 yrs.</td>
<td>Turkey</td>
<td>Turkey</td>
<td>None</td>
<td>Shopkeeper</td>
<td>married, one child</td>
<td>Residence permit status (exceptional leave to remain)</td>
</tr>
<tr>
<td>CL4</td>
<td>Female</td>
<td>32 yrs.</td>
<td>German</td>
<td>German</td>
<td>Foreign language</td>
<td>Job seeking</td>
<td>single</td>
<td>Job-seeking (Headscarf)</td>
</tr>
<tr>
<td>Gender/Age</td>
<td>Case/Background</td>
<td>Education</td>
<td>Occupation</td>
<td>Marital Status</td>
<td>Children</td>
<td>Additional Notes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>------------</td>
<td>----------------</td>
<td>-----------</td>
<td>------------</td>
<td>----------------</td>
<td>----------</td>
<td>-----------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CL 5</td>
<td>Female</td>
<td>37 yrs.</td>
<td>Belorussian</td>
<td>German</td>
<td>University degree</td>
<td>Job seeking</td>
<td>married, four children</td>
<td>Several, acceptance of university degree from abroad, employment (teacher), education (daughter)</td>
</tr>
<tr>
<td>CL 6</td>
<td>Male</td>
<td>46 yrs.</td>
<td>Iran</td>
<td>Iran</td>
<td>University degree</td>
<td>Psychologist</td>
<td>single</td>
<td>Access to public space (event)</td>
</tr>
<tr>
<td>CL 7</td>
<td>Female</td>
<td>45 yrs.</td>
<td>born in Turkey, raised in Berlin</td>
<td>German</td>
<td>University degree</td>
<td>Cleaning woman</td>
<td>Married/Mother of 2 children</td>
<td>Superior forbade headscarf</td>
</tr>
<tr>
<td>CL 8</td>
<td>Male</td>
<td>50 yrs.</td>
<td>Raised in Egypt</td>
<td>German</td>
<td>University Degree</td>
<td>Engineer and political science</td>
<td>single</td>
<td>Police Violence / permanent injuries</td>
</tr>
</tbody>
</table>

**Complaints**

<table>
<thead>
<tr>
<th>Gender/Age</th>
<th>Case/Background</th>
<th>Education</th>
<th>Occupation</th>
<th>Marital Status</th>
<th>Additional Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>CO 1</td>
<td>Female</td>
<td>48 yrs.</td>
<td>Dominican Republic</td>
<td>Dom.R ep.</td>
<td>M.A. University degree</td>
</tr>
<tr>
<td>CO 2</td>
<td>Female</td>
<td>26 yrs.</td>
<td>Turkey</td>
<td>German</td>
<td>High school degree</td>
</tr>
</tbody>
</table>

**Witnesses**

<table>
<thead>
<tr>
<th>Gender/Age</th>
<th>Case/Background</th>
<th>Education</th>
<th>Occupation</th>
<th>Marital Status</th>
<th>Additional Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>W 1</td>
<td>Female (case 1)</td>
<td>26 yrs.</td>
<td>German</td>
<td>German</td>
<td>High school degree</td>
</tr>
<tr>
<td>W 2</td>
<td>Female (headscarf) (case 2)</td>
<td>21 yrs.</td>
<td>Bosnia-Jordan</td>
<td>German</td>
<td>High school degree</td>
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</tbody>
</table>

**Cases through 2 witness**

<table>
<thead>
<tr>
<th>Gender/Age</th>
<th>Case/Background</th>
<th>Education</th>
<th>Occupation</th>
<th>Marital Status</th>
<th>Children</th>
<th>Additional Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) 3 Males</td>
<td>Mid 30 yrs.</td>
<td>Malta</td>
<td>Malta, visitor of trade-affair</td>
<td>unknown</td>
<td>Businessmen</td>
<td>unknown</td>
</tr>
<tr>
<td>(2) 3 Females</td>
<td>17, 24, 50 yrs.</td>
<td>Bosnia, Turkey</td>
<td>Unkwnon</td>
<td>unknown</td>
<td>Pupil / vocational training / work (child care)</td>
<td>Single (2), married, mother</td>
</tr>
</tbody>
</table>
### f. Sweden

<table>
<thead>
<tr>
<th>CODE</th>
<th>Sex</th>
<th>Age</th>
<th>Nationality</th>
<th>Origin</th>
<th>Residence</th>
<th>Present occ</th>
<th>Last occ</th>
<th>Family</th>
<th>Education</th>
</tr>
</thead>
<tbody>
<tr>
<td>CL 1</td>
<td>M</td>
<td>45</td>
<td>Swedish</td>
<td>Sub Saharan African</td>
<td>Lund</td>
<td>Other (restaurant)</td>
<td>Unknown</td>
<td>Divorced with two children</td>
<td>Higher</td>
</tr>
<tr>
<td>CL 2</td>
<td>F</td>
<td>42</td>
<td>Swedish</td>
<td>South/Central America</td>
<td>Lund</td>
<td>Professional</td>
<td>Domestic worker</td>
<td>Married</td>
<td>Higher</td>
</tr>
<tr>
<td>CL 3</td>
<td>M</td>
<td>56</td>
<td>Swedish</td>
<td>Middle Eastern</td>
<td>Malmö</td>
<td>Nurse</td>
<td>Nurse</td>
<td>Married with two children</td>
<td>Higher</td>
</tr>
<tr>
<td>CO 1</td>
<td>M</td>
<td>34</td>
<td>Swedish</td>
<td>Middle Eastern</td>
<td>Stockholm</td>
<td>Professional</td>
<td>Profession al</td>
<td>Single</td>
<td>Higher</td>
</tr>
<tr>
<td>CO 2</td>
<td>F</td>
<td>54</td>
<td>Swedish/Czech</td>
<td>Foremr East-European</td>
<td>Lund</td>
<td>Unemployed</td>
<td>Profession al</td>
<td>Single</td>
<td>Higher</td>
</tr>
<tr>
<td>CO 3</td>
<td>F</td>
<td>38</td>
<td>Swedish</td>
<td>Middle Eastern</td>
<td>Stockholm</td>
<td>Interpreter/teacher</td>
<td>Teacher</td>
<td>Married with three children</td>
<td>Higher</td>
</tr>
<tr>
<td>CO 4</td>
<td>F</td>
<td>54</td>
<td>Swedish</td>
<td>Middle Eastern</td>
<td>Lund</td>
<td>Professional</td>
<td>Profession al</td>
<td>Married with grown up children</td>
<td>Higher</td>
</tr>
<tr>
<td>CO 5</td>
<td>F</td>
<td>53</td>
<td>Swedish</td>
<td>South/Central America</td>
<td>Malmö</td>
<td>Health worker</td>
<td>Health worker</td>
<td>Divorced with two adult children</td>
<td>Secondary</td>
</tr>
<tr>
<td>CO 6</td>
<td>F</td>
<td>30</td>
<td>Swedish</td>
<td>Sub Saharan Africa/Russia</td>
<td>Stockholm</td>
<td>Self employed</td>
<td>Other (hairdresser)</td>
<td>Single with one dependent child</td>
<td>Secondary</td>
</tr>
<tr>
<td>CO 7</td>
<td>M</td>
<td>29</td>
<td>Swedish</td>
<td>Sub Saharan African/Swedish</td>
<td>Malmö</td>
<td>Administrative worker</td>
<td>Administrative worker</td>
<td>Single</td>
<td>Higher</td>
</tr>
<tr>
<td>CO 8</td>
<td>M</td>
<td>56</td>
<td>Swedish</td>
<td>Middle Eastern</td>
<td>Lund</td>
<td>Teacher</td>
<td>Teacher</td>
<td>Married with grown up children</td>
<td>Higher</td>
</tr>
<tr>
<td>CO 9</td>
<td>M</td>
<td>49</td>
<td>Swedish</td>
<td>Afro-Caribbean</td>
<td>Malmö</td>
<td>Law Enforcement agent</td>
<td>Self employed</td>
<td>Divorced with two teenagers</td>
<td>Higher</td>
</tr>
<tr>
<td>CO 10</td>
<td>F</td>
<td>48</td>
<td>Swedish</td>
<td>Former Eastern Europe</td>
<td>Stockholm</td>
<td>Unemployed</td>
<td>Teacher</td>
<td>Married with three dependent children</td>
<td>Higher</td>
</tr>
<tr>
<td>CO 11</td>
<td>M</td>
<td>53</td>
<td>Swedish</td>
<td>South East Asia</td>
<td>Stockholm</td>
<td>Professional</td>
<td>Profession al</td>
<td>Married with two dependent children</td>
<td>M D</td>
</tr>
<tr>
<td>CO 12</td>
<td>M</td>
<td>50</td>
<td>Swedish</td>
<td>Middle Eastern</td>
<td>Stockholm</td>
<td>Professional</td>
<td>Profession al</td>
<td>Single</td>
<td>Higher</td>
</tr>
<tr>
<td>CO 13</td>
<td>F</td>
<td>53</td>
<td>Finnish</td>
<td>Roma</td>
<td>Stockholm</td>
<td>Self Employed</td>
<td>Self employed</td>
<td>Married with four children</td>
<td>Secondary</td>
</tr>
<tr>
<td>CO 14</td>
<td>M</td>
<td>46</td>
<td>Swedish</td>
<td>Middle Eastern</td>
<td>Stockholm</td>
<td>Professional</td>
<td>Profession al</td>
<td>Single with disabled child</td>
<td>Higher</td>
</tr>
</tbody>
</table>
### g. Bulgaria

<table>
<thead>
<tr>
<th>Code</th>
<th>Sex</th>
<th>Age</th>
<th>Nationality</th>
<th>Origin</th>
<th>Residence</th>
<th>Present occ</th>
<th>Last occ</th>
<th>Family</th>
<th>Education</th>
</tr>
</thead>
<tbody>
<tr>
<td>CL1</td>
<td>M</td>
<td>40</td>
<td>Bulgarian</td>
<td>Turkish</td>
<td>Haskovo and Sofia</td>
<td>Manual worker</td>
<td>Teacher</td>
<td>Married, one son</td>
<td>PhD</td>
</tr>
<tr>
<td>CO2</td>
<td>M</td>
<td>21</td>
<td>Bulgarian</td>
<td>Roma</td>
<td>Samokov</td>
<td>Student</td>
<td>N/A</td>
<td>Single, lives with his father and sisters</td>
<td>Secondary education</td>
</tr>
<tr>
<td>CO3</td>
<td>F</td>
<td>29</td>
<td>Bulgarian</td>
<td>National majority</td>
<td>Sofia</td>
<td>Maternity leave</td>
<td>Administrative worker</td>
<td>Cohabitation, pregnant with her first child</td>
<td>Higher education</td>
</tr>
<tr>
<td>CO4</td>
<td>M</td>
<td>32</td>
<td>Bulgarian</td>
<td>National majority</td>
<td>Pleven</td>
<td>Unemployed</td>
<td>Policeman</td>
<td>Married, one child</td>
<td>N/A</td>
</tr>
<tr>
<td>CO5</td>
<td>M</td>
<td>33</td>
<td>Bulgarian</td>
<td>National majority</td>
<td>Dupnica</td>
<td>Teacher</td>
<td>Teacher</td>
<td>Single, father - retire</td>
<td>Higher education</td>
</tr>
<tr>
<td>CO6</td>
<td>F</td>
<td>48</td>
<td>Bulgarian</td>
<td>National majority</td>
<td>Veliko Turnovo</td>
<td>Retired</td>
<td>Administrative worker</td>
<td>Divorced, 1 child</td>
<td>Instructio n training</td>
</tr>
<tr>
<td>CO7</td>
<td>F</td>
<td>33</td>
<td>Bulgarian</td>
<td>Roma</td>
<td>Sofia</td>
<td>Self-employed</td>
<td>N/A</td>
<td>Married, 2 children</td>
<td>Secondary education</td>
</tr>
<tr>
<td>CO8</td>
<td>M</td>
<td>60</td>
<td>Bulgarian</td>
<td>National majority</td>
<td>Stara Zagora</td>
<td>Teacher</td>
<td>Teacher</td>
<td>Married</td>
<td>Higher education</td>
</tr>
<tr>
<td>CO9</td>
<td>M/ F</td>
<td>23/18</td>
<td>Bulgarian</td>
<td>Roma</td>
<td>Sandanski</td>
<td>Manual worker/Pupil</td>
<td>Manual worker/Pupil</td>
<td>Married</td>
<td>Secondary education</td>
</tr>
<tr>
<td>CL10</td>
<td>M/F</td>
<td>6 - 8</td>
<td>Bulgarian</td>
<td>Roma</td>
<td>Tvardica</td>
<td>Pupils</td>
<td>Pupils</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>CL11</td>
<td>F</td>
<td>38</td>
<td>Bulgarian</td>
<td>Roma</td>
<td>Sandanski</td>
<td>Unemployed</td>
<td>Manual worker</td>
<td>Married, 2 children</td>
<td>Secondary education</td>
</tr>
<tr>
<td>CL12</td>
<td>F</td>
<td>60</td>
<td>Bulgarian</td>
<td>National majority</td>
<td>Luljakovo</td>
<td>Retired</td>
<td>Cleaner at school</td>
<td>Widow</td>
<td>Primary education</td>
</tr>
<tr>
<td>CO13</td>
<td>F</td>
<td>Ca. 49 - 59</td>
<td>Bulgarian</td>
<td>National majority</td>
<td>Montana</td>
<td>Farmer</td>
<td>Farmer</td>
<td>Married, 2 children and grandchildren</td>
<td>Secondary education</td>
</tr>
<tr>
<td>CL14</td>
<td>F</td>
<td>32</td>
<td>Bulgarian</td>
<td>National</td>
<td>Luljakovo</td>
<td>Teacher</td>
<td>Teacher</td>
<td>Married with</td>
<td>Higher education</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td>---</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CL15</td>
<td>M/F</td>
<td>59/ca .55</td>
<td>Bulgarian</td>
<td>Turkish</td>
<td>Luljakovo</td>
<td>Retired Miner/Agricultural worker</td>
<td>Second marriage for both, children and grandchil dren</td>
<td>Secondary educatio n</td>
<td></td>
</tr>
<tr>
<td>CL16</td>
<td>M</td>
<td>34</td>
<td>Bulgarian</td>
<td>Roma</td>
<td>Samakov</td>
<td>NGO leader</td>
<td>N/A</td>
<td>Single, lives with his parents</td>
<td>Secondar y educatio n</td>
</tr>
<tr>
<td>CL17</td>
<td>F</td>
<td>34</td>
<td>Bulgarian</td>
<td>Roma</td>
<td>Samakov</td>
<td>NGO officer</td>
<td>N/A</td>
<td>Married, 2 children</td>
<td>Secondar y educatio n</td>
</tr>
<tr>
<td>CL18</td>
<td>F</td>
<td>45</td>
<td>Bulgarian</td>
<td>Roma</td>
<td>Samakov</td>
<td>Cleaner at school</td>
<td>N/A</td>
<td>Widow, cohabitation, 4 children</td>
<td>Primary educatio n</td>
</tr>
<tr>
<td>CO19</td>
<td>F</td>
<td>60</td>
<td>Bulgarian</td>
<td>Roma</td>
<td>Sandanski</td>
<td>Unemplo yed</td>
<td>N/A</td>
<td>Married, lives with her son’s family</td>
<td>Primary educatio n</td>
</tr>
<tr>
<td>CO20</td>
<td>M</td>
<td>22</td>
<td>Nigeria, temporary resident with work permit</td>
<td>Sub Saharan African</td>
<td>Greece</td>
<td>Football player</td>
<td>Football player</td>
<td>Single</td>
<td>N/A</td>
</tr>
</tbody>
</table>
5.5 Conclusion

A number of points can be made about the impact of gender and racialised identities on the experience of discrimination. Men and women experience and deal with discrimination in a number of different ways. First of all, discrimination takes place based on certain stereotypes and these are often different for ethnic minority men and women: ethnic minority men are seen as sexist, as violent, as having links with terrorism and as being oppressive of women, while ethnic minority women are seen as passive and submissive. In this way, men and women are discriminated against in different ways. Secondly, women appear to be more often the victims of harassment and of intra-group discrimination. Thirdly, men are often facing discrimination in leisure, such as access to bars and restaurants. Fourthly, women are more affected by the emotional stress of taking a discrimination claim to court and this makes them more inclined to settle a claim whereas men might be more inclined to take the matter further.

On the other hand, there are a number of similarities in the way both men and women experience and deal with discrimination. Many interviewees, both men and women, have difficulty in articulating the nature of their experience as discrimination and this is even more so in cases of multiple discrimination. Victims rarely identify multiple discrimination as such, with the exception of Sweden. It is usually the advisor who suggests that multiple discrimination took place. However, race as ground for discrimination seems generally to be more easily articulated than gender.

More educated victims are usually quicker to recognise discriminatory behaviour as such and they are also generally better informed about where to get help and about remedies. Also, groups become habituated to daily discrimination and interiorise the stigma. Both men and women in these groups have little expectation that they will be able to change anything about this situation.

For both men and women, visible difference seems to be the most important trigger for discrimination. Both men and women sometimes deal with discrimination by avoiding the situation in which it occurred. There appears sometimes a reluctance to bring proceedings because of lack of faith in remedies or because a person does not want to be seen as a complainer or trouble maker.
If we look at the context of discrimination, we see that, in general, the sector of employment is often the arena for discriminatory behaviour, followed by the provision of goods and services. Both sectors encompass both the public and the private employers/service providers.

The author or perpetrator of the discriminatory action is, in nearly all cases, a person who has a dominant position _vis-à-vis_ the victim, like an employer or manager, a service provider or doctor.

As for grounds, we looked mainly at discrimination on the grounds of race and gender, and which ground is pursued is often a strategic decision as to which is stronger and which can be proved more easily. Race seems to be easier to identify. Multiple discrimination takes places on race and gender grounds combined, but also on both or either of these grounds with age, disability nationality and religion. Social class was a ground that emerged as a ground for discrimination in many of the GendeRace partner countries, both together with other grounds and on its own.
Chapter 6: The use of institutional and non-institutional resources according to gender and racialised identities

by

Olga Jubany, Berta Güell and Róisín Davis
6.1. Main objectives

Differences in the use of institutional and non-institutional resources according to gender and racialised identities are the focus of this report. This part of the project investigates the hypothesis that differences can exist in the use of the law between men and women, and that the intersectional experiences of discrimination based on the ascription of racialised identities and gender are not recognised nor treated properly in legal and institutional frameworks built around single types of discrimination. Further hypothesis indicate that many factors may interfere in the choice of which are the resources used as different strategies of action against the experiences of discrimination. These factors not only include gender and ethnic origin, but also other elements which refer to the individual circumstances (such as the level of education) and to the institutional and structural framework of each country such as the institutional commitment in the fight against discrimination and perceptions of the legal system present in social structures.

A fundamental purpose of this chapter has also been to look at the motivations held by those having experienced discrimination when making a claim/complaint and record any difficulties encountered in the use of institutional and non institutional resources. Finally, main remarks per country and complainants’ recommendations on improvement of resources are provided, and specific cases used to illustrate the main arguments presented.

6.2. Methodology applied

Analysis in this paper results from all fieldwork carried out during the two years of the investigation, for which various research methods have been applied. Findings gathered from the following research tasks have been especially useful in the elaboration of this report: ‘Case law studies and complaints’, ‘Interviews of experts and stakeholders’, ‘Interviews of complainants’, and ‘Workshops with stakeholders’.

At the outset, a stock-taking at national and European levels of the key frameworks and literature provided information on those organisations for consultation for case law studies, in identifying how a particular discrimination basis was chosen to file legal claims and complaints. Employing a gender perspective in the analysis of files explored factors
including number of complaints by gender, differences on the field of discrimination between men and women, specific gender discriminations, and conflict resolution tools used by men and women.

In-depth interviews with stakeholders from both institutional and non-institutional settings has enabled us to gather a range of perspectives on resource use, attitudes, and behaviours. The viewpoints of legal actors at the academic and practitioner level and those in fields of gender and anti-racism are taken alongside individuals involved directly in the processing of claims and complaints to those working at policy and research, and from a grassroots approach. Interviews conducted with complainants provided a source for recommendations on improvements, and first-hand motivations underlying use of the law and expectations. These interviews unravelled the ways in which these motivations were articulated, revealing that overall, we find a clear lack of confidence in the legal system or lack of knowledge of existing legal frameworks, as will be explained in detail. Crucially, the project has attempted to determine the number of women and male complainants in contact with organisations dealing with complaints, and those tools employed by women and men to resolve conflicts when faced with discrimination.

To complement these perspectives, workshops with stakeholders have allowed us to test out initial findings, define key trends and extract policy recommendations in application to each guiding theme.

6.3. Comparative analysis

This analysis is fundamentally focused on cross-national comparison of the findings related to the use of available resources in reflecting differing and converging points between member states⁵⁹. The results and conclusions included here refer not to absolutes or single features but to those aspects of the analysis of particular relevance within a comparative framework between the countries. In doing so, some individual aspects are exposed either to highlight differences, underline specific situations or to exemplify cases. As we will see, these illustrative examples are of particular value in displaying specific national variations within analogous resources or channels.

⁵⁹ The project’s approach to methods for comparative analysis, and an extended discussion of its advantages and limitations may be found in the Methodology Report.
In order to make a comparative analysis of the data, some indicators have been used, which arise from the methodological structure of the Guiding Themes already used in the previous phases of the research. These indicators or variables include an evaluation of those resources that appear to be most available to victims of discrimination and the study of the circumstances around how individuals use them and why. We have also discovered which are the events that normally lead people to make a claim/complaint and the most common difficulties encountered when doing so. A special emphasis has been put in highlighting the most interesting differences according to the racialised identities and to gender and finally, a series of policy recommendations from main actors participating in the study have been gathered in order to improve institutional and non-institutional resources.

6.3.1. Use of institutional and non-institutional resources

**Description of available resources**

In regard to our exploration of case law studies and complaints, formal and informal organisations and institutions were contacted in order to identify those with an office of claims and complaints for issues of discrimination, some of which had already been explored for the state of the art. Although not all could be included within the case law studies sample due mainly to issues of access, we may see that these include equality bodies, local and regional antidiscrimination offices, and NGOs (see matrix below). Both Sweden and the UK’s equality bodies are longer established than those of France, Bulgaria and Spain, in part because of delays in the transposition of the EU Directives. In Germany, there exists in addition to the equality body set up under the auspices of the Federal Ministry of Women, Elderly, Family and Youth an antidiscrimination alliance at the national level.

NGOs also play an important role in assisting victims of discrimination, who may relate better and feel more at ease with these less formal types of organisation. This is especially the case in Spain, Germany and Bulgaria. Despite the apparent existence of various channels by which to make a discrimination claim or complaint, it is worth noting that not all resources exist in all countries. Workshops with experts addressed both the number of resources available and an evaluation of whether as these must be increased. For example, Germany and Spain occupy positions at different ends of the spectrum, where the former has 20 active antidiscrimination offices and the latter just one. In Spain, experts have frequently remarked
upon there being an insufficiency of resources, not only within antidiscrimination offices or NGOs, but significantly, within the national equality body which is still under construction.

The matrix below is intended to serve as a tool in describing the existing institutional and non intuitional resources available to victims of discrimination in making a claim or a complaint in each partner country. These include mainly Equality bodies, NGOs, Antidiscrimination Offices and Ombudsman Offices.

<table>
<thead>
<tr>
<th>Country</th>
<th>Organisations and institutions</th>
<th>Functions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Sweden</strong></td>
<td>DO</td>
<td>Antidiscrimination body (grounds of ethnic origin and religion)</td>
</tr>
<tr>
<td></td>
<td>JÄMO</td>
<td>Gender equality monitor</td>
</tr>
<tr>
<td></td>
<td>Local AD agency</td>
<td>Antidiscrimination (based on race, gender, religion and other grounds)</td>
</tr>
<tr>
<td><strong>Bulgaria</strong></td>
<td>Ombudsman</td>
<td>Antidiscrimination monitor. Official proposals.</td>
</tr>
<tr>
<td><strong>Spain</strong></td>
<td>Commission for protection against discrimination (CPD)</td>
<td>Antidiscrimination (based on race, gender, religion and other grounds, including cases of multiple discrimination)</td>
</tr>
<tr>
<td></td>
<td>Antidiscrimination Office of Barcelona</td>
<td>Antidiscrimination (all grounds)</td>
</tr>
<tr>
<td></td>
<td>SOS Racism</td>
<td>Antiracism NGO with an office of claims and complaints</td>
</tr>
<tr>
<td></td>
<td>Fundacion Secretariado Gitano (FSG)</td>
<td>NGO in charge of promoting the Roma community and gathering ethnic discrimination claims</td>
</tr>
<tr>
<td></td>
<td>Ombudsman Offices (local, regional and national levels)</td>
<td>The Ombudsman’s role is to handle the complaints of anyone unprotected before the administrations’ actions or omissions. However, in practice it is not very focused on issues of discrimination.</td>
</tr>
<tr>
<td><strong>France</strong></td>
<td>HALDE</td>
<td>Equality body</td>
</tr>
<tr>
<td></td>
<td>Mouvement contre le Racisme et l’Antisémitisme (MRAP)</td>
<td>Antiracism NGO</td>
</tr>
<tr>
<td></td>
<td>Ligue Internationale contre le Racisme et l’Antisémitisme</td>
<td>Antiracism NGO</td>
</tr>
<tr>
<td></td>
<td>SOS-Racisme France</td>
<td>Antiracism NGO</td>
</tr>
<tr>
<td></td>
<td>Association européenne contre les violences faites aux femmes au travail</td>
<td>Legal support in the field of sexual harassment</td>
</tr>
<tr>
<td><strong>UK</strong></td>
<td>The Centre for Information on Women's Rights (CIDFF) Equality and Human Rights Commission</td>
<td>Legal support in the field of gender discrimination</td>
</tr>
<tr>
<td></td>
<td>Citizen Advice Bureaux</td>
<td>Advice on discrimination</td>
</tr>
<tr>
<td></td>
<td>Law Centres (in London)</td>
<td>Provides local help in social welfare law: legal advice/representation service</td>
</tr>
<tr>
<td><strong>Germany</strong></td>
<td>Antidiscrimination Office of Hannover</td>
<td>Claims on the ground of ethnic origin</td>
</tr>
<tr>
<td></td>
<td>Antidiscrimination Network of Berlin</td>
<td></td>
</tr>
</tbody>
</table>
Analysis of resources used

Although different channels available to victims of discrimination exist in all countries, these are not always used under the same circumstances. Interviews with complainants have informed us that many people tend to make use of informal networks and contact associations as a first step. These are usually linked to an individual’s ethnic group (and less to gender, such as women’s organisations) and their existence is usually already known by the individual, despite such organisations not always having an office of claims and complaints. This is especially relevant in Bulgaria and Spain where discrimination is poorly addressed at the institutional level and where equality bodies are not yet fully empowered. Whereas in Spain we find lack of awareness of the existence of the Ombudsman or the Antidiscrimination Office, in Sweden their presence appears more normalised within community networks. Consequently, such offices are more frequently visited in Sweden than in Spain, where people make much more use of non-institutional resources.

In this context, promotion of awareness and building of trust between victims of discrimination and organisations and institutions appear crucial to dealing with such situations as first and foremost, people may usually require forms of support followed by advice on which steps to take.

It should be noted that several organisations are often consulted at the same time, either at the complainant’s request or at the suggestion of organisations. In France and in Bulgaria, some associations request that HALDE and the CPD intervene in some cases, especially as the latter has powers of inquiry enabling it to intervene more efficiently. Alternatively, trade unions and equality bodies may work together, as in Sweden where the DO and JämO transfer some complaints to trade unions of which complainants are members. In Spain, complaints may be submitted both to court and to NGOs. These strategies may be employed in order that complainants may maximise their chances or at the very least, obtain as much information as possible.

Whilst often consulted by complainants, trade unions may in fact not be especially involved in providing assistance to victims of discrimination or harassment if we consider the sizeable amount of cases within the employment sector. Exceptions exist for those cases in which discrimination may be directly related to union activities, as revealed in Bulgaria and France’s fieldwork. Several experts within the study have characterised unions’ behaviour as either
outdated or ill-adapted to the needs of ethnic minorities, especially women. Swedish interviewees expressed the view that local trade unions often represented employers’ interests over those of employees, proving counterproductive in the processing of discrimination claims/complaints.

