Intersectionality and the Implementation of EU Antidiscrimination legislation: An Overview of concepts, policies and issues

The aims of the Genderace Project are to evaluate the effectiveness of Racial Discrimination laws from the point of view of the target group and in a gender perspective as well as to improve understanding of the phenomenon of double discrimination.

In order to do so the project has explored issues of discrimination, double discrimination based on "race" and gender, intersectionality and multiple discrimination from an extensive review of both official publications from the European Commission as well as through academic literature. (WP3: 'Race' and Gender Overview) Whilst this has focused on the European Union, attention has also been paid to relevant legal and sociological literature from Canada and the US.

Through an intersectionality approach, Genderace investigates the impact of gender on the experience, application and uses made of legislation with regard to racialized[1] discrimination[2]

First identified within juridical procedures, it was Crenshaw's (1989) intention for the term to be recognized through anti-discrimination legislation in the US within the discourse of justice. From the pioneer work of black feminists, intersectionality has since become significant within the vocabulary and understanding of feminist studies across Europe.

In evaluating these studies, we have focused on those that best address our themes and have found methodologies applied in order to differentiate the impact of specific milieus and contexts as especially useful.
(Cf, e.g. Phoenix, Wekker, Berreswill).

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[1] Racialized discrimination is used here to point out the social construction of assumed membership in a group based on physical features, skin colour or cultural or ethnic characteristics for ideological purposes of exclusion or to identify and/ or to ascribe certain behavioural characteristics that would imply inferiority or would legitimate discrimination.

[2] It may be possible in some instances/ countries to control for the impact of racialized ethnic origins on the experience and use of legislation concerning gender discrimination in the fields of employment, occupational training and education.

The main findings are:

→ **Norm setting implications – awareness raising for multiple discrimination:**
The implementation of the European directives into anti-discrimination laws in the 25 member states sets new norms with respect to the major grounds for discrimination of categories of persons due to gender, racial/ethnic origins, abilities, religion/ beliefs, sexual orientation, age.

→ **Multiple discrimination has received greater recognition and legitimacy through the above implementation of the EU directives.**

→ Reference to multiple discrimination in the prefaces of EU documents is not in itself adequate in guaranteeing implemention in judicial practice.

→**There is a need for explicit and binding regulations in the national legal system that would make it feasible to consider multiple grounds in discrimination cases.** (Cf. Canadian case)

→ **Intersectionality is a conceptual tool for grasping the impact of multiple memberships in discriminated groups**. It has been stated that racialised collectives may experience unique lived locations in social space – By understanding intersectionality we are more able to appreciate the impact and significance of multiple discrimination. In addition, we may be able to better identify collectives suffering particular forms of discrimination.

In some cases multiple discrimination is legitimized based on a common stigmatizing belief about the behaviour for example, of black adolescent males in certain circumstances (Solanke 2009).

Groups recognized within the literature as potential cases of gender and racialized identities with grounds for multiple discrimination:

→ **External Discrimination:** migrant women and ethnic minority women with respect to legal rights, marriage status and dependency on marriage partners for legal rights, women in cases of human trafficking, Roma women**.**

Muslim women who wear headscarfs: In their volume, Schiek and Chege (2009) have written 4 chapters which address intersectionality of sex, religion and racialized discrimination. They examine the discriminatory and patronizing attitudes that these women are sometimes viewed as having a false consciousness.

→**Internal Discrimination:** Women excluded due to their ethnic origin may be further subjugated within their own groups due to associated cultural or religious values and issues of social control.

In some cases legislation has been implemented to protect women suffering external or internal discrimination. However such decisions remain controversial in the case of the rights of Muslim women to wear headscarves.

→ **All studies of multiple discrimination need to be grounded in the local reality, contextualized and reinforced with historical knowledge.** This statement is asserted by the work of Vieten (2009). Certain collectives / ethnic groups may have apparent similarities but the experience of discrimination may vary considerably from country to country.
→European studies and judicial experiences (Schiek and Chege 2009)

demonstrate that difficulties exist in the implementation and enforcement of individual rights of equal treatment when concerning discrimination. In this case the project authors propose **a need for equality goals and mainstreaming.**

This report is available on the GendeRace website : http://genderace.ulb.ac.be

Key expert guidance

Interviews with around 60 experts, including social partners, women and migrant organisations, have been carried out in all six partner countries and with experts at a European level. These interviews provide a valuable overview of anti-discrimination policies and their impact on race and gender issues in each country as well as within the wider European context.
Advice from experts and stakeholders has provided key feedback for methodology on the interviews of complainants and the insights will also be incorporated into the thematic and final reports.

Here, we would like to take the opportunity to thank everyone that has contributed their time and efforts to this important part of the project.

Autumn workshops for stakeholders

Autumn workshops will take place in each of the six parnter countries for discussion of the initial findings emerging from the project.

Around 10 to 15 key stakeholders will be invited to attend each half-day event to evaluate project findings regarding policy recommendations.

The GendeRace project : a complex methodology

The project methodology focuses on issues of conducting international comparative research and in particular on how the differences encountered in the diverse range of countries impact on the conduct of the research. For the GENDERACE 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 (especially employment) covered by discrimination legislation and data collection; and the regulatory ethical frameworks 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 its transfer to third parties. Only in the UK are official statistics collected on ethnicity. In other countries, place of birth and nationality may serve as proxies to provide us with a means of assessing discrimination. Access to data and the type of ethical regulatory framework results in a complex pattern across the six countries which will be analysed in the report. On the other hand, there may be fewer problems raised in interviewing stakeholders as in WP7 where access and consent may be obtained directly without a need to rely on intermediaries.

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. This extends from objectives to outcomes and the ways in which they have sought to connect different types of data and results through comparative analysis. 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), and the meaning and interpretation of contested concepts and their transferability across societies (Cameron and Moss 2006). In addition we have drawn from valuable surveys of access and availability of ethnic statistics and data protection concerning EU and Council of Europe states (Simon 2004, 2007).

The methodology report is available on the GendeRace Website : http://genderace.ulb.ac.be

Understanding the langage