Justification of resources used

Having described those resources available to victims of discrimination and those most commonly used, we highlight a list of elements that may influence differential use of resources from various levels. We may find that the use of certain resources is not only affected by an individual’s circumstances, but also by factors placing a more indirect impact at the social structural level.

a) Individual level: private circumstances

Personal circumstances such as residence status, economic resources, or language proficiency may either advance or inhibit a person’s desire or ability to make a complaint, and above all, via formal means. As stated in relation to the case law studies, a correlation can be established showing that those with stable legal status are more likely to consult institutions. Also, the level of awareness of civil rights (also influenced by the level of education and the political culture) and of existing resources may determine the filing of a claim/complaint. In this sense, those involved in organisations linked to their community/ethnic origin display greater awareness and familiarity of complaint mechanisms than those who are not60. Individuals tend to display better awareness of resources that are more accessible as part of their lives, and these normally operate at the local level. In Sweden, workshop participants pointed out that in areas marked by division, local antidiscrimination bureaux are often the most natural choice, as residents are aware of them, but perhaps too as they may view authorities with suspicion.

In Spain, Bulgaria and Germany, a relatively low number of claims and formal complaints are brought to court as people may often not identify their experience as discriminatory, may not know that this may be liable to action by antidiscrimination laws or are unaware of the existence of equality bodies or NGOs that could assist them.

b) Organisational level: training of main actors in issues of discrimination

60 This has been informed by those complainants working in the Federación Secretariado Gitano in Spain.
It is worth noting that *legal advisors and counsellors* play an important role in promoting the use of resources for making complaints and in bringing the phenomenon of multiple discrimination to the fore through mobilisation and support for legal actions. For example, numerous actors came together to highlight issues around the wearing of the headscarf by Muslim women in France upon discovery that HALDE was in favour of religious freedom (arguably, a position more European than French). As a result, Muslim women who lodge complaints often belong to associations and are already politically active on this question. We also find collective mobilisation on the part of Roma women, particularly in Spain. However, organisations’ lack of resources together with actors’ lack of awareness of the legal framework in regard to issues of discrimination may influence the low number of formal complaints brought to trial.

**c) Institutional level: institutional commitment in the fight against discrimination**

On the other hand, victims’ level of awareness may depend also on governmental commitments at each level to disseminate information around existing channels across the country as a whole. A contrast can be observed in terms of the provision of information, with NGOs appearing to operate more openly in this regard and institutions less so.

In this sense, the extent to which discrimination issues are incorporated in the public agenda, the commitment of the government in applying the EU Directives, the will to implement the antidiscrimination law and the design of antidiscrimination policies are all elements which may contribute to how the exercise of civil rights is regarded in a cultural context. A poor institutional commitment to tackling discrimination may affect people in not making a claim/complaint more indirectly.

**d) Structural level: perceptions of legal system present in social structures**

Aside from institutional commitment to issues of discrimination, various opinions and perceptions on the ability of institutions still remain which may hinder the making of formal complaints. In this sense, we encounter many feelings and pre-conceived ideas, such as fear or distrust towards institutions, with many failing to identify any benefits in making complaints and many afraid of the consequences.

More vulnerable individuals (such as undocumented migrants, certain groups of ethnic minority women or asylum seekers) may be reluctant to make their situation known and whilst they may identify their experience as discriminatory, the making of a claim is seldom a
priority. Rather they may prefer to engage with informal networks. Some identify the only available option in the making of a complaint with visiting the police and are very averse to doing so. Several complainants have described their treatment by the police as having been disrespectful.

**Use of resources according to strategies employed by complainants and organisations**

The strategy adopted when deciding which resources and methods to use can vary according to the interests and wishes of complainants, as well as organisations and institutions. Some victims and complainants may decide to make an informal claim within an NGO rather than using legal means as they may perceive this to be more beneficial in terms of gaining emotional redress. Others may choose to make use of legal methods in addressing their case of discrimination with the desire to achieve public/official recognition. However, the individual strategy may change according to advice from organisations and institutions. This may sometimes focus on providing full support to the victim’s decision from the individual perspective by providing moral and legal assistance (if necessary). Others focus on the social impact that a discrimination case can have on the community, and at institutional and structural levels if the resolution is favourable. This is especially applicable for NGOs such as SOS Racism which make efforts to influence State antidiscrimination practices. Those cases with a favourable outcome which recognise discrimination can be conceived as important achievements towards challenging socially constructed stereotypes, in raising awareness of discrimination towards certain ethnic groups, in facilitating strategic litigation for future cases, in promoting antidiscrimination policies by institutions, or in enlivening debate on discrimination within public fora. This is why the strategy adopted by complainants in the first instance may be subject to change, according to the methods suggested by organisations and the type of impact expected in each case.

6.3.2. Events leading to the making of a claim/complaint

Those deciding to make a claim or a complaint generally display what can be described as strong attitudes on [in]justice and of resolution to redress it. In many cases, this may also
follow from an ‘everyday’ experience of discrimination present in their lives and/or at the community level.

In Bulgaria, several complainants revealed their wish in pursuing a case to receive, at the very least, the sense of moral satisfaction that the CPD had recognised them as having experienced discrimination. Worth noting is that in Sweden, the majority of people interviewed wished to make their complaint public and have their case of discrimination publicly recognised.

In the UK, some have taken their case to court with the hope of being granted economic compensation. Most interviewees had experienced several incidents before taking action, and most commonly, the final straw was the loss of employment rights or demotion resulting in financial loss or potential loss. Often, a series of humiliating events had preceded this. In other cases, the person took action when the psychological burden of their treatment became too severe. On the other hand, the psychological burden of pursuing a claim to the tribunal stopped some interviewees from taken legal action.

Interestingly, we find that in Spain some were apprehensive about visiting an organisation specifically to make a claim, and it was only through their relationship with staff that they would eventually feel comfortable enough to reveal their experiences of discrimination, either when still current or already resolved. Staff would then record these experiences as cases of discrimination to be included in the annual report, but in some cases no further actions were taken to resolve the situation. This is why some cases in the sample refer to oral claims, which is also the case for Bulgaria due to the small number of written claims/complaints at the national level.

6.3.3. Difficulties in use of resources

This section explores difficulties encountered in the use of resources. Most frequently, complainants have expressed that the major obstacles were in the attempting to understand and follow through legal processes of formal complaints, as legal advice was often considered insufficient. Commonly, complainants perceive the process as overly complicated or pointless.
In Spain, staff from ethnic minority organisations such as Fundación Secretariado Gitano (FSG) displayed considerable knowledge of those mechanisms for making a discrimination claim and reported having experienced very little difficulty overall. However, those who decided to take their case to court reported having struggled to familiarise themselves with each stage of the legal process.

Complainants in France did not relate any difficulties in particular. However, we may infer that whilst the possibility to lodge online complaints in HALDE enables better sharing of information, it may also reinforce the ‘digital divide’. Furthermore, HALDE’s mandatory written procedure may serve to exclude those individuals with difficulty writing in French, and those that do use intermediaries are likely not to lodge complaints. The fact that HALDE does not have more offices throughout France and that their hours of business coincide with routine working hours may certainly seem to hinder usage of their resources. However, the implementation of a network of local correspondents spanning the entire country by the end of 2009, enables it to be closer to the public, provide more personal attention and address a greater number of individual cases.

In addition, several individuals in the UK expressed difficulties around access to Citizens Advice Bureaux with inconvenient opening times and long waits and also around the costliness of private lawyers. On the other hand, the UK equality body, the Equality and Human Rights Commission, was not known to everyone and even if interviewees had heard about it, they did not think they were going to be very helpful. This was borne out by interviewees who had contacted them and received only very general information.

6.3.4. Influence of perception of legal system on the use of institutional resources

Many negative perceptions of the legal system were encountered, particularly in Spain, Bulgaria and Sweden, with a common perspective that interviewees’ situations would not be improved, and doubts expressed on the effectiveness of the system and towards the complicated nature of making a complaint. This was perceived in terms of interviewees feeling that they would not receive enough attention, fearing of consequences, or not being aware of any successful case. In contrast, in Germany, the key issue has been described of a lack of awareness of antidiscrimination legislation and of institutional and non-institutional resources, especially in regards to the Muslim community.
Some individuals that did undertake a legal process affirmed having faith in the justice system’s capabilities and effectiveness, despite results having not always been in their favour, as was the case of Spain. NGO staff stressed the importance of denouncing discrimination even when it was not legally recognised. Some interviewees mentioned that they were lucky because they had the support of legal advisors without whom it would have been rather complicated to move forward. However, we have found that in France the majority of complainants to hold a ‘very positive’ image of the legal system and of HALDE. Arguably, we may associate this to a representation as symbolic in addressing issues of discrimination at the state-sponsored level. Similarly, we find in the UK a relatively high level of awareness and/or usage of legal means to report discrimination.

6.3.5. Observations according to racialised identities

In regard to the different use of resources according to racialised identities we find key contextual distinctions. Where in Sweden, Germany and France there are not clear variations between ethnic origins in the making of claims/complaints, in Spain, Bulgaria and in UK, several disparities emerge.

In Spain, we have seen that individuals tend to use those resources offered by organisations tied to their [ethnic] community. This is especially relevant for Roma community which often visits the FSG or other Roma organisations. The small number of Sub-Saharan interviewees in the Spanish sample expressed and displayed a strong community ethic, in bearing in mind any potential consequences for the rest of the group in their making of a claim or complaint. This has not been observed in interviews with Moroccan, Latin American or Afro-American individuals.

It may be suggested that distrust in the court system is the defining factor in Bulgaria, whilst Roma and Turkish interviewees remarked on lawyers’ lack of knowledge. Experts at the Bulgarian workshop expressed that immigrants and foreigners with undocumented status avoid filing complaints in any institutions, fearing that this would exacerbate their current or expected legal status. The only known case of discrimination put forward by a foreigner is extreme - attempted murder. Nonetheless, the main factor for which the case was taken to court was the fact he was a football player, which means that he has a legal residence and
work permit. It is interesting how Bulgarian Roma tend to use more non institutional resources in receiving assistance from NGOs, except for those more aware of the CPD’s existence. Ethnic Bulgarians usually file complaints with the CPD either alone or assisted by family members.

Interestingly, the two interviewees in the UK who visited a Race Equality Council were of ethnic minority background although some white applicants believed that their race or nationality had been an issue. However, there was no other clear variation by ethnicity in the use of resources.

The workshop conclusions informed us about the impact of ethnic origin on the use of resources. Experts believe that the Roma community’s reality presents important particularities in their consideration of themselves above all as full citizens and demand for equal treatment, whilst sometimes adopting an approach of non-differentiation towards nationals and not wanting to make a stand on racial discrimination as not to be categorised and stigmatised by society. However, Roma women (in contrast to men) tend to lodge informal claims in countries like Sweden (particularly Finnish Roma) or in Spain, although they are more sceptical about taking a case to court (particularly in Sweden). In addition, our research shows that Sikhs prefer not to be recognised as a religious minority but as an ethnic group with religious characteristics. This may be interpreted as a strategy to avoid the European Court of Human Rights case law, which is currently dominated by secular leanings.

6.3.6. Observations according to gender

This section examines the impact of gender in the differential use of resources, kinds of actions taken and on which grounds complaints are based. On the whole, complainants interviews reveal both men and women having expressed their willingness to exercise their rights and protect themselves from discrimination. However, data from those organisations with a claims and/or complaints office informs us that women tend to lodge fewer complaints than men, with some differences according to ethnic origin and sector of discrimination. The fact that migrant women appear more vulnerable than men may be reinforced by their resident and socio-economic status and their educational level.
For instance, according to SOS Racism Spain, migrant women without a stable residence status lodge fewer complaints than men. In Bulgaria, the CPD shows us that ethnic minority women rarely make complaints. Therefore, a correlation between the use of resources and legal status may be made. The more stable the legal status (by having full citizenship or a long-term residence visa), the greater the tendency to lodge complaints.

Furthermore, a correlation may be established between educational level and ability to begin legal proceedings after experiences of discrimination, especially amongst women. This is particularly the case with Roma women in Bulgaria, where we see that women with a high educational level coupled with the social prestige of being employed are more sensitive to discriminatory practices and display greater confidence in defending their rights. The case is similar in Sweden where female students lodge more complaints than their male counterparts.

An interesting finding extracted from both, the case studies and the interviews, revealed that ethnic minority women lodge fewer gender-based complaints than other women. This is the case in the UK where those making complaints on gender discrimination are primarily white (33 compared to 4 for women of ethnic minorities). Likewise in Bulgaria or in Spain we see that women belonging to a minority group hardly ever lodge gender-based complaints. Ethnic minority women have displayed difficulties in recognising discrimination of which they are victims, but if they do so, they tend to identify ethnic origin rather than gender as the main ground of discrimination. Women's organisations in France, Spain and Bulgaria are highly focused on political action and in issues of domestic violence and do not seem to provide much legal support to treat women's complaints based on gender discrimination. The history of the women’s movement shows that there have always been struggles on how to see and what to do with other inequalities than gender, such as ‘race’ and ethnicity. Their political strategies are focused on the struggle for equal treatment, with a specific attention for the level of social structures and institutions rather than individual discrimination. Those organisations that do provide more legal assistance for gender issues sometimes overlook racial/ethnic discrimination, as was revealed by the German fieldwork. Whilst some seem aware of the phenomenon of multiple discrimination and the specific problems faced by ethnic minority women, in practice not all of them provide assistance taking both grounds into consideration.
The Roma community that participated in the fieldwork of the study exhibits a specific profile concerning gender differences in the use of resources in all countries involved. In Bulgaria both men and women appear relatively active in defence of their rights - perhaps as a result of an active information policy by NGOs and public bodies towards the community.

However, in Spain Roma women are more active than men\(^6\). This illustrates their role in the social structure within the Roma community, where they display more initiative than men. Opposite to this, in France and the UK, men seem to take complaints to trial more often than women, and the latter seem to employ a larger variety of resources. On the other hand, some women in France reported their decision to lodge a complaint due to them being single mothers and so they felt more duty bound to act in the interest of their family. In contrast, in the UK, women more often did not pursue a claim because of the emotional and mental strain this would put on their families.

Further observations reveal that women generally prefer to talk to a female advisor even if she does not belong to the same ethnic group and tend to be accompanied by relatives, colleagues or friends when visiting organisations win which to file a claim/complaint. In some cases, such individuals may act on their behalf\(^6\).

6.3.7. Other grounds of discrimination at stake

Throughout the project we have seen that variables such as social class/socio-economic status, age or level of education play an important role in the experience of discrimination and the use of resources, to the extent that it might present a real challenge. Whilst the analysis has concentrated on the intersection of gender and ‘race’, the results have shown how these often appear in combination with other grounds of discrimination. For example, it was affirmed in France that the lower the individual's level of education – for both men and women – the more they turn to local intermediaries (a public official, a trade union, a local association providing assistance to foreigners) to be steered towards the appropriate institution.

\(^6\) In 2007, the 70% of the cases of discrimination were put forward by women, according to the annual report on discrimination reported by Fundación Secretariado Gitano.

\(^6\) As an example, data from the Hannover Centre in Germany reveal that two thirds of the migrant women do not lodge the complaint themselves, but go through intermediaries, such as colleagues, friends, family members or other supporting people.
Also, in the UK, it was stated that perhaps the most significant difference in the use of resources related to education and social class; thus of ‘cultural capital’. More educated applicants seemed to have access to a wider range of resources and be more pro-active in advancing their case. However, it was not only less well-educated interviewees who endured lengthy periods of difficulty before taking decisive action.

In all remaining countries, experts were in agreement with the inclusion of social class as a key ground of discrimination and a determining variable in analysis of experiences of discrimination.

6.3.8. Recommendations on resources by complainants

The recommendations put forward in this part of the chapter arise from the conclusions of the analysis on the use of resources. For the purpose of this section we have considered particularly useful to present the recommendations distinguishing between European and national level recommendations.

**At EU level**

- The ability to lodge class actions is recommended, particularly to enable women of foreign origin to progress the question of multiple discrimination more efficiently and on a larger scale. This is considered a key mechanism to obtain real gender equality by the Parity Observatory. The introduction of this legal action at the national level would require an amendment of the European Directives.

- Further specific measures should be designed and applied to improve application of the European Directives with regard to the specific situation of women as victims of multiple discrimination, such as awareness-raising campaigns and training courses.

**At domestic level,**

- Additional actions, such as publicity campaigns in workplaces and schools, or public debates in the media, should be undertaken to promote awareness of existing resources particularly amongst the most vulnerable communities. Also, more knowledge on *which* types of resources exist to denounce discriminatory acts should be fostered. This should take into account language barriers and cultural sensitivities.
- There is a need for increased awareness and training actions on multiple discrimination (detection, analysis and legal approach):
  - Those groups most exposed to discrimination, to strengthen their exercise of rights, in particular by encouraging the creation of advocacy groups, especially among women so as to increase the chances of recognition of direct and indirect discrimination in society;
  - Women's organisations and trade unions, which have a very limited presence in several countries in the area of assistance with the lodging of complaints;
  - Social intermediaries such as regional and local officials in direct contact with the public in the areas of integration, training and employment, to enable them to identify potential cases of multiple discrimination and to use legal instruments to prevent/resolve cases;
  - Legal professionals (judges, lawyers, experts, etc.) so that they may develop specific defence methods for such cases.

- State and municipal officers should ensure that a network of information reaches the country as a whole, inclusive of remote and/or rural areas and that resources be decentralised to those areas of need beyond large/capital cities.

- Issues of accessibility, for instance regarding of business hours, could be better addressed to facilitate attendance and take account of working hours and family responsibilities, such as childcare.

- More public offices assisting victims of discrimination should be created. These could be smaller advisory organisations targeting particular groups or communities (e.g. Muslim women, Roma women, young French men with a North African background) which operated at the local or regional level and were coordinated with the National Equality body of each country. Alternatively, these offices could also be actual Departments of the National Equality bodies in order to avoid fragmentation and dilution of expertise and resources (e.g. by delivering services such as outreach or telephone based services). It is important that these specialised offices or departments are developed in order to ensure that the most vulnerable and marginalised groups have access to services in whichever way is most effective in each national context.
- Although there may be preference for the state to adopt more responsibilities in assisting victims of discrimination directly through the national equality body and its offices, more resources to third sector associations and NGOs which currently assist victims of discrimination should be also provided so that they may offer better services. These should be equipped with long-term funding and better infrastructures.

- Public financial resources for organisations in charge of assisting victims of discrimination should be invested to cover the costs of the legal proceedings.

- Governmental and non-governmental institutions should promote initiatives for rights awareness for those having suffered from discrimination and the various actions that may be taken to tackle the situation. A special emphasis on the making of claims and formal complaints in court should be made. Thus, institutions should highlight the benefits of such actions so that people may overcome feelings of distrust, fear and alienation from them (especially towards legal institutions).

- There is particular need for women's movements to make use of legal instruments for both financially and legally support individual complaints lodged by women. Information and awareness campaigns should be organised to alert these associations of the importance of legal proceedings. Residual salary differences affecting women, for example, are well-known and well-documented. Actors within associations should therefore mobilise to act through the judicial system to challenge all rules with a discriminatory impact on women – whether of foreign origin or not – in the world of work.

- Roma and travellers organisations should better mobilise on the question of multiple discrimination and make a wider use of their civil rights to combat it.

6.4. Conclusions

Where we may remark upon the existence of different resources existing in each national context, differential behaviour around their use may be of similar significance. This is related to several factors. In those countries with fewer institutional channels to handle cases of
disadvantage (or in which they are very recent) such as Spain or Bulgaria, individuals still make more use of non-institutional resources. In contrast, countries including the UK, Germany or Sweden with longer histories of immigration and of feminist movements, and in which the welfare state has been more developed, institutions appear more aware and adapted to the needs of migrants and ethnic minorities. Although the French Equality body is recent, the constant growth of claims\(^{63}\) shows its growing reputation, at least amongst middle class ethnic minorities.

The extent to which [multiple] discrimination is incorporated within the public agenda and the commitment of institutions in designing and applying antidiscrimination policies and legal frameworks may contribute to the political culture of individuals using resources to act against their experiences of discrimination. This macro perspective also includes those ideas and perceptions towards the abilities and scope of institutions when dealing with cases of discrimination embedded in the social structure.

At the meso level, the experience of organisations in the field and the awareness, training and mobilisation of actors providing assistance may influence use of certain resources over others (e.g. complaints in court) and in how to proceed with the making of claims and complaints. Awareness of issues of intersectionality and multiple discrimination may also affect the victims perception of facing multiple grounds of discrimination.

At the micro level, private circumstances such as level of education, their residence and socioeconomic status, language or work and family commitments can work either to hinder or avail oneself of resource use.

Interestingly, no significant variations in the use of resources according to racialised identities have been observed, with the exception for the Roma community. Those countries who have easier access to resources, as was mainly the case in Spain and Bulgaria, have found out that the Roma community tends to use more non institutional resources from NGOs, although those more educated have also lodged formal complaints in court. However, other ethnic groups seem to consult their own networks and associations as a first step to reveal their

\(^{63}\) The number of claims lodged to the HALDE has been 1.410 in 2005 and 10.734 in 2009
experiences of discrimination, as well as having their own strategies, such as the example demonstrated of Sikhs.

For gender, we note that ethnic minority women tend to lodge fewer claims/complaints than men, which may be partly influenced by their higher level of vulnerability. Perhaps more interestingly, complaints are generally based on ethnic grounds, as this appears to be more visible than gender discrimination, and they normally prefer to talk to women advisors, whereas men do not usually express a specific preference.

Concerning policy recommendations, more awareness of the existing resources to report discrimination through campaigns must be raised, particularly amongst the most vulnerable groups and more public financial resources for organisations in charge of assisting victims of discrimination should be invested to cover the costs of the legal proceedings. On the other hand, offices for claims/complaints should be expanded over the territory and these should ensure a wider range of opening hours in order to facilitate accessibility taking into account working hours and family responsibilities.
Chapter 7: The influence of gender and racialised identities on the treatment of discrimination complaints

by
Agneta Hedblom
7.1. Main objectives

The main objectives of chapter seven are, firstly, to deepen the understanding of the impact of gender and racialised identities on the treatment of discrimination complaints/claims and, secondly, to improve knowledge about both the motivations underlying the use of law and the expectations of complainants/claimants. These objectives have been met through advanced qualitative studies which produced knowledge about the treatment of complaints and the way that gender and racialised identities influence the actions and methodology employed to solve conflicts. Furthermore, the complainants’/claimants’ motivations for using the existing legal and institutional framework have been explored.

These objectives correspond to the overall purpose of the Genderace project, which is to evaluate the effectiveness of racial discrimination laws. The main hypothesis of the project is that differences can exist between the use of the law from the point of view of the target group and in a gender perspective; the secondary hypothesis is that the intersectional experience of discrimination based on racialised identities and gender is not recognized or properly treated in a legal and institutional framework built on around single types of discrimination because discrimination are seen as one dimensional and affecting all in the same way.

7.2. Methodology applied

The methodology used in producing the findings for chapter seven is threefold and has been established in three studies: an analysis of claims and complaints relating to racial or ethnic discrimination from a gender perspective; an interview study with stakeholders and experts (including legal representatives, lawyers, and academics); and finally a second interview study, which consists of interviews with racial or ethnic discrimination complainants/claimants. The first of the above studies provided us, amongst other data, with specific knowledge of the process following a complaint and the use of methodology from a gender perspective; furthermore, a uniform data collection model was used to ensure that data was gathered in a coordinated manner. While the first interview study provided us with an expert point of view on the treatment of complaints from a gender perspective, the second gave us rich information on the complainants’ experience of the same phenomenon. Interview
guidelines based around the same theoretical framework (encompassing five regulatory themes) ensured that the information correlated in these two phases.

The first study, consisting of 864 complaints, revealed an interesting pattern within the sample, something which is also visible in the other studies: the sample generally correlates with the national context as regards complainants who tend to have an established social status (well educated, employed, citizens); however, it does not totally correlate with the general situation for discriminated groups, although some of those groups most exposed to discrimination are underrepresented amongst the complainants. This pattern is still present, albeit to a lesser degree, in the interview study with 123 complainants/claimants who have been subject to multiple or intersectional discrimination. However, it should be noted that in order to achieve a balance, a careful selection of interviewees was undertaken aimed at securing the representation of minority groups especially exposed to discrimination, as well as male and female representatives. Overall, there is a difference between the southern and northern countries: the group most exposed to discrimination in the southern context (Spain and Bulgaria) is the Roma, while groups from the Middle East and North and Sub-Saharan Africa are most exposed in the northern context (Sweden, Germany and France). In the UK, the groups most represented are from the Indian subcontinent, North and Sub-Saharan countries and the Caribbean. This is partly due to the country’s imperial heritage. It is against this background that the findings in chapter seven must be read and understood.

7.3. Comparative analysis

The findings presented in this chapter are based on a cross-national analysis of data, obtained by means of the three studies presented above, concerning the treatment of complaints. The goal is to highlight diversities as well as convergences between the partner countries involved.

7.3.1. Type: claim / complaint

*Claim* is defined in this project as a *statement of one’s right to redress in connection with an assertion of discrimination*. We refer to a *complaint as a formal charge or allegation of discrimination in a context of legal action*. 
Trends according to resources used

There is no general identifiable international trend regarding the choice of method used to make a claim or a complaint; rather, this choice is dependent on the national context, on the profile of the discriminated groups, their trust in authorities and their access to Equality Bodies or NGOs. However, it could generally be said that persons who are better educated, with good jobs and stable citizenship, were more likely to make a complaint to a national or local equality body, whereas persons with less education, uncertainties regarding employment and citizenship, and less trust in authorities were more likely to make a claim to an NGO. (The above does not apply to the UK, where there is no real distinction under UK law between a claim and a complaint.)

Of course, the choice of method used to make a claim or a complaint is also related to the resources available in each country. Where national Equality Bodies are available, even though they are relatively recent (as in France and Bulgaria), the complainants massively tend to consult them because they provide free legal counselling and advice. In Spain, on the other hand, persons subject to discrimination find it easier to consult NGOs since most of these people are migrants, with no legal status in the country. In Bulgaria a similar situation exists for the Roma group. In Sweden, on the other hand, NGOs are not actively involved in claims, and anti-discrimination bureaus (which are partly voluntary) have been slimmed down over the past few years; consequently, the complainants often have no choice but to consult an authority.

In all countries, complainants often used multiple strategies and made both claims and complaints to maximize their chances. Trade unions were rarely consulted (except in Sweden), and their support was very infrequent in cases of racial and gender discrimination. The possibility of making a complaint could also be circumscribed by the law, as was the case in Germany, where the Discrimination Act could not be applied to cases of discrimination in school.

As regards gender differences, it appears that more men than women lodged complaints based on ethnic origin and race - with the exception of the Roma group. This could be explained in several ways: the women may have a more precarious residential status; there could be a correlation between educational level (generally lower for female complainants in all
countries) and ability to launch a complaint; or the reason could be that women’s organisations give little support to women of foreign origin or from minority groups. In the UK, women rely heavily on sex discrimination laws, particularly in the employment field. It is more difficult for men to bring a sex discrimination claim/complaint.

**Reasons for selecting either a claim or a complaint**

Apart from the reasons mentioned above, decisions about making a claim or a complaint are influenced by the question of whether or not to pursue a legal process. (A complaint is per se related to a legal process.) As well as being motivated by trust in authorities, complainants seemed to be encouraged by the wish to make a legal statement. (This was most apparent in Sweden.) Hindrances impeding a legal process did occur, however: lack of evidence, problems with defining discrimination in legal terms, and difficulties getting help with a complaint based on racial grounds (as was the circumstance in the UK). In the latter case, the complainant was either advised to discontinue the legal process or was prohibited from continuing with it. Sometimes the choice of whether or not to make a complaint was simply not available (especially in Spain) because the voluntary organisations did not have the economic or human resources to maintain a legal process. On the other hand, the choice could also be affected by the complainants’ desire not to go ahead with such a process. Some reasons for this decision were, for example, the stress involved in a legal process that especially women (above all in the UK) pointed out, or the fact that the complainant instead preferred mediation or a settlement.

7.3.2. Services provided

The picture that became evident of the services provided by NGOs, Equality Bodies and other resources reveals that the division of opinion among the complainants is basically twofold: those who expressed satisfaction with the service and those who did not. Complainants satisfied with the service at Equality Bodies emphasised the quality of procedures, the effective organisation, the existence of rules, and the free legal and professional advice. As regards the NGOs and other voluntary organisations (including anti-discrimination bureaus), the quality of emotional support and the option of various solutions and actions with regard to the nature of the claim were especially appreciated. While the service provided by the latter
organisations was generally satisfying, the level of satisfaction with the services provided by Equality Bodies varied between the countries. On a ranking scale, Bulgaria and France came out on top, followed by Germany in the middle, and Sweden at the bottom. The Equality Bodies in UK do not take individual cases and the interviewees did not express any view about their services except that they were perceived as remote or inaccessible. The complainants were primarily dissatisfied with the tardiness of the process (or slow court procedures), local authorities that followed their private interests rather than the rules (especially in Bulgaria), the lack of information and communication, the redirection of cases to other instances, and the termination of a case without investigation (in the last instance, especially in Sweden).

The shortcomings of the trade unions and the police in handling discrimination complaints relating to gender and racial or ethnic discrimination are especially obvious in the data gathered. Except in the UK, where some people relied on the trade union and distrusted the legal system, the unions are either randomly used or their efforts are not appreciated. For example, in Sweden the DO redirects complaints to the trade union, and in France the unions are also often consulted. The lack of action taken and slow procedure (often so slow that complaints might be statute barred) are seen as especially problematic. The police are generally mistrusted, either because they are biased due to local influence (especially in Bulgaria) or because they did not investigate the complaint or provide any real service at all.

7.3.3. Key actors involved in the process

The key actors involved in the process are defined by the organisations wherein they operate. While legal representatives are in a majority in NGOs and voluntary organisations, lawyers are the most common actors at Equality Bodies. Of course, the police, trade union representatives, judges and private solicitors could also be actors in the legal process. The expectations of the complainant differ depending on what organisation the actor is associated with. Professionals in authorities such as the Equality Bodies are supposed to be neutral, competent, professional and committed. The importance of expertise becomes obvious in the appreciation of those lawyers specialised in anti-discrimination law and complaints. Complainants stress the lack of relevant qualifications of private solicitors and sometimes of legal aid lawyers. As there is dissatisfaction with the service from the police and trade unions, this discontentment inevitably also encompasses the key actors from these organisations.
With regard to the key actors in NGOs and voluntary organisations, the expectations are that they should be committed to the case (and to the complainant/claimant). As stated above, there is general satisfaction with the service from NGOs and voluntary organisations, which also includes the key actors in these organisations. One of the factors that seems to affect the appraisal of key actors is related to the diversity in an organisation. Usually there is more diversity amongst the actors in NGOs and voluntary organisations, and the importance of this is pointed out by the complainants.

7.3.4. Methods of resolution

**Description of different methods applied to solve discrimination claims and complaints and analysis of most common methods**

The study of complaints revealed some collective tendencies. Firstly, the Equality Bodies generally preferred to use conciliation or mediation to settle disputes between neighbours about access to goods and services or employment. The results generally favoured the complainant. Secondly, a legal solution was rare in all the countries. In Spain and France, recourse to a legal solution was primarily used in penal law, where decisions were rarely in favour of the complainant and in Sweden only 8% of the cases were brought to court, with few leading to a verdict in favour of the complainant. In the UK, only 4.5% of the cases favoured the client, (but it is then necessary to take into consideration that the overwhelming majority of cases are settled before the hearing or even before proceedings are issued as the defendant realises that they will loose the case if it goes to trial). Thirdly, new methods for the settlement of disputes were revealed. The power of non-legal institutions such as the Equality Bodies in France, the Halde, and the CPD in Bulgaria is substantial because these institutions use new dispute settlements methods. They hand down decisions whose main objective is to recognise victims’ rights by determining whether discrimination exists. Their decisions are primarily symbolic in scope. Their strength resides in the publicity the institutions give to their decisions through the media, particularly in France. The recommendations issued, except for those at fault, also concern legislation and administrative praxis.
However, a more detailed analysis of the data from the interview studies reveals that there are also differences between the countries. Whereas a legal process was generally desirable for complainants in Sweden, in order to make a statement and obtain publicity, the opposite was the case in Germany and the UK, where less divisive solutions such as mediation were usually preferred. The latter was perhaps due to a lack of confidence in resources or a wish to avoid tribunal proceedings. It should also be noted, however, that some disputes, such as discrimination in school, are not referred to in the German Anti-discrimination Act, and therefore a legal process is impossible. In Bulgaria and Spain there is a divide between those who trusted legal Equality Bodies, wanted a legal process and filed a complaint, and those who filed a claim at NGOs because they were afraid of corruption and/or other problems with the legal authorities. France seems to have a double strategy, whereby the Equality Body has recourse to legal proceedings in court, while at the same time giving precedence to mediation solutions; this type of solution is especially appreciated by women.

**Inclusion of a gender perspective when treating racial and ethnic discrimination claims and complaints**

Our data shows that ethnic origin is the most usual ground for complaints involving multiple discrimination. This indicates that a gender perspective when treating racial and ethnic discrimination is often absent, something which in a national context could be explained in several ways. have several explanations. It was not possible, for example, to lodge a complaint on two grounds in any of the countries (UK and Sweden has however since 2009 one single equality body and law on all grounds. In UK there is since 2010 a single equality act but claims can only be brought on one ground until this part if the act comes into force in April 2011, then claims can be made on two grounds, but not more than two. However only direct discrimination claims can be brought on two grounds under the new act) except in Bulgaria, where the CDP has a separate panel to deal with multiple discrimination. 64 Complaints of this type increased in Bulgaria as a result of activities by the CDP and NGOs. Laws may also prohibit legal remedy procedures involving more than one ground in other ways, and distinct anti-discrimination laws for each motive may preclude legal actions citing multiple forms of discrimination.

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64 It should be noted, however, that since 2009 the UK and Sweden have had one single Equality Body and one law covering all grounds.
The organisations may also be accustomed to working with a sole ground of discrimination. Some anti-discrimination bodies are divided into separate services for different forms of discrimination. This division of competencies makes it hard to process cases multi-dimensionally. Even when a single Equality Body is competent to deal with all kinds of discrimination, it does not necessarily take multiple discrimination into account.

Despite the fact that multiple discrimination is seldom recognised as such but is treated instead as being based on a single ground, the number of multiple discrimination cases seems to be on the increase. In several countries (Bulgaria, France, Germany and Sweden) disputes linked to religious discrimination in conjunction with gender are emerging. Gender differences are evident: while Muslim men are more likely to be a target of the police force and judiciary or more likely to be refused access to recreation areas, the complaints of Muslim woman basically concern the wearing of the hijab or veil as well as refused access to the public or private sector.

Even when a case is based on one ground, there could be gender differences relating to the methods preferred by key actors and complainants. For example, in the UK cases brought to the employment tribunal are more often settled through an agreement between the parties when the complainants are women. In Sweden there seems to be a tendency to redirect more cases involving men than women towards the trade unions, and more men go through a legal process in court.

It is important to stress the significant role lawyers and legal advisers have in determining the ground and methods of discrimination used in a process: they choose the ground and the method that they consider either give them more chance of winning, or require most urgent attention. A further point that should be taken into account is the fact that these organisations usually identify racism before gender as the main priority and ground for discrimination, and therefore they do not work with gender discrimination.

**Main differences in processing discrimination claims and complaints**

As shown above, there are more convergences than differences between the countries concerning the methods used. The Equality Bodies generally preferred to use conciliation or mediation to settle disputes, while legal remedy was rare in all the countries.
Our data also show convergence regarding the absence of a gender perspective when treating racial and ethnic discrimination. Ethnic origin is the most usual ground used to address complaints involving multiple discrimination. In connection with this fact, it is important to stress the role lawyers and legal advisers have in determining the ground for discrimination and the methods used in the process.

Another common feature is that, despite the fact that multiple discrimination is seldom recognised as such but is treated as based on a single ground, the number of cases of multiple discrimination seems to be increasing. Furthermore, in several countries disputes linked to religious discrimination in combination with gender are emerging.

Nonetheless, divergences between the countries do occur. The legal process was generally preferable for the complainants in Sweden, but the opposite was true in Germany and the UK, where less divisive solutions were usually preferred. In Bulgaria and Spain there was a split between those who trusted legal Equality Bodies and made a complaint, and those who did not and made a claim.

Also, new methods for the settlement of disputes were revealed in some countries. Halde in France and the CPD in Bulgaria handed down primarily symbolic decisions whose main objective was to recognise victims’ rights and gain publicity in the media.

7.3.5. Duration of the process

Average period of resolution

The average period of resolution depends on whether a claim or a complaint is involved and on which organisation is dealing with the case. Usually the period for resolving a claim is shorter, i.e. around one month to one year. A complaint, on the other hand, could take between six months to three years to process there are examples of processes in the UK that have taken up to six years. However, if the complaint is the subject of a legal process in court, it could take up to two or three years before it is solved.

Nonetheless, there are distinctions between the countries. In Bulgaria, there does not seem to be much difference between a claim and a complaint; the duration of the process merely
depends on the institution and/or person handling the case, the socio-economic status of the perpetrator and the ethnic origin of the discriminated person. If the complainant is a Roma, the probability that the case will be prolonged and finally forgotten is higher. In Sweden the duration of a case is also related to the organisations involved. The police tend to terminate a complaint very quickly without investigation; trade unions, on the other hand, are very slow, and it usually takes one to two years before a case lodged with them is closed. For the DO there are two recognisable patterns: either a complaint is closed very quickly without investigation or, if a legal process is initiated, resolution could take between nine months to three years. A claim made to the ADBs is usually solved within a few months or a year at the most.

**Observations according to gender**

Even though differences relating to ethnic origin in the duration of the process were noted (particularly involving persons from the Roma group), there do not seem to be any differences of duration relating to gender. Any diversity seems rather to be related to the type of case and the person or organisation handling it.

7.3.6. Main remarks as to national contexts
Overall, there are both divergences and convergences between the countries investigated in respect to the complainants’ motivation for using anti-discrimination law, their expectations, and the manner of treatment of complaints by the organisations.

Even though there is no apparent general trend indicating what motivates individuals to prefer to make a claim or a complaint, a measure of convergence could be distinguished. Usually persons with a more stable employment and citizen status preferred to make complaints to Equality Bodies, while those in an insecure situation made claims to NGOs. On the other hand, multiple strategies were commonly used to maximize the complainant’s chances. The most usual complainants/claimants in all countries (with the exception of the Roma group) were men.

A similarity in the different organisations relating to the nature of the key actors and to the expectations of service on the part of the complainants is also discernible. The Equality Bodies and their staff were expected to be neutral and competent, with a structured
organisation and clear rules, while NGOs and their legal representatives were assumed to provide emotional support and a variety of solutions. The complainants showed a deeper confidence in key agents at NGOs, basing their trust on a greater diversity within these organisations. Other organisations, such as the trade unions, were either randomly used or, as in the case of the police, generally mistrusted. While there are convergences of the aspects mentioned above, there seem to be fewer consensuses among individuals when it comes to the preferred methods of pursuing a case. While a majority in Sweden wanted to make a statement by means of a legal process, other less divisive solutions were selected in Germany and the UK. Opinion was split in Spain and Bulgaria between those who trusted authorities and those who did not, and this influenced the choice of method and the decision as to whether to make a claim or a complaint. There are also clear differences between the countries regarding the degree of satisfaction with the services provided; this may be illustrated by a scale where Bulgaria and France are at the top, the UK and Germany are in the middle, and Sweden is at the bottom.

In all countries, a number of factors define the type of service provided by the organisations and their preferred methods: are linked to several dimensions in all countries. It is decided by their purpose, their capacity, resources, diversity and knowledge. In all countries (except for Spain, where the NGOs are the prime choice and UK), Equality Bodies are massively consulted because they give free legal advice. Whether or not this led to a legal process was dependent on the interpretation of evidence and the possibility of defining the discrimination complaint in legal terms. Legal remedy was, however, rare in all the countries, and conciliation and mediation were preferred. In addition, new methods for the settlement of disputes were revealed in France and Bulgaria, using primarily symbolic decisions in order to recognise victims’ rights and obtain publicity.

A total convergence Amongst all countries, stands out concerning the absence of a gender perspective when treating racial or ethnic discrimination. Ethnic origin is the most usual ground in complaints about multiple discrimination, despite the fact the number of multiple discrimination cases seems to be increasing. In several countries, for example, disputes linked to religious discrimination and gender are emerging.
7.3.7. Complainants recommendations on the treatment of complaints

- Equality bodies should improve their knowledge about multiple discrimination in different contexts and concerning different groups although law professionals are not accustomed to this type of case and proceedings are very long. This could be facilitated by more diversity amongst the administrators and lawyers and specific training on anti-discrimination.

- It is necessary to clearly explain to claimants the different legal options and their consequences. For instance, it is important to give correct information on the consequences of different methods.

- It is recommended to improve both moral and practical support for complainants.

- Generally it is important with a clear and effective administration of complaints and cooperation between different organizations in the process.

More affordable, easily-accessible advice on legal aspects, earlier on in the process of a complaint/claim and in a way that claimants/complainants can understand.

7.4. Brief Conclusion

The main hypothesis for the Genderace project is that differences can exist between the use of law from the point of view of the target group and in a gender perspective and the second that the intersectional experience of discrimination based on racialised identities and gender is not recognized and treated properly in legal and institutional framework built around single types of discrimination because discrimination are seen as one dimensional and affecting all in the same way.

This chapter has shown that although gender is an important variable when it comes to differences in the use of the law (in that men lodge more complaints), the differences in use of service and choice of methods to pursue a claim/complaint may also be explained by other variables. Trust in legal authorities, the availability of organizations, and the nature of the
service and methods provided seem to be determining factors. Generally, trust in NGOs and other voluntary organisations seems to be greater, as does satisfaction with their service and the methods they provide. This endorsement seems to be a result of the diversity within these organisations, of their knowledge about discrimination related to different groups and situations, and of their specialization in anti-discrimination law. On the other hand, distrust in authorities or disappointment with the service they provide seems to be connected with insufficient knowledge on their part and with inadequate recognition of the circumstances of discrimination in different contexts and concerning different groups. Some people even perceive themselves to be the victims of racism at the hands of some of these organisations. Although the probability of institutional discrimination has proved to be high in the investigations undertaken in this project, the likelihood that the key actors in legal institutions may be connected to institutional discrimination as representatives in the public sector cannot be excluded; this could also be interpreted as a form of xeno- otherism.65

The chapter has, on the other hand, very clearly shown that the intersectional experience of discrimination based on racialised identities and gender is not recognized or treated properly in legal and institutional frameworks built around single types of discrimination. Multiple discrimination in its additive or intersectional form is rather not treated at all by the organizations; instead, they prefer to treat cases of multiple discrimination as a complaint based on a single ground, even though these cases seem to be on the increase. Perhaps this may be explained by the limited diversity within the legal authorities as well as by their lack of knowledge about discrimination in different contexts and amongst different groups, notwithstanding their high level of legal expertise. Solanke (2009) recognizes the problem in handling multiple discrimination related to lack of knowledge, and she suggests that a method is required which enables lawyers and courts to incorporate systematically social context into legal process and judicial decision making. As a means of achieving this, she criticizes laws built around single types of discrimination and introduces the concept of stigma. Furthermore, she suggests that discrimination law focus on those stigmas that are both difficult to escape and make a significant difference to individual access and acquisition of resources in key areas. In order to accomplish this, close cooperation with social science specialists would of course be required.

65 Xeno-otherism is a concept which can avoid the problems arising from the dualism of institutional and individual racism. While the concept of attitudinal racism relates discriminatory practices to individual attitudes, institutional racism risks ignoring the intended consequences of institutionally sanctioned individual acts, such as those of gatekeepers (Kamali 2009)
Chapter 8: Capacity of institutional and legal frameworks to handle multiple discrimination

by

Isabelle Carles
8.1. Introduction

Equal treatment legislation has advanced considerably in recent years especially with the inclusion of Article 13 in the Amsterdam Treaty and the adoption of two antidiscrimination directives in 2000. However, ten years on from adoption of these directives and their implementation at national level, there does not appear to be a uniform minimum level of protection in the European Union for people who have suffered discrimination in areas other than employment. As the number of prohibited grounds has risen, the issue of multiple discrimination has also emerged. As a result, the European Commission has proposed new initiatives to complete the legal framework.

The European Commission acknowledges that the EU legal framework is not adapted to deal with multiple discrimination. Little has been done to lay down coherent rules or specific strategies to address the issue, although in a flash Eurobarometer survey conducted in February 2008, 16% of respondents said they had experienced discrimination on grounds of a combination of factors. Knowledge of the phenomenon is also rare, due to non-systematic cross-grounds data collection on multiple discrimination by equality bodies, although according to a recent publication of the European Network of Equality bodies, "Database on Complaints" (Equinet, 2009: 13), 56% of EU national equality bodies can provide information on multiple discrimination.

8.1.1 Main objectives

The main objective of this chapter is to examine the influence of a ground-specific or a multiple approach to antidiscrimination legislation on the acknowledgment and treatment of multiple discrimination. Our initial hypothesis is that because of its single-ground approach to equality legislation, the present legal framework does not address multiple discrimination based on ‘race’ and gender properly. This is due in particular to the segmentation of legal instruments into different sets of laws, which separate ‘race’ and gender grounds, and the different coverage of discrimination grounds generated by the diverging scope of the Employment, ‘race’ and Gender directives. As a result, some forms of discrimination remain hidden.

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We would like to improve our understanding of the phenomenon of multiple and intersectional discrimination through analysis of the legal and institutional framework and the experience of women and men confronted with discrimination. The aim is to stimulate new and complementary actions to better assess the effectiveness of antidiscrimination policies and practices based on race and gender. The variety of national contexts will be helpful as some countries have chosen to treat all grounds of discrimination, including ‘race’ and gender, in the same body and a single law. Others have set up separate bodies to treat gender and ‘race’. Comparative research makes it possible to establish a catalogue of situations and identify good practice.

8.1.2. Methodology applied

The research includes a methodology that analyses the different levels in which social divisions operate, such as institutional, interceptive, representative and in the subjective constructions of identities.

In this chapter, the institutional and representative level is analysed through a detailed description of the legal and antidiscrimination framework related to ‘race’, ethnic origin and gender in each country and its impacts on the treatment of multiple discrimination.

It also includes a study of the complaint files of specialised bodies and NGOS in order to determine whether or not organisations include a multiple perspective in the treatment of complaints. Interviews with lawyers and stakeholders have been used for the analysis of representative and interactive levels and the subjective level is explored through the study of interviews of complainants.

Multiple discrimination is seen here as covering three forms of discrimination. The first form is where a person suffers from discrimination on several grounds, but discrimination takes place on one ground at a time. The second form occurs where a person is discriminated against on more than one ground in the same instance and discrimination on the one ground adds to discrimination on the other ground to create an added burden. The third form takes place where two or more grounds of discrimination interact and discrimination takes place because of this interaction. This is referred to as intersectional discrimination.
8.1.3. Comparative analysis

Schiek (2009: 11) shows that the theme of multiple discrimination is not yet sufficiently reflected in legal research and practice. Information is rather scarce as a result. This was also the case within GendeRace partner countries at different levels.

First, of the 914 claims and complaints collected, the sample contains only 107 complaints based on multiple discrimination, including ‘race’ or ethnic origin and gender. This category also covers a portion of the disputes linked to religious discrimination\(^{67}\). The small number of multiple discrimination cases could be explained by difficulties obtaining access to such cases. Depending on the country involved, the researchers were not all successful in collecting these data because some countries, such as Germany and Spain, did not foresee the possibility of recording a complaint based on more than one ground.

Second, acknowledgment of the concept differs widely amongst stakeholders, even if individuals interviewed usually have a background in law as well as specific expertise in discrimination issues. Although multiple and intersectional discrimination are well known amongst European experts, at the national level not all interviewees had a high level of knowledge. In Sweden and the UK, we found good general awareness and use of such concepts. In Bulgaria as well, many experts were very familiar with the concept in relation to levels of social awareness and its implementation in courts. In Spain and France, more difficulties were encountered when focusing the interviews on multiple discrimination. In Germany, on the whole, interviewees did not make much reference to multiple discrimination, but rather to the implementation of the ‘General Equal Treatment Act’ in discussing its perceived impact and capacity to deal with discrimination.

In interviews with complainants, it is clear that multiple discrimination is not a well-known concept and in some countries, such as France and the UK, plaintiffs do not even consider it useful. Moreover, women from ethnic minorities tend to identify the ground of origin in their experiences of discrimination, whereas gender is often perceived only as an additional sign. This may be influenced by the presence of stereotypes which are still deeply rooted in social attitudes and are internalised by individuals.

\(^{67}\) For example, in France, Germany and Spain, we find complaints related to wearing of the *hijab* and religious symbols in general.
In this chapter, we analyse the phenomenon of multiple discrimination in a comparative perspective through the implementation of the European antidiscrimination directives (2) and antidiscrimination policies related to multiple discrimination (3). Then we focus on the current treatment of multiple discrimination at legal level (4) and on the evaluation of actual capacities of national equality bodies to deal with this concept (5). Lastly, we examine the opinions (6) and recommendations of plaintiffs (7).

8.2. Variable transposition of the European directives

All states have taken serious steps to transpose and implement the 2000 European antidiscrimination directives. Problems with the transposition of the European directives are reported by Bulgaria, France, United Kingdom, Spain and Germany. Sweden seems to be the best performing state, demonstrated by the fact that it is the only old Member State amongst the partner countries which has not been brought before the ECJ for failure to fulfil its obligations with regard to the EU antidiscrimination directives. At this stage, only Spain and France have reported transposition of Directive 2006/54/EC.


In Spain, the two 2000 antidiscrimination directives were incompletely and ineffectively transposed but all gender directives (Directive 2002/73; Directive 2004/113/CE; Directive 2006/54/CE) have been fully and effectively transposed.

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68 Bill 514 establishing various adaptations to Community law in the field of combating discrimination, filed on 19 December 2007.
69 The bill establishes a more elaborate definition of direct and indirect discrimination and sexual or moral harassment, and organises protection against retaliation for victims and witnesses of discrimination.
A new Spanish Equality Law was debated in Parliament in May 2009. This legislation potentially represents a giant step forward in Spain’s fight against discrimination as it entails the transposition of European Directive 2000/43 as well as the creation of a new body for equality. The new law on equal treatment is supposed to address all forms of discrimination.

In the UK, a new Equality Bill was published on 24 April 2009 which incorporates in a single piece of legislation all existing discrimination provisions. It would regulate, amongst other grounds, discrimination on grounds of sex, pregnancy and gender reassignment and race, including nationality, national origins, ethnicity and colour (McColgan, 2009b: 96).

The same evolution towards a single act can be noted in Sweden. The new Discrimination Act (2008:567) merging seven earlier laws on discrimination into a Single Non-discrimination Act implementing the European equality directives, entered into force in January 2009. All antidiscrimination laws were merged into a single act that covers all grounds in all areas. It also strengthens protection against discrimination by governments and raises compensation amounts.

In Germany, it was not until 18 April 2006 that an antidiscrimination law, the General Equal Treatment Act, was passed. It prohibits discrimination on grounds of race as well as ethnic background, gender, religious or political beliefs, disability, age and sexual identity. The Equal Treatment Act (AGG) reinforces gender protection by adding protection from discrimination on grounds of gender in civil law matters.

However, in October 2009, the European Commission initiated an infringement procedure against the Federal Republic. The inquiry concerns inter alia protection against unlawful dismissal in the AGG and Directives 2000/78 and 2000/43 (ban of ethnic discrimination and protection against victimisation). Germany's federal government has so far not taken visible steps to avoid a conviction by the European Court of Justice. The infringement procedure is still pending at this time (April 2010).

In Bulgaria, the basic statute is the Protection against Discrimination Act (PADA), in force since 2004. It follows the European model and transposes all European legislation on protection from discrimination and on human rights. However, it is important to note that equality and antidiscrimination are treated in general legislative terms in Bulgaria, without
special attention being paid to gender issues. Moreover, a draft gender equality act was under discussion for several years but its adoption delayed until a new draft was introduced in November 2008. It provides for a separate gender equality body and a mechanism for gender equality policy and allows the adoption of temporary special measures in the field (Tisheva, 2009a: 40). However, given the current economic situation, it was decided to drop the debate on the need for a special gender equality law, which would imply an additional budget for a new gender equality institution and to monitor its financing (Tisheva, 2009b: 37).

In conclusion, it can be observed that legislation on the protection of individuals against racial discrimination existed almost two decades before the European directives resulting from the Amsterdam Treaty (1999). With respect to gender discrimination, there has also been a longer tradition in the UK and in Sweden. We can also observe a general tendency within partner countries to implement antidiscrimination legislation in a single act.

8.3. Analysis of antidiscrimination policies

It should be noted that there is a discrepancy between the European and national levels concerning the degree of awareness and knowledge of multiple and intersectional issues.

8.3.1. Multiple discrimination at the European level

The debate on multiple discrimination is very present amongst European antidiscrimination lobbies since the European Commission has published on July 2008 a proposal for a Council directive on implementing the principle of equal treatment between persons irrespective of religion and belief, disability, age or sexual orientation other than in the field of employment and occupation, published as part of the “Renewed Social Agenda”.70 The proposal has been criticised by the European Women’s Lobby (EWL), which has initiated a debate on the possibility of a gap between European legislation on the grounds of race, religion, disability, age, and sexual orientation and European gender equality legislation.71 For instance, the scope of protection from gender discrimination under the 2004 directive is not as extensive as in

70 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Renewed social agenda: Opportunities, access and solidarity in 21st century Europe, COM/2008/0412 final

71 See European Women’s Lobby, Briefing 2, July 2008.
Directive 2000/43/EC, since it does not cover education, social protection, social advantages, media or advertising. That is why the lobby is advocating for a levelling-up of the material scope of EU gender equality legislation.

The European Network Against Racism (ENAR) also expresses its opinion on the proposal in the Bell Report (2008) of an ENAR Ad Hoc Expert Group. On multiple discrimination, the group highlights: 1) the need to ensure effective protection from discrimination for all persons in all areas of life; and 2) the need for the directive to “explicitly prohibit discrimination on more than one ground (multiple discrimination)” and to “require specific measures to ensure that this is dealt with effectively by national law (e.g. in relation to equality bodies and legal procedures).”

The European Commission has also shown its interest with its recent publication of several studies on multiple discrimination. In a study on data availability (2008), it stresses the lack of research, registered complaints and cross-sectional data, which contributes to the continued invisibility of other disadvantaged groups as well, for instance, older ethnic minorities, black persons with a disability, etc.

These conclusions were already found in the 2007 publication on multiple discrimination (European Commission, 2007). This report was based on the literature, legal expert review and interviews of stakeholders in 10 member states. In addition to more research and awareness raising, it recommended new legislation to define the concept of multiple and intersectional discrimination. This report was completed in 2009 by a publication on Multiple Discrimination in EU Law (Burri, Schiek, 2009). The main objective was to provide a complementary report to cover 30 states and to focus on legal problems related to gender equality and multiple discrimination. The report clearly recommends the inclusion of a clarifying clause in non-discrimination directives and development of the concept of gender mainstreaming in order to respond to multiple discrimination.

To sum up, the debate on multiple discrimination is well developed at the European level. This is not the case in all the GendeRace partner countries, however.

8.3.2. Multiple discrimination at national level
The debate on discrimination on more than one ground depends on the level of scientific research and public awareness in the different states. The basic issues in expert and/or public discourse in the six states are generally similar. The differences relate to the extent to which a given issue is part of the public or expert debate, the extent to which different aspects of the issues are included in the discussion and the number of studies related to the corresponding issue.

In the United Kingdom, there were discussions as early as 1992 about how the law should deal with situations of discrimination on grounds of both gender and ‘race’ against the same individuals (black women). Consequently, the problem of multiple discrimination and the issue of intersectionality became a focus for academic and public debate. In Sweden as well, discrimination is a subject of scientific data and debate as well as political debate and discussion in the media. Several reports show that women from non–European countries, especially Somalia and Iraq, make up the group least integrated into the labour market and education.

In the other states, the issues of multiple discrimination and intersectionality are rather new but nevertheless attract the attention of numerous researchers and NGOs, as in France, where the overlapping of racism and sexism was recently addressed by sociologists and feminist scholars. However, multiple discrimination has not been given much academic attention by lawyers (Laulom, 2009: 53), with the notable exception of Lanquetin (2004, 2009).

Germany has been sensitive to some extent to evolving parallels, differences and overlaps of the gender and ‘race’ categories, particularly in transnational gender research. This awareness became stronger towards the end of the 1980s, specifically in relation to the inequalities created by other institutional and structural factors, especially instances of ethnicity/racism and social class.

In Spain and Bulgaria, multiple discrimination and intersectionality are only now emerging as part of the current race and gender antidiscrimination debate. For the moment, the discussion is restricted to describing what multiple discrimination and intersectionality are, outlining the potential advantages of this approach over previously adopted analytical frameworks and suggesting possible practical applications for these concepts in the antidiscrimination struggle. However in both countries, the debate only exists at the expert level.
8.3.3. Few initiatives to handle multiple discrimination

In the partner countries, the very few laws that mention multiple discrimination are usually limited. Bulgaria is the only country where multiple discrimination is defined and in a very basic way. German legislation, which does not use the term “multiple discrimination” as such, mentions the possibility of discrimination based on more than one ground. In the UK, the recently adopted UK Equality bill allows a claim only on two grounds and only for direct discrimination.

In all six states, discrimination case-law is usually based on a single ground. There are very few examples of complaints based on more than one ground of discrimination. In the United Kingdom, a claim was filed on two grounds but this approach was not upheld on appeal (Bahl v Law society (2003) I.R.L.R. 640 and (2004) I.R.L.R. 799). In a recent case, however, the existence of discrimination based on race/nationality and gender was recognized by the Employment Appeal Tribunal. The Bulgarian Commission for Protection against Discrimination has issued several decisions dealing with multiple discrimination, although these currently do not deal with gender/race but rather with gender and age discrimination and gender and personal status, such as motherhood. There is no indication in either case that the identification of multiple discrimination played a role in the award of compensation to the victims (Tisheva, 2009).

In regard to equality bodies dealing with discrimination claims, Bulgaria is the only country to have a subdivision specialised in multiple discrimination. This Commission also has the competence to initiate cases, including for multiple discrimination. However it has not been very effective at identifying multiple discrimination cases based, among other grounds, on gender.

The recent merging of equality bodies in the UK and Sweden can be expected to lead to the creation of such sub-divisions and consequently better handling of cases of multiple discrimination. As these changes were made in 2009, however, it is too early to assess the impact of the merging on multiple discrimination.

8.3.4. Is one ground given more importance?
At the European level, racial discrimination is usually considered to have the most extensive protection compared to other grounds, including gender (see Matrix 1 below). At the national level, the issue is usually more complex and must be analysed at different levels, such as institutional, but also in terms of public interest and research fields.

In several countries, experts highlight the fact that race is given a higher profile in the media than gender. This also emerges in the fact that people are more worried about being accused of racial discrimination. Society seems to find racism more unacceptable than sexism and is rife with sexist and gender stereotypes. This might be because there is a perception that the battle on gender discrimination has been won and that society has now moved on to the battle against racial discrimination. This whole public debate and image shapes the way people think about and conceptualise their own experiences. As a result, sexist attitudes are seen as belonging to other cultures, such as Muslim societies.

At the legal level, although laws and policies on gender equality pre-date those on racism, gender is the issue that never seems to be resolved. In terms of institutional racism or institutional sexism, the latter seems to be less important and this will not change without an intersectional approach, according to UK experts.

This aspect consequently does not play a leading role in the work of antidiscrimination offices, where the focus is more on the grounds of ethnic origin and religion. In many partner countries, stakeholders note that organisations tend to find discrimination due to ‘race’ or ethnic origin easier to identify than gender discrimination. However, in terms of strategy, they do not always handle cases of multiple discrimination based on this finding. On the other hand, actors such as trade unions, which are familiar with the wage gap or ‘glass ceiling’ issue, do not always interpret it as discrimination on the ground of gender either, so the lack of sensitivity in these issues also appears to be relevant.

The presence or absence of case-law is also important in determining the extent to which the case should be oriented towards one ground or another, as well as the tradition of legislation in each field. In this sense, given the longer tradition of laws on gender equality in many countries, such laws do not seem to play a leading role nowadays in the work of many organisations dealing with discrimination claims and complaints. The focus is more on issues
of ethnic origin, often combined with religion, when it comes to dealing with vulnerable groups such as women who wear the headscarf or Turkish/Arabic-looking men with beards.

At the micro level, analysis of the interviews shows that women often had difficulty identifying situations of discrimination, especially cases of gender and multiple discrimination. This is mainly because they themselves do not identify their experience as discrimination. In the French context, an expert states that this is due to the dual French discourse on equal opportunities for women and protection under the family policy.

As a result, they do not feel discriminated against on the ground of gender.72 This trend is even worse for migrant women. They have assimilated the social image of themselves as victims and dependent women. Consequently, when they complain, they usually do it on the ground of race instead of gender because they identify racial discrimination more easily than gender discrimination.

As a result, in our research, ethnic discrimination, based on assumptions about ethnic origins, appears more frequently than discrimination on the basis of gender. Gender is perceived more as an additional sign, above all in connection with religion. This is the case in Germany and in France, where the most vulnerable groups are those who mention associations between the perceived Muslim cultural origin combined with the Islam religion. This is the case, for example, for women wearing the headscarf or Turkish Arabian-looking men with beards. There is an impression that Islam is the cause of numerous social problems and challenges to society.

To sum up, despite ‘old’ and extensive legislation, when it comes to practice, both experts and complainants state than gender is less visible than race.

72 ULB-EX 9.
Matrix 1: Protection according to ground of discrimination at European level

<table>
<thead>
<tr>
<th>Scope</th>
<th>Ground</th>
<th>Race</th>
<th>Religion</th>
<th>Disability</th>
<th>Age</th>
<th>Sexual orientation</th>
<th>Sex/Gender</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employment</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes + Equality body</td>
</tr>
<tr>
<td></td>
<td>+Equality body</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Education</td>
<td>Yes + Equality body</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Goods and services</td>
<td>Yes + Equality body</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes + Equality body</td>
<td></td>
</tr>
<tr>
<td>Social protection</td>
<td>Yes + Equality body</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes + Equality body</td>
<td></td>
</tr>
</tbody>
</table>

Source: European Commission Staff working document (COM (2008) 426 final)

8.4. Multiple discrimination and the legal framework

8.4.1 EU legislation and multiple discrimination

Community law does not use the term multiple discrimination in legally binding provisions. However, the Race and Framework Directives explicitly recognise the possibility of multiple discrimination, where gender discrimination can be combined with discrimination on any other grounds covered in the Directives.

Recital 14 of the Preamble to the Race Directive states: “In implementing the principle of equal treatment irrespective of racial or ethnic origin, the Community should, in accordance with Article 3(2) of the EC Treaty, aim to eliminate inequalities, and to promote equality between men and women, especially since women are often the victims of multiple discrimination.”
The EC Framework Directive contains virtually the same wording in Recital 3, but the term ‘multiple discrimination’ does not appear anywhere else in either of these directives, nor do they give any definition or indication as to how to deal with cases of multiple discrimination. The Action Programme\textsuperscript{73} mentions multiple discrimination a number of times. However, as observed by Schiek (2009), the recitals of the gender equality directives do not mention multiple discrimination at all.

In the proposal for a Council directive on implementing the principle of equal treatment between persons irrespective of religion and belief, disability, age or sexual orientation other than in the field of employment and occupation, the Commission does not add any new concepts, but simply repeats the recital mentioning multiple discrimination found in Directives 2000/43 and 2000/78.

The European Parliament, however, under the influence of EU antidiscrimination lobbies\textsuperscript{74}, adopted a number of amendments relating to multiple discrimination\textsuperscript{75}, including a proper definition of multiple discrimination, defined as discrimination based on two or more grounds listed in Articles 12 and 13 of the EC Treaty. The amendment also concerns the effectiveness of legal procedures for dealing with situations of multiple discrimination. In particular, national legal procedures should ensure that a complainant can raise all aspects of a multiple discrimination claim in a single procedure. The proposal is still being discussed by the European Council (April 2010).

To sum up, the EU acknowledges the existence of multiple discrimination but considers it too early to act at the European level in the current context. It urges the member states to remove any obstacles to addressing multiple discrimination or to go even further by adopting a legal definition. This is why it is of particular interest to review the national laws of the GendeRace countries.

\textsuperscript{74} See for example, ENAR message to MEPs ahead of their vote: "Don’t miss your chance to ban discrimination in the EU!", [03/04/2009] or ILGA press release, "ILGA Europe welcomes European Parliament signal to EU Member States: antidiscrimination directive needs to be adopted", [02/04/2009],http://www.socialplatform.org/News.asp?news=20935.
\textsuperscript{75} See P_6 TA (2009) 0211.
### Matrix 2: Antidiscrimination legal framework at the European level

<table>
<thead>
<tr>
<th>Gender</th>
<th>Directives</th>
<th>Principles</th>
<th>Definitions</th>
<th>Scope</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2002/73/EC</td>
<td>Equal treatment</td>
<td>Direct and indirect discrimination, harassment, sexual harassment</td>
<td>Access to employment, vocational training, promotion and working conditions</td>
</tr>
<tr>
<td></td>
<td>2004/113/EC</td>
<td>Equal treatment</td>
<td>Direct and indirect discrimination, harassment, sexual harassment</td>
<td>Access to goods and services, except social security and financial services</td>
</tr>
<tr>
<td></td>
<td>2006/54/EC</td>
<td>Equal pay</td>
<td>Direct and indirect discrimination, harassment, sexual harassment</td>
<td>Employment (recast of certain gender directives)</td>
</tr>
<tr>
<td>Race</td>
<td>2000/43/EC</td>
<td>Equal treatment</td>
<td>Direct and indirect discrimination, harassment, instruction to discriminate</td>
<td>Employment, access to goods and services, education, social protection</td>
</tr>
<tr>
<td>Other grounds</td>
<td>2000/78/EC</td>
<td>Equal treatment</td>
<td>Direct and indirect discrimination, harassment, instruction to discriminate</td>
<td>Employment</td>
</tr>
</tbody>
</table>
8.4.2. The concept of multiple discrimination in national legislation

National legislations differ widely as to whether multiple discrimination is explicitly defined or even mentioned. The general trend is both the absence of a specific definition and the absence of prohibition as well.

**In France**, multiple discrimination is not prohibited as such. So it could be argued that French antidiscrimination legislation could address the issue of multiple discrimination. In addition, the same principles apply for every form of discrimination and because the HALDE is competent for all grounds of discrimination, the institution theoretically should be able to address multiple discrimination (Laulom, 2009: 53). However, in practice, multiple discrimination complaints are not brought before the courts and the HALDE tends to focus on one ground only.

**In Spain**, there is no definition of multiple discrimination. Nevertheless, according to some experts (Valdés, 2009: 118), the absence of legislation on this matter does not mean that the multiple ground approach is prohibited. Public authorities have a positive duty to address the problem of multiple discrimination.

**In the UK**, the new Equality Bill of 2009 does not contain any provisions for multiple discrimination claims, but the day after the new bill was adopted, the government started another consultation on this aspect. It proposes to add a provision to the new bill that would allow claims to be made on two combined grounds, but not on more than two because allowing claims for discrimination on three or more grounds would complicate the legislation. However, the general opinion of British stakeholders appeared to be that the new bill should definitely contain a provision for cases on multiple grounds, although most did not expect this to lead to a large number of additional discrimination claims. In their view, an intersectional approach is solving problems rather than creating them.

**In Germany**, the concept of multiple discrimination is neither defined nor explicitly prohibited. The AGG contains a specific rule for situations where unequal treatment occurs on the basis of several prohibited grounds and the law does not distinguish between multiple and

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77 This consultation paper can be found at: www.equalities.gov.uk/pdf/090422%20Multiple%20Discrimination%20Discussion%20Document%20Final%20Text.pdf (accessed 19 June 2009).
intersectional discrimination. As a result, both are covered by this provision (Rudolf, 2009: 56). There is just one case in which multiple discrimination is alleged, but a judgment has not been handed down yet. In addition, there are numerous labour law decisions concerning the dismissal or refusal to hire women because of their wearing a headscarf. All the decisions approach the problem as religious discrimination (Rudolf, 2009: 57).

In Sweden, the recent Discrimination Act (2008: 567) only entered into force on 1 January 2009. It merges all existing laws on discrimination into a single Discrimination Act that covers all grounds. It does not contain any direct reference to multiple discrimination but it does not contain any express prohibition either. In addition, there is a special mention of the single act approach being more appropriate for cases of multiple discrimination (Numhauser-Henning, 2009:120). Moreover according to a Swedish expert, the new law could cover multiple but not intersectional discrimination. So it is possible to plead a case on two single grounds, but not to argue that the grounds for discrimination function together.

In Bulgaria, multiple discrimination is defined in the supplementary provisions of the Protection against Discrimination Act (PADA) as “discrimination on the grounds of more than one of the characteristics under Article 4(1).” It is also mentioned in Article 11 of PADA: “(2) State authorities, public bodies and local governments shall undertake priority measures pursuant to the provisions of Articles 7 (1)… to provide equal opportunities for individuals who are victims of multiple discrimination”. However in practice, even when multiple discrimination issues are raised, the complaints tend to focus on one ground. It is also noticeable that in Bulgaria, the antidiscrimination legal framework contains legal provisions for positive actions in favour of a multiple discrimination approach. In Spain as well, public authorities are under a positive duty of adopting positive actions to tackle multiple discrimination and to reflect multiple discrimination in studies and statistics. These provisions should be seen as an example of good practice.

In conclusion, although use of the concept of multiple discrimination is not prohibited in the partner countries, multiple discrimination issues are not raised in practice. As a result, although a single act would help to address multiple discrimination, it is not sufficient. It is recommended to develop a definition of multiple discrimination so that a methodological

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79 Article 11 of the PADA.
framework for the law can be proposed. The intersection of sociology and law should make this possible and lawyers should encourage the development of case-law on multiple grounds of discrimination by using this definition. This concept, like that of indirect discrimination, will be assimilated into the law through case-law before being written into directives. So there is a need for litigants to try to transpose a sociological definition in their approach to demonstrating the facts. Multiple discrimination should subsequently be clearly and understandably defined by the law and easily implemented. This definition would meet the standards set out in Article 21 of the Charter of Fundamental Rights of European Union\textsuperscript{81} which have an open list on the prohibited grounds, that could render possible to offer protection to multiple discrimination\textsuperscript{82}.

\textit{Matrix 3: Race and gender antidiscrimination legal framework at national level}

<table>
<thead>
<tr>
<th>Main laws</th>
<th>Race ground(s)</th>
<th>Gender ground(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>France</td>
<td>Several acts and a specific law on antidiscrimination</td>
<td>Ethnic or racial origin, nationality, physical appearance</td>
</tr>
<tr>
<td>Spain</td>
<td>Single act</td>
<td>Ethnic or racial origin</td>
</tr>
<tr>
<td>UK</td>
<td>Single act</td>
<td>Race, nationality, national origins, ethnicity and colour</td>
</tr>
<tr>
<td>Germany</td>
<td>Single act</td>
<td>Race and ethnic origin</td>
</tr>
<tr>
<td>Sweden</td>
<td>Single act</td>
<td>Ethnic or racial origin</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>Single act</td>
<td>Ethnic or racial origin</td>
</tr>
</tbody>
</table>

\textsuperscript{81} The article 21 refers to the prohibition of any discrimination based on \textit{any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.}

\textsuperscript{82} See European Commission, DG Employment and social Affairs, \textit{Legal seminar on the implementation of EU law on Equal opportunities and antidiscrimination. Discussion paper. Multiple discrimination and potential conflicts between grounds, 2008}, ec.europa.eu/social/BlobServlet?docId=687&langId=en.
8.5. Equality bodies: Real capacities, limited effectiveness

In the six member states compared, it is not easy to evaluate the capacities of equality bodies to handle cases of multiple discrimination because some of these bodies were set up only recently and others were merged recently, creating a single body that covers all grounds of discrimination. Nevertheless, the main tendency among partner countries is to set up a single body. A single equality commission is considered to deal more effectively with cases of multiple discrimination. This was not the case previously, when equality bodies and other organisations providing legal advice and assistance often dealt with cases of multiple discrimination by deciding which ground was the strongest and then proceeding on this ground only.

Spain is now the only country where the national antidiscrimination frameworks for gender and race are not coordinated in any meaningful way. The main specialised body for racial discrimination is the Spanish Observatory Against Racism and Xenophobia, which focuses on the subject of immigration and it is simply an observatory. Concerning gender discrimination, the Instituto de La Mujer (Women's Institute) mainly works on gender/sex discrimination and its approach to multiple discrimination is not thorough enough to have a definition of the phenomenon (Valdes, 2009: 120). However, this situation is likely to change with the creation of the National Council for Equal Treatment irrespective of Ethnic Origin, established by the Ministry of Equality.

In the other partner countries, Bulgaria, France and Germany already have a single equality body and Sweden and the UK recently created one. In January 2009, Sweden merged a number of bodies into a single body. Sweden previously had four different ombudsmen to monitor and combat discrimination on different grounds (race, disability, gender and sexual orientation). The new ombudsman's office is organised in a horizontal manner, which may foster multiple discrimination claims. In the UK, in 2007 the Equality and Human Rights Commission took over the tasks of the previous three British Equality Commissions (on race, gender and disability) and its remit was extended to include the other grounds on which discrimination is prohibited in British law as well as human rights.

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83 In Spanish, “Consejo para la Promoción de la Igualdad de Trato y No Discriminación de las Personas con indiferencia de su origen racial o étnico”
A single equality body is a very interesting option for handling multiple discrimination as it can deal with all grounds. Where there is more than one commission, the victim has to decide which commission to go to for help and advice, and this one commission might not be able to advise on grounds it does not cover. A single commission provides a "one-stop shop" for victims and employers to get advice on all grounds at the same time. Another advantage is that all competences are found in the same place and can be used in another way. This opinion is shared by a Swedish expert who works for the new Swedish equality body:

“The new law and the new department would make it better when it comes to combating multiple discrimination. The problem before was that ethnic discrimination could be very subtle and hard to prove while gender discrimination could be more visible. When we don’t have the problem to choose between two grounds it would be easier.”\(^{84}\)

However, having a single body does not mean that multiple discrimination will systematically be treated properly. In France for example, the HALDE has general competences and has the responsibility to cover all grounds. Nevertheless, until now, it has focused its action on a single ground approach and has not played a major role in tackling multiple discrimination. Furthermore, there is no legal rule addressing multiple grounds of discrimination such as race and gender. Complainants can claim to be victims of discrimination on a number of grounds, but there is no method developed for each case in order to apprehend the specificity of multiple grounds claims. The HALDE is nevertheless starting to contribute to the dissemination of this concept by conducting commissioning studies and research.\(^{85}\) A second sign in favour of greater visibility of the concept is that the institution recently changed its registered claims data system and it is now possible to register multiple discrimination cases. Since 2008, the HALDE has also published in its annual report statistics on grounds, fields and results of claims, detailed by the sex of the complainant.

In Germany as well, despite the fact that many antidiscrimination offices use a horizontal approach that stresses the aspect of multidimensional disadvantages, identification of the complex interplay between gender, religion and ethnicity is not easy in practice. There is a need for information and education to clarify the meaning of multiple discriminations and to make the concept of intersectionality useful and valuable for active antidiscrimination work.

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\(^{84}\) KU-EXP-5.

\(^{85}\) The HALDE asked a research team to draw up a report on multiple discrimination experienced by migrant women in the field of employment.
In Bulgaria, a specific panel on multiple discrimination exists within the Commission for Protection from Discrimination (CPD), created in 2004. However, this competence to ensure protection from multiple discrimination has not been sufficiently used. Even if the case is assigned to the CPD panel dealing with multiple discrimination, a single ground of discrimination is always selected. According to the experts, this is mainly because the law does not define discrimination. As a result, the CPD has considerable difficulty implementing the act, which needs to be reviewed. Furthermore, the institutions themselves must learn to apply the PDA appropriately, especially because not all the commissioners are lawyers, which can sometimes lead to a strange interpretation of existing legislation.86

Furthermore, Swedish legal experts observe that the DO lawyers are making progress in the treatment of multiple discrimination. Although they are aware of the concept and have the possibility to register data on several grounds, the methods are still not sufficiently developed and there is no legal praxis whatsoever. Even if a single equality body is mainly seen as a positive step towards better handling of multiple discrimination, potential negative effects are also mentioned. For instance, a Swedish expert states:

"We saw a risk that the weak ombudsman, like the former DO, could be swallowed up by the stronger (like JämO). It is possible that they put more effort into gender discrimination, for example."87

The second potential negative impact is a watering down of the specificities of each ground: “There is also a problem with talking about multiple discrimination, because we could lose sight of what is behind it, for example racism. It creates a smoke screen around the norms and prejudices that makes everyday racism possible. There is a risk that the will to encompass so much would mean that we lose focus in a lot of important areas.”88

In short, equality bodies can be open to the phenomenon of multiple discrimination, but in practice are confronted with methodological obstacles. In this sense, although there is increasing awareness of multiple discrimination, a specific method to deal with such cases is still lacking. As one stakeholder affirmed in Spain, “the concept of multiple discrimination is still in the laboratory"89. It is clear that there is a general movement within the European

86 IMIR-EX-7.
87 KU EXP 3.
88 KU EXP2.
89 UB EXP4
Union towards a single equality body with a view to better implementation of a multiple
discrimination approach. On the other hand, a single equality body does not seem to be
sufficient: appropriate methodologies have to be actively implemented. Both training and
methodology are needed in central and local institutions, which in the course of their daily
work encounter the problems of unequal treatment and have the ability to direct the victims to
seek protection of their rights under antidiscrimination law.

**Matrix 4: References to multiple discrimination in the legal and institutional framework**

<table>
<thead>
<tr>
<th></th>
<th>France</th>
<th>Spain</th>
<th>UK</th>
<th>Germany</th>
<th>Sweden</th>
<th>Bulgaria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Definition of multiple discrimination</td>
<td>No</td>
<td>3 References to MD in Law 3/2007 on Equality between men and women</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prohibition of multiple discrimination</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Single Equality body</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Single act against discrimination, including gender</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Case-law</td>
<td>One ground</td>
<td>One ground</td>
<td>One or two grounds</td>
<td>One ground</td>
<td>Multiple grounds</td>
<td>Multiple grounds</td>
</tr>
<tr>
<td>Legal provisions for positive actions in favour of multiple discrimination approach</td>
<td>- Possibility of adopting positive actions to tackle MD - Reflect MD in studies statistics</td>
<td></td>
<td>Positive duties to address the issue of MD</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
8.6. Complainants' observations on the handling of multiple discrimination

Generally complainants do not comment on multiple discrimination very often because they are not very familiar with the concept, even those who have filed cases based on multiple discrimination, as in Bulgaria, with the notable exception of Sweden where nearly all of the interviewees experienced and articulated their discrimination as multiple. Moreover, in this country, women more than men identified their experience of discrimination as multiple. On the contrary, in the UK, no interviewee saw the need for a multiple discrimination framework as important for their claim. Two did not think that a multiple framework would have helped them. According to a legal expert, clients do not appear to be too concerned about getting recognition of their unique multi-layered identity, but are looking for a practical solution.\textsuperscript{90} Victims display a greater tendency to identify the ground of origin in their experiences of discrimination, whereas gender is often perceived of only as an additional sign.

As a result, complainants have usually expressed opinions on the antidiscrimination framework in general. It appears clearly in the interviews that their opinions depend to a large extent on the national context and are closely related to the history of migration and development of the fight against discrimination in each cultural context.

In Spain, for instance, the debate is focused mainly on how migration laws are discriminatory in themselves, especially for women who come to Spain through family reunification, because they are not given a work permit. In France, where complainants are mainly French citizens from a migrant background, the debate is more focused on evaluation of the antidiscrimination legal and institutional frameworks. Perhaps as a result of the recent adoption of the law and debates on antidiscrimination in the media, complainants are usually familiar with the framework and have a positive opinion of it. In addition, the fight against discrimination is a consensual political issue in France today, seen as a priority by both the left and right wings, with the notable exception of the extreme right.

\textsuperscript{90} MDX-EX-1.
In the UK, where the law has been implemented for a long time, the comments more generally concerned the financial and emotional cost of bringing proceedings and the difficulty obtaining useful advice. The interviewees showed mixed feelings about the procedural side of discrimination cases, saying there should be easier court procedures and higher compensation paid by employers who discriminate\(^91\) and criticising employment services which were not able to provide adequate service.

In Germany, where the public debate on the antidiscrimination framework has been very controversial, the interviewees pointed out that the legislation's visibility and acceptance are very limited, due to the fact that active antidiscrimination work is carried out by small organisations instead of powerful authorities. Interviewees also highlighted the fact that the protective scope of the AGG is restricted, since it excludes the public administration and its institutions. Consequently, counselling centres are described as weak and the interviewees have doubts about the antidiscrimination act and political declarations on combating discrimination.

The opinion of the Bulgarian interviewees is even more pessimistic and seems to reflect a more general concern about the legal system in Bulgaria. As far as legislation is concerned, the interviewees share the widespread opinion in Bulgaria at the moment, that there are laws but no one abides by them, that the laws are good but their enforcement difficult and that the court system is corrupt. None of the respondents was familiar with the details of the PADA – even those who did research and found the act by themselves, found the CPD by themselves and prepared the complaint on their own or with the assistance of friends. Consequently, none of the interviewees felt competent enough to give recommendations about how to improve the legislation.

On antidiscrimination resources, however, the opinion on national equality bodies is much more positive in France and in Bulgaria. In the later country, interviewees who have filed complaints with the CPD expressed satisfaction with the existence of this institution, where anyone can file a complaint (“even if you are not educated at all”)\(^92\) and be sure it will handled seriously. The respondents who have used or continue to use the assistance of NGOs are totally satisfied with the support and assistance provided.

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\(^91\) MDX CO 3.
\(^92\) IMIR CO8 transcript, p. 16
In the other countries, the opinions are more ambivalent. In Spain, some interviewees expressed satisfaction with the work of NGOs, considering them important agents that contribute to the fight against discrimination and increase awareness amongst citizens and institutions. However, there were other interviewees who think that NGOs should be better organised and provide more support to victims of discrimination.

Several interviewees stressed institutional discrimination in different areas of society. This phenomenon is considered widespread in French, Swedish and Spanish societies. In France, young male complainants stressed racial discrimination at the workplace but also in housing and in relationships with institutions such as the police. Some women complainants were more exposed by structural discrimination on the basis of origin and gender because directors and members of management are still mainly ‘white’ men, went to the same schools, and superiors often choose their staff members from among their male acquaintances or friends. Some complainants also described institutional discrimination they experienced in access to civil service employment. The public sector could function as a refuge in a context of labour market discrimination. This was not the case for several women of foreign origin who were confronted with discrimination despite the fact that they had passed an exam.

The education system was reported to be discriminatory as well by several interviewees in different countries. In Spain, some commented on institutional discrimination in access to schools for immigrants and Roma children, who tend to be grouped in certain schools, whereas local children are usually concentrated in others. In the UK, comments concerned universities. An interviewee remarked that gender and race discrimination are not treated the same and that racial issues are taken more seriously than gender issues. In Germany, several interviewees commented that local authorities and the entire field of education are excluded from measures related to discriminatory acts.

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93 UB-CO7, UB-CL6.  
94 UB-CO6 and UB-CL1.  
95 ULB-CO11.  
96 MDX CO 6.
8.7. Complainants' recommendations

As said above, complainants do not have any specific recommendation on multiple discrimination. However, they did express ideas on how to improve the antidiscrimination framework in general.

The first recommendation concerns the promotion of a positive image of migrants and ethnic minorities. According to the complainants, more resources should be invested in promoting awareness of the characteristics of ethnic minorities and the benefits of multiculturalism, with the inclusion of a specific programme on cultural diversity at school instead of focusing only on the national culture (France, Spain, Sweden). Muslim women who wear the headscarf also recommend more information on Muslims to help French society become more tolerant and positive about this community. In Spain, complainants suggested the introduction of special mechanisms to ensure that the media do not discriminate against ethnic minorities. They should also have to show immigrants and Roma who have middle or high socio-economic status and live in decent houses. Some stressed the importance of bringing to the media's attention cases legally recognised by the courts so that these decisions will have a real impact on society.

The second concerns greater awareness and better training for administrations (including the police and judicial spheres) in combating discrimination and raising their awareness, particularly of the suffering and possible reactions discrimination can cause to its victims. It is also advisable to adopt active diversity policies, including the adoption of quotas (France and Spain). This should include the compilation of ethnic statistics to allow monitoring of practices in companies in terms of both hiring and career progression in order to denounce companies that try to circumvent or disregard the law.

Some recommendations concern very specific areas, such as political parties, which should introduce awareness-raising campaigns to break down their resistance to representation of ethnic minorities or the world of sport, where many players are of African or North African origin.

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97 UB CO7.
98 ULB CO8 and ULB CO26.
100 ULB-CO25.
Interviewees in France and in Spain formulated recommendations concerning specific populations, namely Muslims in France and Roma and migrants in Spain. In France, Muslim women strongly recommend the use of reasonable accommodations in French society at different levels and sectors, such as specific days for women at swimming pools, or the possibility for women to wear a headscarf at work. They also insist on the necessity to combat the very negative image of Muslim women, seen as uneducated victims. In Spain, action is recommended in different social areas such as employment by encouraging employers to hire more Roma.\(^1\)

In Spain, a significant number of recommendations specifically concern immigration, such as the demand for more flexible admissions policies. Immigrants should also be more involved in social life through participation in anti-racist associations\(^2\) and agreements with the municipalities to find local solutions to problems that emerge in connection with the phenomenon of immigration.\(^3\)

No references are made to the migrant population in the other countries, with the notable exception of France, where a woman with a migrant background states that it is particularly difficult for migrant women with several disadvantages (being a single mother and holding precarious jobs) to lodge a claim against employers, who are generally well protected by their social networks. Moreover, it is obvious that both men and women migrants do not seem to use the antidiscrimination framework much compared to citizens. This may be because migrants have fewer remedies than citizens because they have less social capital.

In conclusion, it can be said that the level of awareness of discrimination in general and multiple discrimination in particular among interviewees is not very high, with the notable exceptions of France and Spain. In these two countries, the recommendations clearly show that the complainants interviewed are sometimes very well informed about debates on discrimination and tools to combat them, such as ethnic quotas or reasonable accommodations. In Spain, this is particularly the case of those complainants who work in organisations supporting ethnic minorities and are more familiar with the proceedings of

\(^{1}\) UB-C10.
\(^{2}\) UB-CL8, UB-CL9.
\(^{3}\) UB-CL7.
making claims and complaints. This does not seem to be the case in other countries, such as Bulgaria, where none of the respondents is familiar with the details of the PDA – even those who searched and found the act by themselves, found the CPD by themselves and prepared the complaint on their own or with the assistance of friends. Consequently, none of the interviewees feels competent enough to make recommendations for improving legislation. In Germany, interviewees simply expressed doubts about the real power of the antidiscrimination act and find the counselling centres very weak. This is true even when it comes to multiple discrimination, which is usually an unknown concept or one seen as useless.

8.8. Conclusion

Has our initial hypothesis - that the present legal framework does not address multiple discrimination based on ‘race’ and gender properly because the approach to equality legislation is based on a single ground of discrimination – been proven?

The answer will be qualified. The ‘one act-one body’ approach must be seen as a very positive step because it can provide a way towards the acceptance of claims of discrimination on intersectional grounds. However, to enhance real implementation, there needs to be a proper definition of multiple and intersectional discrimination and a proper methodology in order to address the specificity of multiple grounds claims. In short, a single act and a single equality body do not seem to be sufficient: a legal definition is needed and adequate methodologies must be implemented to be sure that multiple discrimination is treated properly.

It is also clear that there are enormous differences across a range of aspects between the different member states involved in the project, in the stage of development of national legislation against (race and gender) discrimination, and between the main groups targeted by racial discrimination in each country.

All this would suggest that it might be advisable for the EU to prescribe that the Member states take legislative measures to provide for treatment of multiple discrimination. A European recommendation could be useful for increasing awareness of the problem. There should be at least a recommendation from the European Commission so that intersectionality
cases could be considered by the national courts. However, for the moment, the Commission has simply left it to the individual States, some of which do not even take discrimination very seriously or do not provide national coverage. This means that any implementation of legislation on multiple discrimination will take different forms and move at different speeds at each national level.

In addition, despite old and extensive legislation, both experts and complainants state that gender discrimination is less visible than race discrimination. It is therefore strongly recommended to use gender mainstreaming methodologies that include a focus on the specific needs and experiences of different groups of women holding multiple identities. Furthermore, to prevent gender discrimination and ensure equal opportunities, positive measures should be considered, especially workplace measures taken by employers. It is also recommended to introduce a public sector duty in relation to race and gender applicable to all public sectors bodies. The intersectional approach will then help provide a long-term strategy lever to induce the institutions to deal with all grounds.
Examples of good practices at national level

- **The UK Equality Bill: A first step to approach multiple discrimination**
  The Government Equalities Office set out a proposal for a legal provision for inclusion in the Equality Bill which would provide protection from multiple discrimination.\(^{104}\)

- **The special panel on multiple discrimination of the Bulgarian Equality body**
  In addition to a specific definition of multiple discrimination in the Bulgarian antidiscrimination Bill (PADA)\(^{105}\), the Commission for Protection against Discrimination in Bulgaria has a special subdivision specialised in multiple discrimination cases.

- **The recently created Equality body in Spain has adopted the positive duty of transposing the EU Directives on discrimination**
  After the delay in the transposition of the Directives, the Spanish public authorities have displayed their commitment in creating the Equality body as a way of combating discrimination.

- **The multiple discrimination perspective adopted by the Fundación Secretariado Gitano\(^{106}\) in Spain**
  This NGO is currently focused on a multiple approach to cases, particularly in relation to gender, as an initiative towards the provision of a more inclusive solution to queries.

- **The capacity of the French Equality body to register information on multiple discrimination**
  The HALDE have information available on multiple discrimination through its software for registration data pertaining to claims lodged.

- **The publication of gendered statistics on complaints in the annual report of the French Equality body**
  The HALDE publishes in its annual report statistics on grounds, fields and results of claims, detailed by the sex of the complainant.

- **The new Swedish Discrimination Act merging all existing laws on discrimination into a single Discrimination act**
  It contains a special mention of the single act approach being more appropriate for cases of multiple discrimination.

- **In Sweden, the merging of four ombudsmen to combat discrimination on different grounds**
  The new ombudsman's office is organised in a horizontal manner, which may foster multiple discrimination claims.

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\(^{104}\) Although the Bill allows a claim only on two grounds and only for direct discrimination, we consider that having a provision in law for a claim on two grounds would be a step forward.

\(^{105}\) Multiple discrimination is defined in the Bulgarian antidiscrimination law as ‘discrimination on the grounds of more than one of the characteristics under Article 4 (1)’.

\(^{106}\) FSG is an NGO with offices throughout Spain with the Roma community.
Chapter 9: Collection, recording and public availability of data on discrimination complaints

by

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9.1. Main objectives

The aim of this chapter on collection, recording and public availability of data on discrimination complaints is to represent the situation of this range of issues in the six countries participating in the project GendeRace, and to identify the basic specific features and differences among the different countries.

First, the type of data and the information contained therein were taken into account. The initial expectation was that there were many organisations at national and European level capable to provide detailed and diverse data. On the one hand the expectations were confirmed. On the other hand, it became clear during the research that every institution had different criteria and requirements with regard to the collection and storage of data. Significant part of the available information is partial, which makes difficult the analyses of the discrimination issues. The task of making a large-scale comparative analysis proved extremely difficult as a result of the diversity of data.

Second, the chapter provides a review of the access to this type of data for citizens and researchers. Frequently the information is protected under the personal data protection rules. An important role is played by the policies of the organisations and gatekeepers, as well. In serious number of cases the access to data is restricted by the organisations themselves – mainly NGOs. On its turn, the access to data stored by state institutions depends on the goodwill of the gatekeepers.

The objective of this chapter is to describe the situation and to articulate the problems, and then to systemize recommendations with regard to the collection, recording and public availability of data on discrimination complaints. Concrete ideas for inclusion of detailed and uniform information are proposed, as well as ways for improvement the access to such information.

9.2. Methodology applied

This chapter on the collection, recording and public availability of data on discrimination complaints is based on the study of the practice of the specialized national and European
institutions, and on the activities of NGOs. A special emphasis is put on the principles upon which data are collected and statistics on the claims/complaints against discrimination are prepared. The research analyses the ability for use and access the data and statistics on claims/complaints on the basis of interviews with experts – lawyers, representatives of governmental institutions and NGOs and on the focus group organized with them, as well as on the basis of interviews with complainants who have suffered discrimination. The experience of the researchers participating in the project is also important in relation to the collection and analyses of claims and complaints, and their description of the systems for archiving this type of data. In the course of the systematization of this information, special attention was paid to the specific features for each of the countries where the research was made. The results of the research are the recommendations for improvement of the collection, recording and public availability of data on discrimination complaints.

9.3. Comparative analysis

In this chapter the multiple discrimination phenomenon is viewed in comparative perspective, through the capacity for implementation of the European antidiscrimination directives at national level, with regard to the collection, recording and public availability of the complaints against discrimination. The comparative analysis is concentrated on the specific features of the access to data and use of statistics on claims/complaints in the countries participating in the project. On that basis the recommendations for improvement of the collection, recording and public availability of data on discrimination complaints, are summarized.

9.3.1. Collection of data and statistics on discrimination claims and complaints

One of the requests that the European Union generally makes to the Member states concerns the production of accurate statistics on discrimination complaints. This is an important element, particularly for the adoption of policies capable of combating discrimination adequately. In the report in 2006 to the Council and European Parliament on the application of Directive 2000/43/EC, the Commission noted the crucial role, which could be played by statistics in activating antidiscrimination policies, and referred to the misunderstandings in the relationship between data protection and the production of statistics on discrimination. In turn
this raises issues of how discrimination and equality of opportunity may be measured and monitored without statistical evidence (Simon 2004).

Since the adoption of the Directive, the European Union Member states have had to set up competent bodies to handle complaints lodged in the area of discrimination. In some countries, like Great Britain and Sweden, such institutions have been operational for several years. Others, like France, Germany or Spain, and Bulgaria, had to set them up rapidly.

As a result, complaints regarding discrimination are now on file with these bodies, a set of research materials that can be used to analyse how the complainants seek the assistance of these institutions. At present, the data compiled by equality bodies are sometimes patchy. There are no uniform criteria on the statistics – neither at European, nor at national level. The experts from all six countries acknowledge the need for unification of the criteria for collection of information on discrimination cases.

There is less systematic data available in some countries due to the fact that their immigration flows and/or development of antidiscrimination legislation are relatively new. Collection of such data may be the subject of interest by academics and undertaken in small-scale studies or by NGOs, both of which only yield a very partial coverage. We also have to take into account major differences in significant groups. Though present in all countries, the Roma, probably the most disadvantaged group in Europe\(^{107}\), only form a numerically significant population in Bulgaria where they constitute the main victim of discrimination.

Significant data for collection also change over time. Thus familiar categories such as ethnic minority in the UK, which are embedded in legislation and have until recently determined who may benefit from protection against discrimination, may impede the way we understand more recent changes that have sought to extend the groups covered by legislation. The categories of data collection on ethnicity need to be flexible and incorporate a subjective appreciation to take account of duration of settlement, mixed marriages and diversification of flows. For example, in the UK the original ethnic classification was developed in response to post colonial migration but has in recent years been modified to take account of political

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\(^{107}\) See also the Equinet annual report 2009, p. 9: “Roma and Traveller communities are subject to widespread social exclusion and discrimination in the European Union. There are many manifestations of this problem across the fields of employment, labour market services, education, accommodation, health services, social protection and others.”
representation by groups such as the Irish, who though ‘white’, were able to demonstrate considerable discrimination in terms of a number of economic and social indicators. Inter-marriages between ethnic groups have generated an increasing number of children in mixed categories. Discrimination against other ‘white’ groups such as the Eastern Europeans has become more common but it is difficult to assess due to their inclusion in the broad category of ‘white’. These developments require a much more sophisticated understanding of processes of racism and racialisation beyond a simplistic ‘black’ and ‘white’ dichotomy. Gender statistics too use the broad ethnic categories rather than country of birth or nationality, which would capture more accurately recent changes in immigration and groups subject to discrimination.

Another variation is the collection of data on religion, which is included in official statistics in a number of countries such as Bulgaria, Germany, and the UK in the 2001 census but not in ethnic monitoring forms. As Muslims have been subjected increasingly to harassment and discrimination in the past decade, religious identity, including dress, and belief have become the object of exclusionary and discriminatory practices. In this regard, discriminatory practices have a gender dimension, especially in relation to education and employment.

Though only providing limited coverage, it is NGOs who are more likely to collect data on the newly recognised forms of discrimination. NGOs have an important role to play in raising awareness of different forms of discrimination and the interaction between them, particularly where there is constitutional opposition to the collection of data or simply lack of official data.

To achieve the objectives of this research the teams in the six countries did their best to collect enough and comparable data on the registered cases of discrimination. At the same time it should be acknowledged that:

- The data are not representative with regard to the sum of the discrimination cases in each of the countries;
- The analysis is restricted to the information provided to the institutions or to the organisations giving advice and not to the complainants' overall experience of discrimination;
- Not in all cases and in all counties there are data on each of the indicators determined.
The reasons for this situation will be discussed in detail below. This is the place to highlight the fact that the lack of sufficient information on the cases of discrimination inevitably makes any type of policy against discrimination at national and/or European level less effective. With no detailed analysis of the discriminatory actions, their subjects and objects, and of the way in which they affect individuals subjected to them – as an experience in the short term, and, in a long term, as an obstacle, barrier restricting their life plans, it would be impossible to achieve a significant success in combating the various forms of discrimination.

On the one hand, as it became clear, there are no reasons for the moment to suggest that any of the six countries has an effective system for collection of data on cases of discrimination, despite the existing differences – both with regard to the collection of data on registered cases of discrimination, and with regard to the indicators. Some of the reasons were mentioned above. At the same time two basic problems exist, which must be resolved, to the extent they significantly impede the very possibility for establishment of an effective system for collection of data on cases of discrimination.

The first of the problems is related to the registered cases of discrimination: an individual cannot be forced to self-identify on any ground, excluding the one on which the complaint or the claim is based. On the one hand, this problem hides the cases of multiple discrimination, and on the other hand, it creates significant difficulties for the collection of comparable data, which could serve the analyses of the discrimination issues at national and European level. Regardless of the fact that some of the countries have legal provisions dealing with multiple discrimination, their implementation is impeded as a result of the attitudes of lawyers and judges, who tend to qualify the discrimination under one leading ground (Bulgaria, France). The lack of data on the individual subjected to discrimination does not allow the entire context, in which the discriminatory action has been performed, to be comprehended. The same applies to the way in which the individual subjected to discrimination has been affected.

The second problem is related to the fear of the people to file complaints or claims. Some individuals turn to local agencies or organisations to share their problem, but for various reasons stop at this point. Others are simply afraid to share their problems with anyone. That is to say, that even if it is assumed that effective system for collection of data on discrimination cases can be and is introduced, it is clear that an unknown number of cases will remain unregistered. This problem has different significance in the different countries. In
those states (France, Sweden) with longer experience in implementing antidiscrimination legislation, in which there is understanding of discrimination’s and discriminatory actions’ essence, in which there is a general agreement on the necessity to combat discrimination – the fear of filing complaints is significantly weaker.

Hidden discrimination is a serious problem, because society, institutions and organisations cannot have any reliable knowledge about it, and in the absence of such knowledge one cannot hold that such problem exists. In addition, as a result of the fact that no antidiscrimination measures can be applied against the perpetrators of discriminatory actions, hidden discrimination takes more solid position under the form of discriminatory practices. In fact no one knows how many individuals have become victims of discrimination and how many discriminatory actions have been performed. One can only guess that specific groups (immigrants, members of minorities, individuals with religion different than the official one) are more threatened by such actions. Still, it remains unknown how the discriminatory actions are distributed, and there is no knowledge about the different types of discriminatory actions. The GendeRace project partners faced limitations in the accessibility of the data. Some – such as origin or religion, are deemed sensitive personal information and are subject to special protection. However, although all the partner countries have adopted laws to protect these data, the actual degree of protection varies widely from one country to another, making the collection easier or more difficult for the researchers.

The number of complaints is a poor indicator of the reality of discrimination experience since many instances of discrimination are unlikely to spawn a complaint (Makkonen 2007: 65). This is due to the fact that victims occasionally find it hard to analyse their experience in terms of discrimination. Even if they are certain they were targets of discrimination, a large number of people do not file a report for various reasons – the institutional nature of the organisation, or else social reasons, such as their degree of confidence in institutions and the law. In Sweden, for example, it is known that each year only 4% of the people discriminated against will lodge a complaint.\footnote{Ombudsman against Ethnic Discrimination Newsletter 2002 : 1, available at http://www.do.se} The current antidiscrimination offices work with a data record system, which only gathers data according to one ground of discrimination. Different NGOs, which have as basic objective, or as one of their objectives, assistance for the victims of discrimination, are active in each of the six countries. These NGOs collect data as well, and some of them have large archives but there is lack of cooperation with regard to the collection
of data among the State institutions and the NGOs, and respectively the inability for creation of common information bank, even from the available data. The lack of cooperation and exchange of information is observed among the representatives of the NGOs as well.

9.3.2. Uses of data and statistics on discrimination claims and complaints

The data on registered cases of discrimination (claims and complaints), as far as these are available in different forms in each of the six countries are used mainly in two ways: a) The institutions, collecting data on discrimination cases, produce periodic reports, where the data are generalized under different indicators. The basic objective of these reports is to outline the trends in the discriminatory practices from the viewpoint of their specific features as discriminatory actions; of the sphere where they take place; of the grounds – the specific features of the individuals subjected to discriminatory actions. The main problem here is that as a result of the lack of coordination among these institutions in national context or the insufficient/unsystematic coordination among them, and also as a result of the lack of well developed methodology for collection of data, the reports provide incomplete and not detailed picture of the registered cases of discrimination (and there are no data at all on the unregistered cases).

At the same time, there are institutions at European level, which base their actions on exactly this type of national reports. The analyses of the (insufficient and frequently incomparable) data by these institutions have the objective to represent the situation at European level and to serve as the basis for formulation of the European policy for combating discrimination, and also for elaboration of recommendations for improvement of the implementation of this policy in the separate countries. The most significant of these institutions are:

The European Union Agency for Fundamental Rights (FRA)\(^{109}\) is an institution established by a Council Regulation in 2007, based in Vienna, which has built on the European Monitoring Centre on Racism and Xenophobia (EUMC)\(^{110}\). FRA’s objective is to provide the relevant institutions and authorities of the Community and its Member states with assistance and expertise relating to the observation of fundamental rights. FRA has the task of continuing to protect the rights of persons belonging to minorities and to ensure gender


equality. It cooperates with national and international bodies and organisations, in particular with the Council of Europe. It also works closely with civil society organisations. It publishes thematic and annual reports on issues related to the basic rights included within its scope of activity. The basic task of the Agency is to collect, register and analyse information and data and to present these to the relevant Community institutions.

The **European Commission against Racism and Intolerance** (ECRI)\(^{111}\) was established by the Council of Europe. It is an independent human rights monitoring body specialising in questions relating to racism and intolerance. The basic difference with FRA is ECRI’s work programme with its “state-by-state” approach, whereby it analyses the situation as regards racism and intolerance in each of the member states of the Council of Europe and makes suggestions and proposals as to how to tackle the problems identified. The work takes place in 4/5-year cycles, covering 9/10 states per year.

**Committee on the Elimination of Racial Discrimination** (CEDR)\(^{112}\) to the Office of the High Commissioner for Human Rights is based in Geneva, Switzerland. States party to this agreement are required to submit comprehensive reports to the Committee every four years, with brief updating reports at intervening two-year periods. The Committee's report to the General Assembly summarizes these proceedings, and offers suggestions and recommendations. The organisation relies especially on NGO reports. It has the power to review individual complaints. The 64\(^{th}\) session of the organisation\(^{113}\) (23/02- 12/03 2004) reviewed the periodic reports of 9 states and discussed the issues of racial discrimination and non-citizens’ rights.

**The European Network Against Racism** (ENAR)\(^{114}\) is a network of European NGOs working to combat racism in all EU member states and represents more than 600 NGOs throughout the European Union. “ENAR is determined to fight racism, xenophobia, anti-Semitism and Islamophobia, to promote equality of treatment between European Union citizens and third state nationals, and to link local/regional/national initiatives with European Union initiatives. ENAR issues a Weekly Mail every week, compiling information on European and national news items, which may be of interest to its member organisations.

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111 [www.coe.int/t/e/human_rights/ecri](http://www.coe.int/t/e/human_rights/ecri)
113 See for details: [http://www.unhchr.ch/html/menu2/6/cerd-reports64.htm#noncitizensE.pdf](http://www.unhchr.ch/html/menu2/6/cerd-reports64.htm#noncitizensE.pdf)
ENAR produced 26 state-specific Shadow Reports in 2006.”¹¹⁵ Even where there is extensive official data, NGOs offer a vital alternative data source that comes directly from the experiences of those individuals and communities experiencing racism on a daily basis. The ENAR Shadow Reports are produced to fill the gaps in the official and academic data, to offer an alternative to that data and to offer an NGO perspective on the realities of racism with the EU and its Member states.

b) The media are the other major user of data on discrimination cases. These data are used in two completely different ways:

The first type of use could be determined as informational – the generalized data in the reports of the national institutions (both governmental and NGOs), and of the European ones, is represented with the objective the public to be informed about the results of the national/European policies for combating discrimination, and if possible with the objective the basic issues to be depicted.

The second type of use could be determined as provocative – in the style typical for the media a scandalous case of discriminatory actions is represented. Still, such reports can raise awareness of more general issues of intolerance, violation of individual rights and the conditions, which permit discrimination.

The conclusion to be made is that the methods for collection of information on cases of discrimination, as well as the indicators, according to which this is done, do not create opportunity neither for reaching a good perspective of the situation in the separate countries, nor for development of a quality comparative analysis on the discrimination issues in European context. And this is exactly the type of analysis that should be the foundation for rethinking of the local/national policies, and for development of systematic and effective European framework for these policies to prevent discrimination, and sanction the discriminatory actions and practices. The Equinet report on data complaint collection also shows that data is useful for the development of further prevention and awareness policies and to develop programmes to promote and support good practice in certain areas and for specific target groups and social categories (Equinet 2009: 10).

The development of analyses based on data collected with well elaborated methodology would allow the initiation of media campaigns aimed at increasing the sensitivity of the citizens to the issues of intolerance and violence in general, and to the cases of discrimination, which are sometimes not perceived as such, including discrimination against specific groups, the members of which are under a greater threat to become victims of discriminatory actions.

The description and analysis of data on decided cases of discrimination, i.e. filed claims and complaints in cases where a decision has established violation of antidiscriminatory legislation - could lead to increased thrust in the corresponding institutions on the part of current and potential victims of discriminatory actions, and thus to bring to a decrease of the hidden discrimination. At the same time this could serve as a barrier against future discriminatory actions.

9.3.3. Access to data and statistics on discrimination claims and complaints

The initial plans for data collection were relatively ambitious since the aim was to gather information that would enable us to refine our knowledge about the complainants' support networks and the way the resources were used, the complainant's detailed profile and that of the presumed perpetrator, as well as the context in which the discrimination occurred.

This ambition came up against reality in the field, which has its own rules, primarily motivated by a need to manage the files as efficiently as possible. Many fields, for example, were left empty because the organisation was not interested in collecting this type of information. Furthermore, entering socio-demographic data would add a considerable burden to the data entry system for organisations that are already understaffed. Laws protecting privacy also restricted access to the data requested in all countries except one: Sweden.

The researchers carefully selected the organisations from which they could request information. Nonetheless, the organisations that actually participated in the project were not necessarily among the priority choices. This was the case for Bulgaria where, despite initial promises, access to files held by the NGOs was not possible. The UK bodies did not grant authorisation for direct access but some organisations accepted to transfer the data themselves. However, some researchers were confronted with several Law Centres that were too busy to find time to do any work on files. Moreover, even when the organisations agreed, they did not always respect their promises, such as in Germany, where only two of five
antidiscrimination offices sent the promised data rendered anonymous because they were understaffed and too busy to find time to do any work on files; in Spain as well, access was difficult in some NGOs as they had too much workload.

Although there may be some risks when publishing statistics to record the annual amount of cases of discrimination (e.g. for the use that the media can make of them), there should be more data and statistics on case-law studies, so that there is an awareness of the state of the art in terms of racial and gender discrimination. These could be not only quantitative, but also qualitative and they should be more available to the public.

In terms of data relating to individuals, legal provisions come from the European Directive of 1995 95/46/EC “on the protection of individuals with regard to the processing of personal data and on the free movement of such data” which has been transposed into all EU countries and aims so as to guarantee citizens’ privacy by enforcing respect for anonymity and to restrict the collection of ‘sensitive’ data (the list of these data will correspond to grounds of discrimination) to certain conditions. All EU states have transposed the Directive on the processing and transmission of such information. Whilst Article 8 prohibits the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and the processing of data concerning health or sexual life, there are a number of principles, which authorise exceptions on certain conditions to the collection of what is defined as sensitive data. In some countries interpretation is strict and only data explicitly referring to ‘ethnic’ or ‘racial’ origin’ are prohibited; in others it is broader and includes anything that may act as a proxy, for example nationality, country of birth and name.

All countries include a list of exemptions to the collection of sensitive data but the grounds of exemption are not the same in each state. It may exclude employment or health and vital interests and files kept by NGOs. The latter may be permitted to do keep such data on condition that the processing relates solely to the members of the body and that the data are not disclosed to a third party without the consent of the data subjects (Article 8(2d)). On the other hand, there may be highly sensitive areas such as social welfare where proxies are prohibited even though information is collected in the census, for example on nationality and
place of birth in France\textsuperscript{116}. Finally states may lay down exemptions for reasons of public interest (Article 8(4)), as is the situation in the UK.

The 1995 European directive aims to guarantee the privacy of citizens by imposing anonymity rules and setting strict conditions for possibilities to collect data defined as sensitive.\textsuperscript{117} Data on motives for discrimination fall under this category, i.e. ethnic or national origin, religious convictions, handicap and sexual orientation. Although in principle the directive prohibits processing of such data, a few exceptions authorise their collection under certain conditions, but the application of this exception varies widely from one country to the next.

In the UK for example, organisations are quite scrupulous in their respect of rules governing the transmission of personal data to third parties or researchers. These rules apply even when the data are rendered anonymous and archived, the case of official data held by the Employment Tribunals. The Law Centres and CABs authorise direct access to the files only for their own staff, and the staff can then transmit the data to the researchers.

In France, direct access to the files held by the HALDE was refused because they were confidential and subject to authorisation by CNIL, the national organisation entrusted to protect privacy and individual or public liberties. Access would have required the HALDE being involved in defining the research project in the context of its own research programme, signing an agreement with the research body and obtaining prior authorisation from the CNIL.

In Germany, two governmental antidiscrimination offices refused to transmit their data, while two local antidiscrimination offices accepted to provide statistical data rendered anonymous.

In Spain, the researchers were refused access to any data held by the Ombudsman Offices and only had direct access to data from Barcelona's Antidiscrimination Office.

In Bulgaria, the researchers were able to study data held by the Commission for Protection from Discrimination (CPD) for it is under the obligation to grant access to its decisions. The team, however, did not obtain access to the archives of the NGOs they contacted.

\textsuperscript{116} The Commission Nationale Informatique et Libertés deemed in 1980 that data in this area could only be collected by three headings: French, EU alien and non-EU alien (Simon 2007: 19).

\textsuperscript{117} Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. O.J. n° L281 of 23 November 1995.
In Sweden, however, transfer of the data was largely facilitated for the researchers. They had direct access to the complaint files submitted to DO and JämO, even if the latter were not rendered anonymous.

9.3.4. Main remarks as to national contexts

Only the UK has an established tradition of collecting and using data on ethnic minorities and identities. It is based on laws and regulations governing the production of sensitive statistics which are laid down in the Race Relations Acts (1976 and 2000) where it is argued that there is a need to collect data for the purposes of ethnic monitoring which can be used to highlight potential inequalities, investigate their underlying causes and remove unfairness and disadvantage. Promoting equal treatment is also mentioned in the list of exemptions from the Data Protection Act 1998. Apart from Belgium and the Netherlands, other Council of Europe countries have not modified their data protection laws to align them with equal opportunities policies.

Most of the old EU states collect information on country of birth and citizenship, whilst the UK, Ireland and the Netherlands collect information on ethnic group and religion and in Denmark parents’ country of birth. In France permission to collect personal data must be requested from the CNIL whose powers were established with one of the first data protection laws in Europe in 1978. In 2005 it acknowledged “that the aims of combating discrimination in the matter of employment are legitimate in terms of public interest but considered that in the absence of ethno-racial typologies, on which it expressed strong reservations, there was no purpose to analysing names or nationality” (Simon 2007: 49-50). There has been a lively public debate on the collection of ethnic statistics but the decision not to collect such data on race and ethnicity has been reaffirmed in France in the decision of the Constitutional Council in November 2007 to prohibit the use of racial and ethnic origin in studies which seek to measure diversity (Decision no. 2007-557 DC 15 November 2007). However since its inception in 2005 the High Authority against Discrimination and for Equality has been analysing the complaints submitted to it as an indicator of the kinds and grounds of discrimination being experienced. Furthermore it has been possible in the past few years to study the situation of descendants of immigrants in France drawn from data on tests for job seekers and applicants for housing.
In Germany, the transposition of Directive 95 in 2003 stipulated that a key condition of the collection of statistics was ensuring that personal consent is obtained. Federal agencies and public sector are subject to greater supervision than private sector organisations. It is only since 2005 that the migrant background of men and women has been collected in micro censuses. However data on discrimination are incomplete. Not only is there no official data on discrimination in employment but also there is little non-official data (Baer 2005 cited in Simon 2007). There is also little public debate on discrimination and antidiscrimination and on the collection of statistics except for some NGOs and researchers. However some larger cities, such as Berlin, Wiesbaden, Essen and Stuttgart, are beginning to set up systems to collect data on integration, which includes discrimination. For example, Berlin produced an Antidiscrimination Report 2005-7.

In Sweden all people have the right to get access to public data due to the principle of public access to official records.

The GendeRace project had to cope with substantial differences in collection methods from one country to another. These differences lie not only in the motives for collecting the data, or the criteria and categories used, but also in the collection methods themselves.

In UK, one of the first European countries to have adopted antidiscrimination legislation, the system to record complaints is quite elaborate and data on ethnic origin or religion are collected to serve as a base when drawing up antidiscrimination policies. However, the data on claims made in the employment field is far more developed than that available in other fields and the national equality body is arguably under a duty to do more in that respect.

On the other hand, public antidiscrimination bodies are much more recent in France, Spain, Bulgaria and Germany. As a result their complaint registration systems are often quite basic and contain little, if any, socio-demographic information on the complainants. Both France and Germany, however, plan to improve data collection.

Another question is achieving a uniform data collection system for a whole country. In the case of France, a country traditionally centralised, the local centres developing throughout the territory will also use the system set up by the HALDE. They will therefore use a harmonised system to collect and encode data and the category system will be unified.
The same cannot be said however for other countries that are more decentralised, such as Germany and Spain. The systems used to record the complaints, already quite basic, also vary depending on the region or city and on the type of organisation and institution. This means it is practically impossible to draw up national statistics since the collection and categorisation methods are not harmonised. In the case of Spain, OBERAXE\textsuperscript{118} is supposed to deal with this function, but as it has been proved throughout the research (when looking at case law studies and when interviewing experts, this Observatory is rather ineffective.

Some countries, like Spain and Bulgaria have only experienced inward migration more recently, and at varying levels. In each case, integrative measures to support cultural and ethnic plurality have been established within the framework of their particular political circumstances, which recognize discrimination differently. Thus, a combination of recent immigration flows alongside recent antidiscrimination legislation presents increased difficulties in terms of availability and collection, such as in the Spanish and Bulgarian contexts. This is not the case in Sweden. This country combines a relatively long experience of immigration with a developed equality framework.

9.4. Recommendations on the collection, recording and public availability of data

9.4.1. EU level

- There is a strong need to develop a common complaint statistics system for all Equality bodies through EU which will allow comparative analyses of the situation among the member-states.
- A collection of data from tribunals and courts at national level should be promoted by the EU through regulation in order to have a comparative data on discriminations cases at the level of the EU.
- In order to increase the visibility of gender at EU level, we recommend to The Fundamental Rights Agency to adopt a gender-based approach by including gender statistics in its work.

\textsuperscript{118} Spanish Observatory of Racism and Xenophobia
- European lobbies such as ENAR should introduce gendered data in their annual shadow reports.

9.4.2. National level

**General recommendations**

- We recommend a standardisation of data collection methods at national and regional level within equality bodies in order to improve the institutional knowledge on diverse aspects of discrimination at national level.

- Moreover more coordination between equality bodies and NGOs should be promoted so that they follow the same guidelines and common methods when collecting cases of discrimination, share experiences and maximise the efforts.

- The EU member states should foresee collection of data at the level of Tribunals and Courts in order to have a comprehensive data on discrimination cases. Record of legal cases in courts could be a competence of national equality bodies.

- In order to guarantee the protection of the personal data of the citizens filing complaints/claims the encoding system must ensure anonymity for the individuals whose cases are registered in the national equality bodies. The persons in charge of the data registration can enter in the system a number identifying the case (instead of the name of the person). Under this number all available data related to the case could be registered: gender, age, ethnic origin, citizenship, residence, education, social and employment status. Also could be registered specific features of the case: place where the discriminatory act has been committed, nature of the discriminatory action; profession, age, gender and other information identifying the author of the discriminatory action (as mentioned above, all data should be collected under a unified set of indicators for all member – states of the European Union).

If the individuals filing complaints or claims are well advised that the system for collection of data guarantees their anonymity, as well as if they are made aware of the importance of the information collected for increasing the efficiency in combating all forms of discrimination - there will be enough reasons to assume that the information collected would be reliable and full. This method of collection and storage of data on
discrimination cases will secure access to it for every interested individual with no violation of the provisions regulating the protection of personal data.

**Recommendations on the improvement of the visibility of multiple discrimination**

Knowledge of discrimination phenomena, including multiple discrimination, should be encouraged through:

- A complaint encoding system, including the possibility of lodging a complaint on several grounds of discrimination, on the one hand, or in several sectors and committed by different persons, on the other.

- The introduction of a socio-demographic data on plaintiffs in complaint registration systems to identify discriminated sub-groups and those who lodge few or no complaints, so as to target non-discrimination policies more accurately. This data could also give information relating to access to rights and allow equality bodies to organise campaigns to reach all public.

- In addition to gender, we recommend to collect information on age, nationality, ethnic origin, occupation, level of education. Some of these data could be encoded with the aim of drawing up an annual profile of complainants and allowing analysis of their evolution over time. It will be particularly useful for further sociological research. However, we agree with the conclusion of the report on Discrimination and database on complaints (Equinet 2009), when it is said that it is not useful to have a wide range of possible information to be filled in if it is not filed in properly when a complaint is lodged and processed. It is therefore better to have limited information that is systematically recorded.

- The possibility to add to the registration form subjective information allowing complainants to describe the circumstances of the discrimination in such a way as to reflect their subjective perception of the events in order to bring to light possible cases of multiple discrimination. This information could be used to identify the gap between experiences and the facts established by legal experts.
However it is also strongly recommended not only to include the possibility to fill up the data but to be sure that they are systematically recorded. The persons in charge of the data registration within equality bodies should be aware of the importance to document each case properly. This registration system should be standardised at the European level in order to allow a comparative perspective, as recommended by the European Commission in its Communication on the 2nd of July 2008 to emphasise the need to quantify discrimination and to carry out progress assessment (Equinet, 2009).

**Recommendations on the improvement of the visibility of gender discrimination**

- The “standard information” collected by national equality bodies regarding the plaintiff should systematically include gender. It will allow the publication of gendered complaint statistics (analysis of grounds, sectors of occurrence, and types of discrimination) in the annual activity reports of equality bodies.

**9.5. Conclusion**

There is no doubt that despite the measures undertaken at European level and within the EU member states, discrimination continues to exist, and in some countries it even finds new targets (in relation with the increasing and/or “new” migration) and/or develops more extreme displays (as a result of increasing or acquiring new forms nationalism). The well known and nor always recognized discrimination on the grounds of gender is combined with discrimination on the grounds of race/ethnic origin and creates different but in all cases more severe consequences for the individuals suffering from such actions, who are more heavily traumatized with regard to their self-perception and existence.

Collection of data about the registered cases of discrimination is important for the achievement of three different and mutually supplementing objectives:

- knowledge of who, where and how commits discriminatory actions, and against whom such actions are most frequently committed;
- formulation of efficient policies and prevention mechanisms to combat discrimination and protect its victims;
- monitoring of policies conducted and contextualization of the achieved “good practices”.
As displayed above, the achievement of these objectives necessitates systematic collection of data under unified and well elaborated indicators for all Member-States. Data can be registered in a way not contradicting the rules on personal data protection and not threatening the security and peaceful life of the victims of discriminatory actions.

At the same time, it should be acknowledged that the development and introduction of such unified system for collection, registration and use of data on cases of discrimination within all Member-States of the EU, will not suffice to provide full comprehension of the discrimination phenomenon. Such system will not cover cases of discrimination where no complaint or claim has been filed by the victim – the hidden discrimination. The acquisition of knowledge/data about the range and specific features of the hidden discrimination needs sociological studies, which on the basis of case study should reach and express the circumstances, which make possible the hidden discrimination (probably with specific features for each country), and which should make substantiated propositions for its scale and offer recommendations for counteraction against its concrete forms.
Part III: Beyond the Analysis: Outcomes and Recommendations
Chapter 10: A proposal towards an EU Glossary

by
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10.1. Introduction

10.1.1. Main objectives and purpose of the GendeRace Glossary

The main objective of this part of the research, as reflected in this chapter, has been to create a glossary for a common understanding of terms to be employed within this research program. At the same time the GendeRace research team proposes this as a potential Glossary for EU member states when addressing racialised and ethicised *discrimination*. This is a difficult task due to the political significance of the phenomena we address and the terms that have developed differentially in this field. Historical events have had a very different impact on the use of these terms in different national contexts. Here there is an attempt to sort out some of this distinctions, this may not always be done to the satisfaction of all involved due to these quite different contexts.

In addition to ensuring communication and understanding among the GendeRace partners, the glossary is also intended to stimulate an innovative output as work in progress. To meet these objectives, the partners have focused on an exploration of baseline concepts related to ‘race’ “racism” ethnic and gendered, discrimination. This includes as well the *intersectionality of gender and racialised/ ethnicised discrimination of groups in specific historical contexts*.

Thus, the glossary has two key objectives. The first is *the development of common terms and concepts which will ensure communication and understanding among partners and which will be employed within project documentation*. The detailed work on the construction of the glossary commenced with the methodology workshop in March 2008. This initiated an ongoing discussion that continues to assist partners in the development of a shared understandings of the common terminology. It should also be noted that the language used in defining the aforementioned concepts has not only been subject to unique historical experiences, but continues to be frequently contested and open to a wider and much differentiated debate within each national context. Thus, the need for further elaboration.

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119 From the outset we have been involved in an exchange of ideas about the EU terminology of racialised and ethicised discrimination. As academics from several European countries with very different historical processes impacting on the racism debate we have reached an agreement on this difficult terminology. Preference has been given to the terms ethnicised and racialised discrimination over ethnic discrimination.

120 With the choice of these terms we want to initiate a discussion on the significance of the choice of words for the recognition and interpretation of forms of discrimination in specific societal contexts.
The second key objective, to propose a common glossary that might be employed throughout the European Union, is intended to make a contribution to a reflection on the significance of the terms used in this area for theory and praxis. This glossary will comprise terminology relating to gendered and “racialised” discrimination and will take into account the implications of the use of such terminology for those defined by it and for society at large. In this process of creating a common terminology some over eighty key terms were identified. Numerous discussions took place before finally reaching a selection of terms that we believed needed specification and further elaboration for ourselves and for the understanding of the implementation of antidiscrimination legislation and equality issues in the European context.

Discrimination based on ascriptions attached to religion and world views, sexual orientation, persons with disabilities, youth or elderly age groups may also interact to configure specific discriminatory processes. There exist certainly a number of other combinations of collective forms of discrimination that may be identified as multiple discrimination and may also produce unique processes of discrimination in specific contexts (intersectionality). The glossary drawn up for the GendeRace Project will refer to multiple discrimination and intersectionality, but it cannot give primary attention to the specificities of these other forms of collective discrimination nor the unique kinds of discrimination that could result as a consequence of their interaction. Nonetheless, in the process of identification of specific kinds of multiple discrimination we may have to give attention to overlapping areas and the potential intersectionality of other areas that contribute to multiple discrimination. The partners of the GendeRace research project are well aware that gendered and racialised/ethnicised discrimination may at times include one or more of these other forms of discrimination. The most obvious may be the overlapping of the discrimination of racialised/ethnicised groups with signs of religious/ethnic belongingness. This results in difficulties of disentangling these from racialised/ethnicised gendered identifications. The terms and processes that evolve out of these related spheres of gendered and racialised identification have primarily to do with multiple discrimination and intersectionality. The glossary should provide some insight into how this might be understood.

The glossary, however, cannot substitute for the related theoretical literature. Whenever there is the need to go into depth appropriate references will be given to the most important studies.

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121 Reference is made to certain key terminology in the gender specific literature, however, the in depth treatment of concepts cannot be as extensive as in feminist studies.
that have guided the approach pursued here. Thus, the glossary may make a contribution to this debate as well, through the attention it draws to the concept of multiple discrimination and the valuing of intersectionality in its specific historical context.

This chapter presents the main objectives and purpose of the Glossary. It explains the historical context of terms and concepts, the limits and scope of the Glossary, and it also includes the selection of the 15 key-concepts. The complete list of concepts of the GendeRace Glossary is available for public access at the internet site: http://genderace.ulb.ac.be

10.2. Methodology

Work on the glossary was initiated at the methodology workshop in May 2008. The main focus here was an attempt to achieve a consensus regarding the description of issues related to gender, ‘race’/ethnicized, discrimination and intersectionality. This has continued with the establishment of the GendeRace intranet glossary as a tool for negotiating and reaching agreements on different definitions. Further development of the glossary has been undertaken during the transnational GendeRace meetings and in (European literature review, and methodology, where contested concepts have been negotiated. At an early stage multiple discrimination was identified as a relatively broad term that also included the more specific term of intersectional discrimination. The concepts of ethnicity and minority have also been discussed, especially in relation to methodological questions during the project.

In the work process a modification has been made in the elaboration of interviews with experts and interviews with complainants/claimants: that allows for the replacement of the concept ‘race’ with the term racialised identities, racialisation, or ethnicity with ethnicisation. This allows for a definition that clearly highlights the relational and socially constructed nature of this notion. This will be presented in somewhat more detail in the contextualisation of the terms and concepts.

The rest of the concepts currently included have been given addressed at European team meetings in the methodological discussions or via the intranet glossary. Our objective is to reach an understandable and still a differentiated final product.
10.3. Historical Context of Terms and Concepts

10.3.1. Historical context and processes in different countries

The terms we have identified so far are primarily related to some aspects or form of collective ascriptions and discrimination. The key concepts of ‘race’, gender and ethnicity have developed historically out of a need to make distinctions within categories, classes or groups of persons within society. Systems of categorisation of groups within society are inherent to historical processes. Historical processes differ in their specific forms of domination whether within the traditions of slavery, caste systems and/or different forms of colonialism, that were based on different forms of subjugation. These different historical processes have moulded the vocabulary, concepts and ideologies that shape today’s discourse.

Nationalisms, ethnicism, the construction of ethnic or “racialised” minorities develop in the struggle to exdemonize exercise and maintain power or challenge the existing power structures. Ascriptions and valuing of the so defined “collective other” are produced to validate the logic of difference and these are clothed in an ideology that justifies inequality.

Power relations have made it possible to define groups so categorized as distinct “racial” or ethnic collectives. Those so defined may be considered as inferior or not worthy of equality, thus, excluded from the same rights and less valued as the group in power. In its extreme form ideologies of difference make it possible to subjugate the other as inherently inferior, to demonize them as legitimate victims of genocide. (Freeman 2002, Gilman, 1991, Hinton, 2002 (Annihilating Difference), Mandel, 2008, Mendlowitz und Ruiz 1999, Ratsiani 2007, Saifullah-Khan 1982, Tajfel 1981 Wallmann 1978, Wilpert 1989).

The social construction of difference meets the need to defend the rights and power of the in-group over the out-group. Deterministic theories of ‘race’ and “races” have tremendous implications for what has been ascribed to human potential and the natural destiny of one group compared to another. These ascriptions include the behaviours and social roles permitted and expected of those so defined groups. These distinctions also have supplied the logic that may be used to support the distribution of power. This logic in the form of ideologies has also justified many forms of subordination of certain groups to others. This
has also been true with respect to the social roles and rights of people within/ or ascribed to an ethnic group, or a class/ or caste, who have been deprived in rights to full citizenship, education, professions, equal pay for equal work, etc. In a parallel sense gender theory has also differentiated men and women based on certain biological distinctions that have led to the determination and justification of social roles and the definition of potential rights, norms and behaviours. These distinctions and the accompanying ascriptions that are used to justify exclusion of some groups and the rights of others to belong. It is in this context of the distinctions made within societies and across nations that the terms concerning migration and integration, such as inclusion/exclusion, minority, ethnicity and finally citizenship gain importance.

Terms relating to equality and positive measures (positive / affirmative action) or intersectionality are terms that have resulted to a great extent from the political effectiveness of the civil rights movements especially in the U.S. and Canada and the wider Anglo-Saxon context. Clearly these terms have been further developed within the international and specifically European literature. It is the work of our project to decide which of these terms and their specific definitions are most important and useful in the design of our research and for the broader EU professional work in this field.

10.3.2. The limits of this glossary

This glossary is not intended to represent all terms that are somewhat related to the academic treatment of the issues at hand, but rather to place the most essential terms in a perspective. The issues we are addressing are interdisciplinary to be applied within the study of the implementation of legislation to protect persons endangered by discrimination in the EU Societies. The issue addressed here is both academic and has important political implications.

Intersectionality is a key concept that will be understood here primarily in its significance for the implications it has for legal system with respect to the protection from direct and indirect discrimination or for the development of positive measures for discriminated groups. Thus, perspectives on the social construction of identity, institutional discrimination and the socio-economic structure are also included in the glossary as relevant factors in the process of discrimination and equality issues. Intersectionality is also connected to other key concepts
such as prejudice, stereotypes, and stigma. Prejudice formation has been a rich field of concern for research as one of the factors upon which racism and other forms of discrimination base their legitimacy\textsuperscript{122}. On the basis of the framework described above some perspectives have already been developed quite comprehensively in several research tasks. In the following section attention will be given to the 15 key concepts decided on at the Malmo meeting.

10.3.3 The Selection of 15 Key-concepts

During the transnational GendeRace meetings in Barcelona (March 2009) and Malmö (September 2009), the partners agreed on a set of the most important key concepts that entail the existing concepts in the glossary as well as those to be included during autumn 2009/spring 2010. The key concepts to be addressed are: citizenship, discrimination, diversity, equality, exclusion / inclusion, ethnicity, gender, harassment, identity, intersectionality, minority, positive measures, prejudice, race/racism, stigma.

10.4. The Structure of the Glossary

Respecting the above prioritized key concepts, the outline below is an attempt to place these concepts within a structure together with related key concepts frequently required for communicating in this field. The approach selected here is historical in the sense that it is process oriented. And, it is a multidisciplinary representing a patchwork of theoretical insights rather than applying a strictly historical or a singular theoretical model. For social science the issue of gendered and racialised/ ethnicized discrimination has to do with the construction of difference and different forms of discrimination, valuing processes, ranking social groups in social hierarchies. Discriminated groups respond as well to the experience of discrimination at times they may activate new forms of response, empowered to become active citizens and creating social movements. The state is called on to listen and respond. It is in this sense that the concepts we address are ordered below.

\textsuperscript{122} Zick, Pettigrew and Wagner (2008) focus on several broad empirical studies of current ethnic prejudice and discrimination in Europe. See also Stefan (2008) who reflects on a greater need to present these primarily social-psychological studies into the specific national historical contexts. “Future studies should reflect a deep historical reflection of the origin of these factors both locally and across Europe.” (Stephan 2008:426) Cf. also Weiner (1998).
The concepts that are to be included in the glossary are organised into five related areas. The five areas are:

- The social construction of collective identities
- Forms of discrimination and harassment
- Prejudice, stereotypes and ideologies in the justification of discrimination
- Possible responses to discrimination, prejudice and stigmatization
- Citizenship and the state and supranational modes of membership

10.4.1. The social construction of collective identities social identity theory and the social construction of difference

Gender, ethnic and minority identity are often viewed as processes of the social construction of difference. Social identity theory (Tajfel 1981) which distinguishes between personal and social identity provides some useful insights into this process. Social identity is that part of an individual’s positively or negatively valued self concept which derives from a person’s membership in one or more social groups (Tajfel 1978).

Social identity is, thus, associated with the identification with a group membership, which also helps to explain other processes such as ethnocentrism, in-group favouritism, inter-group differentiation (Hogg 1996).

“Social identity theory is framed by an assumption that society is hierarchically structured into different social groups that stand in power and status relations to one another (e.g. men and women, Blacks and Whites in South Africa -or elsewhere-, Catholics and Protestants in Northern Ireland, Malays and Chinese in Malaysia). Power and status relations also mark the relations between smaller and more transient groups such as classes in schools. The basic premise is that social categories provide members with a social identity: a definition of who one is and a description and evaluation of what this entails.” (Hogg 1996:555-556).

The cognitive process of identifying categories of entities that appear to have certain similarities leads us to categorizing or identifying persons as members of groups other than our own. These “normal” interactive processes of recognizing differences has also led to generalisations based on whatever characteristic that have been selected to identity the “collective other” that tend to be considered immutable characteristics. These categorisations
and the ascriptions associate are also communicated from one generation to the next, learned in one’s primary socialisation process. Stereotypes and prejudices become part of ideologies, collective truths and tradition. These ascriptions become reified, racialised or ethicised as immutable characteristics. These may be used to explain the inferiority of the persons so identified with respect to intelligence, physical abilities, or a specific necessary and unchangeable division of labour in society. Thus, apparent genetic, biological or physiological differences have been used to assign the place of the other in the social hierarchy.

Gender, racialised or ethicised identities are two of the six core groups that have been selected by the directives of the European Union based on their general susceptibility to discrimination due to assumptions about their collective identities. These groups suffer maltreatment in a number of societies. Groups of people may be categorized as belonging to these groups based on assumptions about their: age group abilities or rights, gendered identities, racialised/ ethicised identities, a recognized disability, a minority religious adherence or world view or attitudes toward a sexual orientation considered to differ from the heterosexual norm. Thus, social identity is in this sense not an individualized identity with the characteristic of individuality, but one that the “society” views as a category of persons with certain negative behavioural similarities. That is, the initial identification of “otherness” signalling a collective identity is based on assumptions about this collective. That is, for example, assumptions about the significance of physical, cultural, or religious difference which becomes a ground for discrimination and exclusion from the mainstream. With respect to gender and age these may be assumptions about their limitation to specific certain social roles in society. In this case the reification of a collective has taken place in interaction with the “powers that be”.

There may exist within some groups identified in this way a common social or cultural substance such as religion, world view, or ethnic belongingness that might appear to bind them to these ascribed social identifications, nonetheless that does not apply to all of those so identified. Even persons judged to belong to these categories may not have a sense of group membership and they may or may not have chosen or even internalised this identity.123

Gender
The term “gender” refers to the socially constructed roles of women and men which are attributed to them on the basis of their sex. Gender roles therefore depend on a particular

123 See below for responses to discrimination, prejudice and stigmatisation.
historical, socio-economic, political and cultural context. Gendered roles are learned and may vary extensively between different societies, cultures and religions. Whereas the biological sex may be more fixed, gender roles are more open to changes.

‘Race’, racialisation and racism

‘Race’ was constructed in the 18th and into 20th century as a biological categorisation of groups of people with immutable characteristics associated with innate intelligence, physical abilities and moral behaviour. This supported the ideology of racial inferiority that was used to legitimate slavery, exploitation, oppression and genocide. The racist Nazi ideology of Aryan superiority in national socialism led to the Holocaust. Race as a legitimate scientific category has been discredited as a scientifically based concept following the aftermath of World War II.

‘Race’ and the construction of racialised identities

Nonetheless ‘race’ continues to be used in legal documents forbidding discrimination based on ‘race’ on the national and international level. There is a debate in Germany and elsewhere in Europe that that this practice should be eliminated. The term ‘race’ should be removed from all legal texts. It is problematic and misleading that ‘race’ continues to be applied in official texts that attempt to reject theories which promote the existence of separate human “races” but, at the same time uses these terms with reference to the principle of equal treatment between persons “irrespective of racial or ethnic origin”. Due to this issue the current research proposes adopting more adequate terminology that has been proposed by some prominent critics of these concepts. For example, Robert Miles (1989) has proposed the term racialisation or racialising for the process of ascribing behaviours to groups of persons based on the colour of their skin or any other physical characteristics.

Racialising is the process of categorizing and essentialising groups of people based on selected physical (or cultural) characteristics (Miles 1989). These physical characteristics serve as indicators for immutable genetic factors that are considered to produce behavioural traits that justify an ideology that stresses their inferiority with respect to the superiority of the oppressor, the dominant societal groups.

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124 This factor has been very well analysed and documented by Hendrik Cremer former Director of the German Institute for Human Rights.
Racialised identities
Racialised identities are primarily ascribed identities based on the above process of racialising or racialisation. Racialised identities are subject to the stereotypes, prejudices and ideologies that traditionally exist in the society in which they live. It should be stressed that although there exists the possibility of internalising this identity, all people who apparently carry these identifiers may not feel a sense of group belongingness. The U.S. civil rights movement demonstrates that overtime it was possible to create a social movement out of mass of persons subjected to slavery and discrimination based on their colour, people who may have had a great variety of other social and cultural differentiations.

Racism
Racism is based on an ideology that reifies another group as inherently inferior to the inherent superiority of the dominant powers. This process racialises physical characteristics as grounded in genetic factors which produce immutable negative behavioural traits. Racism constructs the concept of “races” based on the assumption of that there exists a relationship between external physical characteristics and immutable consequences for the value and behaviour of identified persons that justify oppression, discrimination and genocide.

Ethnic Group, ethnic identity, ethnicity
The definition of an ethnic group is frequently as highly contested as the concept of an immutable differentiation of mankind into “races”.

Ethnic group
An ethnic group is identified as differing from the majority group with respect to culture, language, religion. It is often considered that the ethnic group shares a common history and descent. This term is usually applied within the context of a larger society, the state, or with respect to rivalling ethnic groups. National groups become ethnic groups in the context of immigration and becoming citizens. Barth (1969) has defined an ethnic group as a process of setting and maintaining boundaries and as categories of ascription and identification. This means that ethnic groups are relational and may in historical process vary greatly in their own view of the characteristics that explain their identification as a group or those that the dominant majority society or other ethnic groups consider significant characteristics of identification. (Wallman, 1978)
Ethnicisation

Ethnicisation in this context would refer to the process of ascribing/ selecting the cultural/ ethnic markers that are used to justify setting boundaries. Ethnicisation also includes a process of reifying certain key attributes. In most societal contexts it is the dominant powers in societal discourse that are in the position to ethicise a group. In the research at hand the term ethnicisation is adopted to indicate the parallels that this process can have with racialisation. This is also related to the potential internalisation of ascriptions or the group’s search for a valorisation of the characteristics identified as ethnic. (See below responses to discrimination.)

Ethnicity and ethnic identity

Ethnicity and ethnic identity are important terms in the politicisation process in response to ethnicisation. These terms have developed as concepts of social and political mobilisation in the U.S. context in the early 1960’s parallel to the colonial liberation movements in other parts of the world (Bell, 1975, Glazer and Moynihan 1975, Patterson (1975, Wilpert 1989).\footnote{Saifullah-Khan (1982) has also emphasized the coexistence of multiple identities, sub ethnic identities and nested layers of identities among Asians in Britain as a dynamic and historical interaction between two socio-cultural systems in changing geographical and political institutional arrangements. (Rattansi (2007:116) stresses the process of negotiating identity formations that although grounded in power relations and structures of authority and that even bounded identities are not necessarily permanently fixed.}

Minority group: “subordinate segments of complex state societies” (cited in: Tajfel 1978:3) “the principle guiding the definition selected ….is not to be found in numbers but in the social position of the groups to which they refer as minorities”.

National minorities are normally relatively small population groups that are recognized to have certain rights. They are citizens of the country where they are living and have usually lived there for a very long period of time. They may have gained certain rights: “the right to protection of the group and of the affiliation of an individual to this group as part of his or her identity” (Klein 2004:15).

Regional minorities are those groups within a state territory that identify with either a unique heritage, usually some their own language often having lost the struggle in the construction of the nation state.
Ethnic minorities refer primarily to the immigrant minorities who are no longer foreigners, with another nationality but have lived and been accepted as long time residents, or who are citizens, but continue to maintain some visibility as a “community”.

Other collective forms of identification, ascriptions and social mobilisation

- religions and world views.
- sexual orientation
- persons with a disability
- age graded groups: youth – the elderly/ aged / old people

These groups also are subject to ascriptions that reify beliefs about their value and their rights. This also leads to their discrimination. There are also substantial differences within the groups above with respect to their own sense of group belongingness\textsuperscript{126}.

10.4.2. Forms of discrimination and harassment

**Discrimination (direct discrimination)**

Direct discrimination occurs when a person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of negative assumptions about the persons racialised or ethnicised, gender or religious identity, world views, physical abilities, sexual orientation or age category.

Discrimination outside of the legal framework of the EU can be applied to any other kind of discrimination based on assumptions that categorise individuals as unworthy for equal treatment due to their collective identification. Examples of other collective forms of discrimination could be based on ascriptions assumed to be associated with, for instance, speaking a certain mother tongue, accents/dialects, poverty or lower socio-economic status,

\textsuperscript{126} One could assume that religious groups/ religions and also groups identified as holding certain world views may have a stronger sense of collective identity based on belief and world views than age groups or discrimination based on disability. However, each of these groups may have a different status in each historical and institutional context. Each group may also depending on this status or other group memberships have access to different resources. They also have different needs to organize themselves in political lobbies to defend their rights. It is clear that all of these groups have members with multiple sources of identification with respect to all of the other group characteristics.
outward appearances, regional or other minority status that is used to justify unequal treatment.\footnote{217237}

**Indirect discrimination**

Indirect discrimination occurs where an apparently neutral provision, criterion or practice would put persons identified as belonging to a particular collective at a particular disadvantage compared with other persons not belonging to this category. Indirect discrimination may be a form of institutional or structural discrimination.

An exception in EU law is when that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

**Institutional and structural discrimination**

**Institutional discrimination**

Institutional discrimination privileges one group of persons over another on the basis of assumed consensus of about the rights or abilities of favoured group/class. Institutions operate according to tradition, but are legitimised by ideologies, and institutional practices that grow out of dominant systems of belief. (Wilpert 249:2003) “The stabilizing principle (in institutions) is the naturalisation of social classifications.” (Douglas, 1986:48). Recently distinctions have been made between direct and indirect institutional discrimination.

**Direct institutional discrimination**

Direct institutional discrimination refers to actions initiated by an organisation or community that, by intention results in a differential and negative impact on members of subordinate groups.

**Indirect institutional discrimination**

Indirect institutional discrimination encompasses practices that have a negative and differential impact on members of subordinate groups even though the norms or regulations themselves are not intended to harm members of these groups (Brüb 2008).

**Structural discrimination**

\footnote{217237 This definition is purposely larger than the definition in the EU directives and that found in many national and international agreements with respect to protection against discrimination.}
Structural discrimination is used at times as a system of institutional discrimination. Structural discrimination is classically related to the position in the social hierarchy and the socio-economic structure of a society. This also can provide insight into indirect discrimination. Statistical correlations between certain groups (ethnicised/ racialised groups) and disfavourable positions in society provide indicators of structural discrimination, such as: higher unemployment rates, higher imprisonment rates, lower rates of educational success and less social mobility. These variables usually correlate with the higher density of certain groups in underprivileged urban areas and school types. This process of “ethnicisation” of an “underclass” (eth/class)\(^{128}\) can be considered as an indicator for indirect discrimination, since traditional institutions do not permit access to societal goods of education, adequate housing and full participation in local institutions.

**Exclusion / Social Exclusion**

Exclusion: people are ‘excluded’ if they are not adequately integrated into society. The definition of the concept varies among countries and different schools of thought (Silver 1994). The primary forms of exclusion cover

- Circumstances in which people are left out of society, through non-inclusion in systems of social protection;
- Circumstances, like poverty and disability, when they are unable to participate in ordinary activities
- Circumstances in which people are shut out, through stigma or discrimination.

Exclusion stands then for a whole series of social problems and processes and ‘combating social exclusion’ has come to stand for a wide range of actions in social policy.”

**Social Exclusion**

Social exclusion is directly related to the above indicator of structural discrimination. None the less there are different dimensions attached to the concept.

Social exclusion: The process whereby certain groups are pushed to the margins of society and prevented from participating fully by virtue of their poverty, low education or inadequate life skills. This distances them from job, income and education opportunities as well as social and community networks. They have little access to power and decision-making bodies and

\(^{128}\) Eth/class (Gordon:1978) This term suggests that the double process of ethnization and social stratification builds an eth/class, a sub-group or micro-society that faces double barriers to overcome for full participation in society.
little chance of influencing decisions or policies that affect them, and little chance of bettering their standard of living.

Social exclusion is also seen as a multidimensional process of progressive social rupture, detaching groups and individuals from social relations and institutions and preventing them from full participation in the normal, normatively prescribed activities of the society in which they live. (Silver 2007:15)

**Ethnic profiling**
Ethnic profiling is the use of skin colour or other physical characteristics to identify persons to be selected for police controls. The selection process is based on racialised or ethicised stereotypes in making law enforcement decisions to stop, search and arrest or check documents. Ethnic minorities are discriminated against in the course of ordinary crime prevention activities.

**Personal and interpersonal discrimination**
Personal and interpersonal discrimination occur when one individual discriminates against another based on negative prejudices and stereotypes about the group they are ascribed to belonging.

**Multiple discrimination**
Multiple discrimination is the general term for the situation in which one persons suffers from discrimination on several grounds but in a manner that discrimination takes place on one ground at a time. This is basically the accumulation of distinct discrimination experiences (Makkonen 2002).

**Compound discrimination**
A situation in which discrimination on the basis of two or more grounds add to each other to create an added burden (Makkonen 2002).

**Intersectionality**

(1) In the legal context
Intersectionality is a situation where a specific type of discrimination, in which two or more grounds of discrimination interact to creates a unique combination of experiences. Intersectionality in the case of black minority women may produce or indicate a substantially
different discrimination process than that experienced by black minority men or white women (Crenshaw 1989).

(2) In feminist studies / academic context
Intersectionality can also be seen as a sociological analytical method for interrogating the institutional reproduction of inequality (Grabham 2008). In this case it takes into account the historical, social and political context and recognizes the unique experience of individuals discriminated because of their identification with more than one negatively defined group in turn creating a unique new groups based on the intersections of all relevant grounds.

Harassment
Harassment is considered to be discrimination when an unwanted conduct toward members of any of the groups named in the EU directives or national legislation to be protected from collective discrimination, that takes place with the purpose or effect of violating the dignity of the person concerned and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

Sexual Harassment
Sexual Harassment any action (physical, oral, or another) of sexual nature that has the purpose to effect infringement of human dignity or creating a hostile, insulting, humiliating or threatening environment (Bulgarian antidiscrimination legislation).

10.4.3 Concepts that justify discrimination and exclusion

Prejudice
Prejudice can be defined as the holding of derogatory attitudes or beliefs, the expression of negative affect or the display of hostile or discriminatory behaviour toward members of a group on account of their membership in that group. In this light sexism, racism, homophobia and ageism can all be considered as special cases of prejudice.” (Browne and Lepore 1996:450).

Stereotypes
Are societally shared beliefs about the characteristics (personality traits, expected behaviours, or personal values) that are perceived to be true of social groups and their members. (Stangor 1996:632)
Ideologies
Ideologies are more complex structured theories that relate the ideas relevant to prejudice and stereotypes to the whole system of social relations of a society. Dominant ideologies provide legitimacy to the established power relations of a society (Gramsci 1971).

Xenophobia
Xenophobia implies an irrational sentiment toward foreigners. Xenophobia expresses a mistrust and fear of any person whose language, culture, or appearance is different than the majority. It may include the conviction that one’s own group, nation or culture is superior to any other. The irrational sentiment attached to the mistrust, fear or even hate toward foreigners awakens the idea that xenophobia is a normal human condition (Wilpert: 1993).

Scapegoating
Blaming an individual or group for something based on that person or group’s identity when, in reality, the person or group is not responsible. Often scapegoating is used to distract from other problems. Prejudicial thinking and discriminatory acts can lead to the need to justify one’s position with scapegoating.

Blaming the victim
Blaming the victim is related to scapegoating. This takes place when de facto institutional or structural discrimination has created barriers to socio-economic or educational opportunities, but instead of taking a responsibility for the forms of direct and indirect discrimination that has led to structural exclusion of a group, the culture or values of the disadvantaged will be blamed on the consequences of discriminatory processes.

Stigma
“Stigma does not refer to individual attitudes but focuses on negative meanings which are socially ascribed on arbitrary attributes, such as skin colour, sexual orientation, gender, pregnancy, disability or age…Stigmas can be racial, physical, behavioural or biographical, acquired or inherited or in born. They can change from place to place and operate at the local, national, regional and international level.” (Solanke, 2009)\(^{129}\)

\(^{129}\) Cf. Discussion of Solanke’s proposals for applying the concept of stigma with respect to multiple discrimination in the literature review.
“The person is thus reduced in our minds from a whole and usual person to a tainted, discounted one. Such an attribute is a stigma, especially when its discrediting effect is very extensive...” (Goffman 1963).

10.4.4 Responses to Discrimination, Prejudice and Stigmatization

**Individual responses**

Applies to some members of some minorities, and a variety of patterns can be found within any one minority (Tajfel 1979). Thus, here attention is drawn only to some examples. Internalisation by the minorities of the prejudices toward them by the in group is to be found in studies about the response of black children in the U.S. to the experience of consistent rejection. This leads to doubts which become “the seeds of a pernicious self- and group-hatred, the Negro’s complex and debilitating prejudice against himself... Negroes have come to believe in their own inferiority” (Clark 1965). “Jewish self-hatred” is considered by Sartre (1944) and Tajfel (1979) to be a similar phenomena. Individual responses may differ from doubt, self- or own group hatred to the search values, symbols and traditions that demonstrating positive factors to strengthen group identity.

**Empowerment**

It is a pedagogical and political approach to confronting a tradition of discrimination and stigmatising experiences. Empowerment seeks to encourage members of discriminated minorities to distance themselves from the defaming beliefs about their group of origin. In this process one begins to seek the positive and value that part of one’s social identity that has suffered discrimination. This is expressed as a re-evaluation of the existing group characteristics which carry an unfavourable connotation.

**Social movements**

**Identity politics**

Refers to the political mobilisation of a group based on a common characteristic. Within the U.S. context this has primarily been discussed as related to one’s skin colour or ethnic group belongingness. Identity politics might also be considered another form of interest group organisation or lobbying. The creation of this U.S. form of identity politics has received
negative overtones in the European political discourse. This is often based on the assumption that the activists are reifying aspects of ethnic identity.\textsuperscript{130}

**Interest groups**

Interest groups are well known in most democratic and capitalistic societies, these include unions, business groups, sectors of the economy (farmers, pharmacists, industry, teachers, professional groups, civil servants, etc.) Interest groups form to mobilize and lobby for recognition of needs and rights to be included and to be given a voice or a share of public goods and services. There are also a number of other interest groups that represent groups that may suffer collective discrimination whose for this reason desire to be heard. (e.g. these include religious groups, persons with different kinds of physical disabilities, the aged, gay and lesbian groups, women’s groups.) All of the above groups that organize to represent the needs of their own group could be referred to as practicing a form of “identity politics”.

10.4.5 Citizenship and the State

Modern citizenship has been until recently wedded to the concept of the nation-state. The nation-state has been traditionally responsible for the development of policies to protect members of their population from discrimination. The introduction of terminology and concepts below must primarily been seen in that historical context. The social movements referred to above as a response to discrimination within the context of identity politics have been the actors in civil society that responded to conflicts of interest and discrimination in the historical context of the nation-state. Thus in this context the issues of citizenship, pluralism, multiculturalism, the policies/ concepts of gender mainstreaming, affirmative action, inclusion, integration, mainstreaming diversity and equality have been shaped. Although much academic work has recently focused on new concepts of citizenship (e.g. Baubock, 1994) the EU has with its decision to introduce widespread antidiscrimination legislation has been the first supranational body to initiate policies beyond the nation-state borders that aim to protect selected groups from discrimination. Thus, most of the terms below have been developed within certain national contexts.

\textsuperscript{130} References have been made to the false consciousness of ethnicity, the creation of a “mythical” past and the belief in a historical people with common origins (Patterson 1975). But, also to the need for new forms of political organisation in post-industrial society with the growth of the welfare state and the weakening of class based ideologies.
Citizenship and multilevel / supranational modes of membership:

Citizenship

Citizenship is generally understood as a status of equal membership within a bounded polity. This is based on the notion of the closed national societies.

Multi-level governance and supranational modes of membership and rights

Today present debates often focus citizenship on boundary transgressing phenomena and multilevel citizenship that combines sub-state and supranational modes of membership and rights (Baubock, and Guiraudon 2009:439). As these authors point out debates about the issues of gender, racialised identities and ethicised identities\(^\text{131}\) challenge this concept of citizenship. One of the main issues\(^\text{132}\) they raise is around initiative of the EU to introduce the strengthening of a universal principle of non-discrimination in EU law that has impacted bounded equality of citizenship within EU states (opCit.: 440). They argue that the European Union has become a laboratory for differentiated citizenship and demonstrates the interplay between supranational political integration and devolution in plurinational democracies. They point out that EU laws now also prohibit biases in apparently neutral laws (indirect discrimination). This complements a concept of citizenship limited to formal entitlements of formal members that may result in structural inequalities and perceived injustice among significant minorities. This raises the issue of the legitimacy of the political unit bestowing rights, which requires the political participation and equal treatment of its members.

Pluralism

Pluralism is a frequently addressed concept in public discourse in the history of the North American nations of the U.S. and Canada. Pluralism as a process has been considered the fundament of democracy. This is based on the guiding principle which permits the peaceful coexistence of different interests, convictions and lifestyles. Pluralism is connected with the realisation that within a pluralistic framework the scope and content of the common good can only be found out in and after the process of negotiation. Basic to the idea of working toward the common good is a minimal consensus on shared values for conflict resolution. This necessitates mutual respect and tolerance. In pluralism all parties must be engaged in the process of establishing a minimal consensus on common rules according to the principle of subsidiarity. Taylor (1995) sees the age of modernity and post-modernity as a pluralistic age.

\(^{131}\) These authors use the term « race » and « ethnicity ».

\(^{132}\) The authors also speak about minority rights.
Taylor who writing about multiculturalism and the “politics of recognition” argues that it is essential to human identity that one’s community be recognised both politically and socially.

**Multiculturalism**

Within the European context multiculturalism has been primarily a political playgoer for the recognition and acceptance that European societies are in fact multicultural. Multiculturalism is in most European societies more descriptive than a clear comprehensive policy. Although in some European countries, such as Sweden there have been more consistent policy development that may be considered as elements of a multicultural policy beyond the descriptive with respect to educational policy and access to mother tongue education in the school system. Canada may be the one contemporary state that explicitly has an official multicultural policy.

**Antidiscrimination Legislation**

Antidiscrimination legislation (Acts of 1963, 1968) were enacted first in the context of the U.S. civil rights movement as a response to the fight of black Americans against institutionalized segregation in education and all forms of public life. The social movements (anti-racism, anti-segregation and women’s rights movements) of North America created a demand for equal treatment and the awareness of a need for protection from discrimination for the most discriminated. These ideas reached an international arena that was in the process of dismantling colonialism. These worldwide movements began to have an impact within other parts of the Anglo-Saxon speaking world about a decade later. Antidiscrimination legislation within Europe was made possible in connection with the directives decided upon with the Amsterdam Treaty in October 1997 and enacted in May 1999.\(^\text{133}\)

**Diversity and Equality Policies**

Diversity and equality are first general descriptive notion that represent or symbolize the objective of policies, however, both of there is not a universally understood policy concept that would apply to all countries or all institutions that claim diversity as a principle of their organisation.

**Diversity**

Diversity is within the European Union a set of concrete practices which acknowledge and tolerate difference. It is one of the founding principles of the European Union and was one of the driving forces behind the process of European integration. And it is seen as a reflection of the European Commission’s key objectives to prevent people from being discriminated against in any way due to their racial or ethnic origin, religion or belief, disability, age or sexual orientation.\(^{134}\)

Diversity is the recognition and appreciation of difference. The general concept of diversity is based on valuing and respecting differences among people. Core diversity categories based on apparent differences are gender, age, ethnic and cultural origin, skin colour (‘race’), religion/world views, sexual orientation and physical abilities. The concept of diversity was developed in response to the exclusion and discrimination of individuals based on judgements (including prejudices and stereotypes) made by others regarding the meaning of their social identities. According to the concept of diversity, differences are viewed as a potential resource. Individuals with unusual biographies and life experiences bring in new perspectives.

**Managing Diversity**

Managing Diversity or Diversity management or managing diversity in the context of the impact of social empowerment movements and antidiscrimination legislation to stress the concept of differences as a potential resource in an organisation. This has been initiated in the public and private sphere and is applied to the leadership models and organisational cultures of companies and other institutions, such as public offices, educational establishments and other kinds of organisations.

**Mainstreaming Diversity**

Mainstreaming diversity or diversity mainstreaming has not one generally accepted definition. It is rather intended to bring diversity policies into the political sphere. It is seen as the task of the body politic and civil society to implement diversity policies in the management of local communities and metropolitan areas. Diversity policies underlie the idea that to accept and appreciate difference and the resources and potential of all enables communication beyond the barriers of ascriptions and exclusion to the discovery of common interests. Diversity policies have then a greater chance to reach the goals of inclusion and participation of persons independent of their ascribed / visible identities.

Gender Mainstreaming

“Mainstreaming a gender perspective is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in any area and at all levels. It is a strategy for making the concerns and experiences of women as well as of men an integral part of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres, so that women and men benefit equally, and inequality is not perpetuated. The ultimate goal of mainstreaming is to achieve gender equality.” (United Nations Economic and Social Council, 1997)

Mainstreaming includes gender-specific activities and affirmative action, whenever women or men are in a particularly disadvantageous position. Gender-specific interventions can target women exclusively, men and women together, or only men, to enable them to participate in and benefit equally from development efforts. These are necessary temporary measures designed to combat the direct and indirect consequences of past discrimination.\(^\text{135}\)

Equality

Within the EU Equality is defined as conferring the right to protection from discrimination on the grounds of, among other things, sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. This is enshrined in the Charter of Fundamental Rights.\(^\text{136}\)

Integration

Integration has many definitions. The sociological definitions views integration as dependent on the structures of the receiving society. Integration applies to a society where minority groups thus gain full access to the opportunities, rights and services available to the members of the mainstream. Since this is rarely the case in countries with racialised or ethnicised minority groups there need to be legal measures to protect minorities from discrimination.

“The process of integration differs in its very essence from the process of assimilation. Integration presupposes respect and recognition of cultural differences, while assimilation is based on obliterating...of difference, which is considered inferior.” (Greko, M. 2001).

\(^\text{136}\) http://ec.europa.eu/employment_social/fdad/cms/stopdiscrimination/resources/glossary
Affirmative action

Affirmative action is a set of programs designed to provide equal access and opportunity to minorities and women. Typical affirmative action initiatives include targeted outreach and recruitment efforts, the use of multiple criteria (including those aimed to increase diversity) in admissions and hiring and targeted training programs (Kirwan Institute for the Study of Race and Ethnicity 2010).

Positive action / positive measures

Positive action is considered to consist of proportionate measures “undertaken with the purpose of achieving full and effective equality in practice for members of groups that are socially or economically disadvantaged, or otherwise face the consequences of past or present discrimination or disadvantage.” (International Perspectives on Positive Action Programs, European Commission 2009)
Chapter 11: EU and National Policy Recommendations

by
Czarina Wilpert, Olga Jubany, Róisín Davis, Berta Güell, Christiane Howe and Milena Sunnus
11.1. Introduction

Through the implementation of the EU Directives at the national level a norm has been set for the legal recognition of the rights to protection from discrimination where claims procedures have been specifically established often for the first time for the racialized and ethnicized groups in the 27 EU states.\textsuperscript{137} This was accompanied with the enactment of the anti-discrimination directives to protect five additional core groups that are often the victims of discrimination in all societies. With this directive the EU has opened the stage for addressing as well the issue of multiple discrimination. Exactly this issue is at the center of the GendeRace study that focuses on discrimination occurring at the intersection of gender and racialised discrimination.

The findings of the GendeRace study indicate that the majority of claimants are not aware of a gendered discrimination. The claimants seek assistance to defend themselves primarily on a single ground of racialised discrimination. In the following conclusions we will examine how to interpret this situation. However, not only are the claimants not sensitive to potential multiple discrimination, in the majority of cases, procedures for multiple discrimination are not foreseen nor provided for in the legislation. This is another issue that will be addressed below. Based on the discussions of the main findings with the stakeholders at the local, national and EU levels we have identified a number of issues that need further clarification and which may serve as a basis for policy decisions at all levels and further work in this field. Factors found in the GendeRace study that impact on the effective implementation of Anti-Discrimination legislation with respect to multiple discrimination and intersectionality are:

- the pervasiveness of discrimination among certain racialised groups and the great gap between the experience of discrimination and the access of those potentially facing discrimination to knowledge about their rights to protection from discrimination
- the gendered dimension of racialised discrimination and its significance for an intersectional approach for the most vulnerable
- the particular role of formal and substantive citizenship for the perception of rights and for a gender differentiated response to discrimination

\textsuperscript{137} Along with this a cross-sectional approach has been initiated that permits the consideration of equal protection to be legally recognised for the six recognised core groups frequently suffering discrimination. This legislation is differentially enacted in the states concerned. Civil society at the national and local levels are engaged at the moment to see that these directives are extended to all the spheres that are covered by discrimination of racialised minorities.
• systems of social stratification and social structures in the experience and response to
discrimination and gendered racialisation
• the involvement of NGOs and other actors in civil society in pursuing these issues

The above issues provide a basis for reflections and concrete recommendations to be
transformed into policies at the EU and national and local level. In the end this addresses
as well the activation of citizenship to empower the discriminated with other actors within
civil society to join in the struggle to overcome gendered racialised/ethnicised
discrimination and other forms of inequalities.

The discussion of the conclusions and the above mentioned issues follow. In the second
section of this chapter the most pertinent policy proposals will be addressed to specific
stakeholders.

11.2. Conclusions drawn from the findings on the
pervasiveness of discrimination for responses to ethnicised
discrimination

11.2.1. The pervasiveness of discrimination for both sexes

One of the first observations in reviewing the findings of this investigation is that cases of
racialised discrimination are not necessarily perceived by the complainants as specifically
gendered but independent of gender. This has primarily to do with the pervasiveness of
discrimination that claimants reported in the experiencing in the surrounding society toward
their group of origin.\textsuperscript{138} Pervasive, in the sense, that the incident they report is not the first
experience of discrimination in their lives. To the contrary, many point out that discrimination
occurs on a continual basis. This is for some so common that they appear to have internalised
being associated with negative stereotypes and prejudices.

These observations that GendeRace has observed in the qualitative study of claimants/
complaintants have been substantiated in the first EU wide survey among immigrant and

\textsuperscript{138} In societies where a high extent of social exclusion and stratification processes based on ethnic ascriptions
exist certain groups such as the Roma face racialised discrimination and may be basically excluded and
stigmatized.
ethnic minority groups about their experiences of discrimination\textsuperscript{139}. The same groups (Roma, Sub-Saharan Africans and groups with Muslim origins\textsuperscript{140}) are identified as most often perceiving widespread discrimination in the countries surveyed by EU-MIDIS as those found in the data base of the GendeRace research. The EU-MIDIS survey also found that from those who could name concrete experiences in the last 12 months before the survey a small minority (between 9% and 15%) reported their experience. On the average 82% of those discriminated did not report their most recent experience.

In the GendeRace study the experts, stakeholders and the NGO also felt that the pervasiveness of discrimination experienced in a life time led many of those who have experienced discrimination to doubt that reporting discrimination to authorities would change anything in their future. This opinion was also widely expressed by those who had experienced discrimination in the EU-MIDIS survey. In the MIDIS survey almost two thirds expressed their resignation expressing that to report the incidents would not change anything at all if they did. In the EU-MIDIS study there was even a substantial group who expressed concern about the negative consequences of making a report (26%).

In other words the all-pervasive experience of discrimination is coupled with a lack of sufficient trust in the belief that anything could be changed. More than that, the fact that the majority of those surveyed (75%) were not aware of the existence of anti-discrimination legislation means that the message of rights to equal treatment have not fully reached some of the most vulnerable members of society. Legislation has set a new norm but the groups who most need this protection are not aware of it. Recognition of having equal rights as citizens is not yet evident. This lack of recognition is complemented by other factors, the GendeRace study has found to explain why the discriminated do not initiate redress:

The pervasiveness and normality of discriminatory experiences creates stress and other disabling behaviours that can have the impact of withdrawal from further discrimination, passivity and preference to resort to life among one’s own. Living in a world threatened where one is not valued, appreciated or even simply recognized to have certain rights

\textsuperscript{139}Over 23,000 immigrant and ethnic minority people were surey in all 27 EU member states. )Fundamental Rights Agency 2009.)
\textsuperscript{140}This was 88% of the North Africans in France, 75% of the Somalis and 68% of the Iraqi in Sweden and 52% of the persons of Turkish origin in Germany.
undermines trust in representatives of the dominant society (power and status structures), the fear that the persons they consult will not believe that they have been discriminated.

Why this disbelief? The answer can most likely be found in the fact that the discriminated are aware of the messages expressed as views of the dominant society. For instance, many have also heard the argument in the debate on “integration” that claims that they themselves are responsible for their own situation. Depending on the group or culture in discussion: in the public discourse they are often criminalized, parents viewed as uneducated, ignorant, lazy as persons not capable of taking care of their children, others are generalised in Islamaphobia as generally fundamentalist. Moreso, in some national contexts to even mention the idea that discrimination exists is a taboo.

This all contributes to a lack of empowerment of the most vulnerable. As Guiraudon (2009:327) suggests it could be fruitful to initiate a dialogue between citizenship and equality scholars with the observation that “unequal treatment of populations is a way of signifying that they do not belong to the community”. Referring to Joppke (2007) Guiraudon stresses the advantage of relating non-discrimination and equality policy debate to citizenship theory, because this changes the nature of the debate. “..non-discrimination policy countervails citizenship courses and “tracks” and integration contracts. …”. While the latter force immigrants to ‘melt’ into the labour market ‘pot’ by adopting the language and mores of their country of residence, the former designates the host state institutions and the host society as the main culprit for the unequal labour market outcomes of ethnic minorities.”

The debate also changes from a focus on individual or cultural deficits to one of rights. Citizenship rights in its many dimensions empowers and can initiate participation in initiatives for change in civil society. This approach could be a very enriching possibility to move on to issues of participation and mobilisation for rights of the discriminated. Here a dialogue is necessary between the practitioners and actors in civil society.

Citizenship fulfilling rights and participation need to be the cornerstone of this dimension of non-discrimination and equality policies. A major finding of the GendRace study is the tendency of those who enter complaints/ claims have a higher educational average than the majority of the members of their group of origin. They are also more likely to be citizens, and they often have direct access to supportive social networks or information systems that
directed them to the legal experts who they consulted. Many did not, however, have explicit knowledge of the anti-discrimination legislation or where to go to seek help.

Thus, the extent to which the non-universality of rights is challenged seems to depend on formal and substantive citizenship coupled with socio-economic status (level of education, employment) and a sense of the feasibility of a challenge\textsuperscript{141}. This latter certainly interacts with other personal and social resources (access to support-systems/ networks) that contribute to an awareness of rights (civic education), even simply a sense of the legal system and a perception of a right to justice. However, even for those who seek protection from discrimination there exist in the process difficult personal challenges to a decision to make an official claim. One of these is simply having to activate energies against a more powerful agency, whether the owners, managers, directors of the working places or educational context where they experienced discrimination.

11.2.2. Intersectionality: the gendered dimension of racialised discrimination

The GendeRace study employs intersectionality as a tool to approach a very specific form of gendered racialising processes. The use of the term intersectionality instead of the more general term multiple discrimination in the context of the interpretation of the findings of GendeRace has to do with the focus on the gendered specificities of the racialisation. Since this is a study of individual complainants/ claimants the observations that are made about intersectionality are based on the configuration of specific gendered racialisation processes that go beyond the single experiences that are common to discriminatory processes of racialised women and men. As mentioned in the introduction to this chapter the majority of complainants/ claimants in this study are not aware that they are subjected to a gendered racialisation process. They overwhelmingly adhere to a perception of living in a society that discriminates them and their group of origin on grounds of racialised /ethnicised ascriptions and beliefs about them. They may well be conscious of intra-group gendered discrimination, but it is not the reason that they seek advice on how they are treated in the larger society (employment, educational institutions, on the street, in interaction with the public authorities,

\textsuperscript{141}The recent QUING (Quality in Gender + Equality Policie:2009) deliverable reflects on exactly these issues that relate directly to intersectionality and these structural dimensions of all relevant inequalities. This structural view suggests the necessity to intervene in the socia land political construction of privilege, not only the social and political construction of disadvantage. In further analysis of the GendeRace findings exactly the role of these different perspectives address substantive citizenship and structural issues within the application of intersectionality as a tool for the design of equality policies.
leisure activities, housing or police problems, etc.) Nonetheless, despite the fact that the majority do not observe the gendered dimension of the racialisation process the analysis of cases offers insight into the different gendered experiences of discrimination as well as gendered differences in their response to discrimination.

Women and men differ in their experience of discrimination and their reactions to discrimination. Although the above mentioned “pervasive” experience of discrimination may lead to the fact that both men and women primarily lodge complaints and claims in the area of employment, they can experience different kinds of discrimination in other sectors. The data in the GendeRace study reveal also a gendered dimension to racialisation processes with respect to the types of cases reported, the areas of discrimination and the response to the discriminatory processes. The gendered ethnisation/racialisation process of discrimination is strongly related to the prevalent gendered stereotypes and beliefs about women and men associated to be belonging to certain minorities. This gendered racialisation process views men from certain minority groups as sexist, prone to violence, oppressive toward women and having potential links to terrorism. Ethnic minority women are seen as passive, submissive and if they wear a headscarf as oppressed. Intersectionality plays a role in the intersectionalised discrimination they experience and for which they search protection.

The only group in this study that have made consistent use of multiple discrimination are the Roma in Spain. Seventy percent (70%) of the Roma who lodged complaints were women. They may frequently be subject to discrimination related to their ethnicity, gender and socio-economic situation. The socio-economic factor has not been as explicitly mentioned in other forms of complaints when multiple discrimination is at all an issue.

Generally, although men and women, for instance lodge complaints and claims concerning employment, this may be for different reasons (headscarf); they also report different kinds of discrimination in other sectors. Women report more frequently than men discrimination in access to goods and public services, in education and in housing. Men report more discrimination by the police and the judiciary as well as of racism in access to private services and in leisure activities.

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142 Ethnisation/racialisation process is used here as equivalent due to the reification of beliefs about the gendered quality of the expected behavior of women and men among the persons identified as belonging to a specific negatively valued minority groups.

143 This is thanks to the Fundación Secretariado Gitano, an organisation focusing on the treatment of cases from the perspective of multiple discrimination.
The EU-MIDIS survey seems to indicate that GendeRace findings respective to the impact of gender on racialised / religious discrimination could not be substantiated in their survey. To date EU-MIDIS looked very little at the gendered impact on any other the forms of discrimination. But, the point is made that with respect to the discrimination experiences related to religious symbols and clothing, men and women with muslim origins seem not to differ and in fact no significant discrimination based on religion and gender is found. Gender appears to have less an impact on experience with respect to religious symbols and their way of clothing among women in the EU-MIDIS survey.

How can we explain this differences? The GendeRace study finds a higher number of Muslim women as complainants / claimants who have experienced discrimination for wearing headscarves in work or educational settings. This is not found to be the situation of Muslim women surveyed by MIDIS: "On the whole there are only a few differences between Muslim men and women's experiences of discriminations. Wearing traditional or religious clothing, including a headscarf, seems to only marginally affect discrimination experiences. This finding contradicts common assumptions about the negative impact of wearing traditional/religious clothing, such as headscarves on the behaviour of mainstream society towards minorities".

This conclusion is not statistically demonstrated in the report, since it is not considered significant, nonetheless this observation raises many issues. How can we interpret these differences? The main difference is that the EU-MIDIS survey did not interview those persons who made a claim/complaint because of the discrimination they experienced in access to education or employment. Moreover, the experience of discrimination must be set in the specific national context. The EU-MIDIS survey does not report either on the share of women who regularly wear headscarves or on potential differences within different national contexts. The public debate and its consequences for banning the headscarf in the educational and employment settings differs from country to country. This is not the case in the UK, but it has been highly thematised and has legal / institutional implications in countries like France and Germany. The headscarf policy in France and Germany may be considered cases of institutional discrimination. As observed elsewhere (Alund and Phillips 2007) this

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144 EU-MIDIS 02, 2009 Data in Focus Report – Muslims, pp.7-8. The authors also argue that more research is needed to better understand how women experience discrimination.

145 See especially Loennen (Europe) and Roseberry(Denmark) and Sackofsky (Germany) in Schiek and Chege (2009) for discussion on implications of the headscarf debate for racism, religion and ethnicised discrimination.
leads exactly to the form of intersectional discrimination that these women report in access to education, training, apprenticeships, employment. Thus, one might expect that in those countries where the national debate identifies the headscarf as a significant symbol and creates a ban in certain areas of society there is the potential for institutional discrimination. Not only does the headscarf ban lead to these experiences of discrimination but it is also based on stereotypes of ascribed ethnicised differences. Institutional discrimination helps to reify the stereotypes and stigmas that are being assigned to Muslim women with headscarves. Thus, the negative evaluation and especially the outright institutional discrimination of Muslim women due to wearing headscarves exemplifies a form of intersectional discrimination that is specific to them in certain European countries. The extent of this form of institutional discrimination differs greatly between different European countries. This issue needs further systematic attention taking into consideration the institutional context in all European countries where there is a relative large representation of immigrants from Muslim countries and related possibly to the issue of formal and substantial citizenship.

Both women and men face intersectional discrimination. Societal gendered images assume particularities and greater significance amongst racialised minorities, reinforcing gendered discrimination. Women are more often victims of harassment within the work environment and in their neighbourhoods. Men face discrimination in places of recreation such as bars, discos, sports clubs, and restaurants. Throughout Europe, traditional portrayals of the Roma community embody the gendered forms of discrimination they suffer. Increasingly, the media depicts Muslims as patriarchal, fundamentalist, and linked to radical Islam, terrorism and extremism. In the gendered ethnicised version, women are subjected to domination and men are seen as posing threats both to their families as well as to the state.

This form of institutional discrimination discussed here gives some insight into why women may exhibit a tendency to be more conscious of experiencing racialised discrimination than gender discrimination, even when confronted with multiple discrimination. It also raises the issue of whether in a system based on the need to claim or on an individual basis it could be expected that the individual can perceive the intersectional dimension. For this individual the institutional discrimination experienced relates to their cultural/ethnic/religious origins.

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146 Lister (2007) looks particularly at institutional discrimination from a citizenship perspective.  
147 Solanke (2009) raises the issue of young black men in Britain who are stigmatised in this way. The author makes a point for arguing that this is a special case of intersectionality that is not recognised as a discriminating factor in current implementation of antidiscrimination legislation.
11.2.3. Gendered differences in the access and use of social and educational resources

There are also gendered differences in the access and use of resources with respect to responding to cases of discrimination. Men lodge claims/complaints more frequently than women. Women as a whole make less claims than men. This is especially clear in Germany where 58% of the claims on the ground of ethnic origin are made by men, 38% by women. In France its is 55% more males who make complaints and 39% by women. Women appear to be more careful about taking a discrimination claim to court, men who make claims appear to be more inclined to take the matter further.

According to the gender perspective, these responses can be seen within the structure of social relations in society and between the sexes. In most societal contexts women must fulfill a double burden of domestic and economic responsibilities. Indeed, a number of studies reflect the triple burden of women especially within all “ethnicised” minority communities. This may be seen as a major hindrance to assuming the initiative to file a complaint.

Men, once they are aware of the possibility of anti-discrimination legislation appear to file more complaints and to pursue cases further. In this line of thought, men are more empowered due to the social roles they expect to fulfill in society. They have more expectations about their role in society and perhaps they are even more humiliated by the discrepancy between recognition and expectations. Thus, their empowerment helps them to better identify and assert their rights, enabling them to lodge more claims and complaints than women. The socio-demographic data gathered on this sample gives further insight. This indicates that the population that resorts to a legal remedy when exposed to ethnicised/ racialised discrimination is better situated than the average of the groups of origin. They are primarily made up of citizens, or persons with a long residence in the country, with a relatively high level of education and access to employment.

Thus, the fact that almost 40% of those who initiate claim/complaints are of women indicates that some women as well as men have been empowered enough to re-dress discrimination. Evidently there are certain factors that can empower women as well as men to initiate action to defend themselves against discrimination. These seem to be citizenship, a higher level of education that justifies access to employment and knowledge about the legal framework, as well as birth in the country that may create a higher expectation of equal treatment.
Only the tip of the iceberg is mobilised to claim rights. This evidently has to do with social and educational resources as well as networks that may be more readily available to them. Better educated, skilled or educationally successful they have higher expectations with respect to their rights in this society. Moreover, citizenship or birth or a long period of socialisation in the country motivates them to challenge their discriminatory experience.

As a whole women and men who report discrimination differ from the broader group of persons who have experienced discrimination in the society wherein they live. The Muslim women who wear headscarfs and are discriminated tend to seek educational / training opportunities or a job.

Despite the impact of Islamaphobia and the potential to link young men of muslim origin to terrorism, the men of muslim background who make claims are those who are striving to be permitted to enter the broader society. These men who seek the opportunity to defend themselves from discrimination tend to be better qualified and more likely to be citizens or born in the country where they live. The women and men reporting cases of discrimination in GendeRace have an above average education and occupational training than the majority of their group of origin. They are among the relatively privileged. The women and men who report incidents of discrimination tend to be either citizens of the country of residence, born in the country or long term residents. This also makes them more conscious of the discrepancy between their achievements and the beliefs about and treatments of their group of origin in the surrounding society.

It can be concluded that the GendeRace study provides insight into many dimensions of intersectionality in gendered ethnicising/ racialising discriminatory experiences, the information available to the most vulnerable, the potential of applying multiple discrimination concepts in the claims/ complaints as well as many other issues of implementations. The discussion of the main conclusions point to basic questions that touch on the role of recognition and empowerment for substantive citizenship, participation and the mobilisation of civil society to turn the norm-setting potential of anti-discrimination legislation into positive actions that foster broader equality policies that reach the most vulnerable. In the next section specific proposals are articulated for the main stakeholders.
11.3. Policy Recommendations

Based on these findings and conclusions, the Genderace study has drawn up a number of important messages and specific recommendations, addressed to policymakers, stakeholders, trade unions and civil society actors, both at national and EU levels. These focus on four key areas:

- Promoting exercise of rights and the distribution and use of resources;
- The impact of the “one single law and one single equality body” approach on the handling of multiple discrimination
- The impact of the multiplicity of grounds on gender equality
- Statistics on discrimination and complaints databases and their impact on the visibility of multiple discrimination;

11.3.1 Promoting exercise of rights and the distribution and use of resources

The gap between the tremendous extent of prevasive racialised discrimination, but general lack of awareness of the new legislation by the most vulnerable and the lack of information about the right to find protection against gendered/ ethnicised/ racialised discrimination must give a major priority at the national and local level to reach the most vulnerable groups in society.

**At the national and local level more funding is required**

- Major information and awareness campaigns must be launched to inform all levels of society via the national and local media.
- To professionalize and inform the leadership at the community-level and informal organisations/networks about the importance of legal proceedings.
- To extend the number of public offices assisting victims of discrimination at the local level throughout the country.
  - through aid to the smaller advisory organisations targeting particular groups or communities (e.g. Muslim women, Roma women, French-North African men) in coordination with each country’s national equality body.
• The expense of litigation poses barriers to initiating complaints. Public financing should be made available to those organisations in charge of assisting victims of discrimination to cover the costs of legal proceedings.

Civil Society: Leadership in the trade unions, women’s and ethnic minority organisations and professional organisations need to to ensure that antidiscrimination legislation is applied to all victims. They should

- Take greater initiative in developing litigation strategies
- Trade unions need to become more involved with the responsibility to inform and protect all workers and to be all inclusive in their representation of the most vulnerable. More assistance is needed from trade unions to help victims of multiple discrimination at the workplace.

11.3.2. Multiple Discrimination and Intersectionality

In the course of the research, we have gathered many opinions on the benefits of the one single approach on the handling of multiple discrimination because it provides an identical level of protection against all grounds of discrimination. However, we have also heard more critical views arguing that the handling of multidimensional discrimination is not easy in practice even with a horizontal approach.\(^\text{148}\)

At the EU level

Since the EU initiated the original proposals they are addressed clarify the concept of multiple and intersectional discrimination and to make the concept of intersectionality useful and valuable\(^\text{149}\).

- The EU is called on to make an explicit reference to multiple discrimination as an especially vulnerable form of discrimination within the new European Directive enlarging the scope of protection against discrimination.

\(^{148}\) Exactly the question of the relationship between multiple discrimination and intersectionality has been emphasised in an editorial in a recent special issue of International Feminist Journal of Politics, No.11, 2009

\(^{149}\) Cf. The extensive discussion in Chapter four among legal scholars and social scientists about the necessary conditions required to make the concept available in EU countries for practical legal decision making.
An operational definition of multiple and intersectional discrimination is required that meets the standards set out in Article 21 of the Charter of Fundamental Rights of the European Union\(^{150}\) which has an open list on the prohibited grounds, that could render it possible to offer protection from multiple discrimination.

11.3.3. Consequences of operationalising multiple discrimination and Intersectionality: Positive measures as the best protection from institutional and indirect discrimination

Together with the concepts of multiple discrimination and the instrument of intersectionality positive measures can provide the best measure of prevention from institutional and indirect discrimination.

- The enhancement of provisions of the European Union equal treatment directives by further developing the positive measures to advance equality and to fight against structural, institutional and systemic discriminations. The positive duties on public bodies in the UK may be seen as an example of good practice as this tool adopts an intersectional approach, including all grounds and their possible combinations.

- The EU should provide a sounding board at the European level for the public discussion of positive measures that implement the knowledge gained through intersectional analysis and identification of the groups most vulnerable in a given country. Cases like the above examples including the procedures of designing positive measure should be made available for the main stakeholders including the NGOs concerned at the European and national level.

**At the EU and National levels**

- A specific legal methodological framework is required to deal with cases of multiple and intersectional discrimination that takes into consideration the sociological and socio-historical context in order to better understand the complexity of the phenomenon of discrimination. Here there is a need for multi-level professional expertise.

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\(^{150}\) The article 21 refers to the prohibition of any discrimination based on *any ground such as* sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.
At the national level

- The goal is to be able to draw up a clause at the national level stating that complainants will be allowed to lodge a complaint on several grounds including, at least, the intersection of gender and ‘race’ discrimination within the framework of a single legal proceeding. This should also cover all forms and types of discrimination (direct, indirect, harassment and victimisation).

- The approach of intersectionality is especially suitable for the judicial procedure of employing class action in case law, since the operationalisation of intersectionality, for example, in gendered and racialised discrimination enables the identification of the most vulnerable: women, particularly ethnic minority and women of foreign origin and the development of positive measures, thus furthering equality.

- Awareness raising and professional training amongst legal advisors and counsellors on the existence and implementation regulations and procedures of anti-discrimination laws should be promoted in any organization or institution assisting victims of discrimination. Special attention should be paid to cases of multiple and intersectional discrimination.

For Professional Advisors

- Advisors should inform victims about the existence of multiple grounds of discrimination, so that they may better identify and understand them as a key part of the legal proceeding.

- Increased assistance and information should be provided to victims of discrimination throughout the period of claims or complaints resolution as a whole (and not only in provision of information on the available channels and resources)

- Professional legal experts at the European and national level are called on to become involved in the development of case law to enable the implementation of cases of multiple discrimination to impact the legal framework and to promote its development within European directives.

Civil Society: NGOs representing different interest groups, women’s organisations, ethnic minorities and professional organisation should
- cooperate with lawyers and experts to develop cases that have potential to be recognized as precedents for class action.
- lobby for class action as a method to represent via the tool of intersectionality gendered racialised/ethnicised discrimination and indirect discrimination

11.3.4. The impact of the multiplicity of grounds on gender equality

Despite an impressive equal treatment legislation, we observed that in most of the countries investigated gender inequality is persistent, especially the structural and systemic dimensions of the inequality experienced by women, above all with a migrant background. However interviews with experts and complainants reveal that women from ethnic minorities display a better tendency to identify the ground of racialised/ethnicised discrimination origin over that of gender, which is often perceived only as an additional sign.

Stakeholders have affirmed that organisations tend to find discrimination due to ‘race’ or ethnic origin easier to identify than gender discrimination, even if it tends to be more subtle and harder to prove it.

In addition, the media and public discourse. In the realm of collective truths certain groups in each societal context are racialized/ethnicized according to gender. Muslim women who wear scarves are identified as being subordinated by the male patriarchy of the family or the political control of Islamic fundamentalists. This maintains a higher profile in the media and public discourse than gender. Men of colour are excluded from public spaces due to the intersection of racialisation with their culturalised masculinity predicting sexism and violence. The experiences of exclusion, ethnic and religious stigmatisation makes it difficult to seek partnerships with allies beyond the socially constructed divide created by racism and exclusion.

None the less, there is much to be done to open up gender specific discrimination especially with respect to intra-group discrimination against women of colour and women from the “ethnicized” minorities in Europe.
At the EU Level

There is a need to stress the

- Harmonisation of the European Union equal treatment directives for the protection against discrimination on the gender ground. This should be extended to the level of protection currently afforded on the “race” ground at the European level (extension of the protection to education, media and advertising)

At the National Level

Institutional Cooperation with the National Equality Body

- Designing a special mechanism to increase the level of cooperation between institutions. Executive, legislative and judicial powers should undertake joint efforts with the creation of an intra-institutional body, with the participation of NGO representatives, in those cases where the National Equality Body are not properly handling this role.

- A focus on the role of national equality bodies in setting, enforcing and monitoring standards for gender mainstreaming to policies and programmes outside and in the labour market to ensure a planned and systematic approach to gender equality. Gender mainstreaming methodologies should be intersectional and include a focus on the specific needs, situations and experiences of different groups of men and women

- Increased visibility of gender differences in the experiences of discrimination by producing gendered statistics (analysis of grounds, sectors of occurrence, types of discrimination) and report of multiple discrimination cases in the annual activity reports and web-sites of national equality bodies

- A unified protocol for main public services (e.g. police, hospitals, schools, etc.) to identify and redirect cases of discrimination to the national equality body and/or further organization in charge of assisting victims of discrimination This would be particularly the case if the national equality body is resourced to take these cases on or signpost them elsewhere.
11.3.5. A need for unified statistics on [multiple] discrimination

Despite the need for accurate data in assessing the scope of discrimination suffered, the GendeRace findings point out that data on (multiple) discrimination is still very rare and is not coordinated in a meaningful sense at national and local levels. Therefore the development of a standardized system for gathering information on complaints handled by national equality bodies and NGOs is strongly needed.

Our key policy message and recommendations addressed to all stakeholders is that there is a need for:

- Adoption of same criteria and indices for data collection, data recording and public availability by national equality bodies in order to allow comparative analyses of the phenomenon at the European level. This should include the possibility of registering multiple grounds, thus multiple discrimination.

- More particularly all agencies of the European Union that address relevant information and studies on the situation of different minority groups or other collectives or other groups subject to discrimination shouldanalyse and publish gender specific data. The cross section of data on gender and other social categories of official social demographic data is necessary for the development of positive measures and furthering equality.

- Greater coordination between organisations and institutions at national and local level so that they follow the same guidelines when collecting cases of discrimination (common methods) allowing a national overview on discrimination.

- More quantitative and qualitative data and statistics on case-law studies regarding issues of (multiple) discrimination.

- Extremely important for cases of intersectional discrimination, positive measures and Equality programs is the introduction of socio-demographic data on plaintiffs in complaint registration systems (gender, age, nationality, ethnic or ‘racial origin’, occupation, level of education) to identify discriminated sub-groups so as to target non-discrimination policies more accurately.
A special national regulation on access and use of data will be necessary that respects the following principles:

- To avoid undesirable categorisation systems the method will be employed of freedom of choice and self-identification of the fear that has been debated of reifying the categorising process of individuals with respect to nationality, mother tongue, religion, ethnic group or other “racialising categories.”;

- Persons need to be advised on the anonymity of their personal files. The persons who have made complaints/claims about discriminated will also be advised of the importance of the data for combating all forms of discrimination.

- No data on an individual level will be made available to the author of discrimination.

- Data must be coded in a system that makes it impossible to identify the origins of the complainants.
- Access to anonymised individual cases will only be made available for research purposes to the academics who have agreed to meet the necessary ethical procedures.

- These data and statistics should be more readily available to the public, always within a frame of rules and regulation for privacy.
Chapter 12: Concluding remarks

by
Olga Jubany
GendeRace has made possible the examination of the phenomenon of multiple discrimination throughout the EU, and proved, through an in-depth comparative investigation in six European countries, that this is a social aspect insufficiently addressed both in national and European frameworks. This final section of the Report does not attempt to introduce further conclusions or summaries of the information presented, nor to extend upon the recommendations provided. Rather, it is our intention here to point out a few general remarks that may otherwise be over-looked.

Attention should be called to the fact that these findings are as applicable for those EU countries with a relative recent history on antidiscrimination measures, such as Spain, as well as to those countries with a long experience of antidiscrimination such as Sweden and the UK. Furthermore, in both cases, findings have informed us about how this is particularly true for multiple discriminations suffered by women, demonstrating that the natural course of law will not address discrimination in a comprehensive way, unless an intentional intersectional approach is adopted.

Beyond the conclusions and recommendations, we have learned through this research the strongest and weakest points of national legal frameworks and policies, of practices and of structures dealing with multiple discrimination complaints. It has also been revealed that whilst addressing antidiscrimination issues in a comprehensive way is not easy in any national legal system, or at the EU level, it is not impossible either. The results of our analysis have allowed us to unearth specific good practices at the institutional level, and showed us that the essential idea and concept of multiple discrimination is slowly gaining ground at the European and national levels, moving from being a useful tool towards becoming indispensable for understanding and tackling discrimination on all grounds. In this context it is worth mentioning how the European Commission has adopted a multiple approach in 2007 – A European Year against discrimination and for equality where the European Commission has clearly called for the introduction of gender mainstreaming in all programmes of antidiscrimination lobbies and for a cross-fertilisation of good practices between communities. This multiple approach is also present in the initiative: 2010 - Year against poverty and social exclusion, an area where issues of multiple discrimination are specifically addressed, such as the actions against exclusion of people with disabilities who are seen at significant risk of poverty and social isolation.
However it must also be pointed out that in these efforts to bring discrimination to light, the gender dimension has often been overlooked, and the multiple approach abandoned. In 2007 for example, in the guidelines for implementation of the Equal Opportunity Year 2007 at the national level, the European Commission did not make it clear to member states that they should include gender mainstreaming in their actions. As a result, almost none of these states implemented Gender Mainstreaming and developed very few specific actions in this direction, disregarding the multiple discrimination approach.

In contrast, as we have seen, within the academic debate the concept of intersectionality and multiple discrimination is increasingly used by most social scientists, including sociologists and legal academics. The term, and furthermore the idea, has been developed and debated for many years and is now considered a crucial tool for analysing the overlapping and interrelation of diverse sociological phenomena as well as for developing approaches to deal with the multiplication of grounds in discrimination. Evidently, an approach rather different than the one we find in the policy making arena, but both approaches are clearly revealed by the empirical work carried out in this research.

So whilst it could seem redundant to ascertain that empirical research has to inform policy making and that the policy agenda has to be inclusive of contemporary investigation, the GendeRace project provides evidence of the existing disconnection between academic debate and policy making in this area. Besides it seems that it is precisely through experiences like the GendeRace that we find a ground for common understanding between the academic and the policy making –or legal research in the field of multiple discrimination.

As the project findings demonstrate, there is a fundamental need for academic research to inform antidiscrimination policy processes and for social scientists to get involved in the policy debate on discrimination issues, to inform the direction of policy, and establish common languages, particularly regarding multiple discrimination and intersectionality. Research like the one we have carried out for almost three years is nowadays essential, not only to reveal the empirical findings but also to establish the interface between research and the public policy agenda both in the national as well as international contexts.
The abstract level of analysis and debate surrounding intersectionality is as crucial to understand our society, and the current problems regarding discrimination experiences and complaints, as it is for informing the empirical findings of our research and the policy proposals and recommendations that arise from them. This theoretical paradigm provided the foundations that framed our hypothesis, our methods and our conclusions, and has been used to develop the meaning beyond the specific case studies and ensure a wider more generalized meaning and impact. At the same time policy aspects have been fundamental to inform us about the standards and norms applied everyday regarding discrimination claims and complaints, and the further we get from the complex international framework and academic concepts, the more blurred the connections with the implementation level become.

We should examine the critical findings that the GendeRace project has put forward and interpret them beyond its arena, as an illustration of the bridge that can be built through research between academic debate and policy making in the fight against gender and racialised identities discrimination. The GendeRace project provides scientific evidence that policy-making cannot afford to ignore, both in specific and abstract terms. But furthermore it also raises the need to shape the direction of debate on the European antidiscrimination framework by establishing a corresponding theoretical approach to intersectionality.

By developing research on the lines of the GendeRace we contribute to bridging the gap between theory and practice; between academic debate and policy making, between national and European levels. It is only with this approach that we will be able to plan for realistic policy and design better informed tools to respond to the social needs, in the frame of legitimated policies that are efficient and respectful of social and individual rights.
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In order to facilitate the track down of the references cited in the text of the report, this section has been divided following the same structure, in terms of Parts and Chapters, as the whole document. Due to this division, some references could be repeated, in cases where the citations have been mentioned in more than one Chapter.

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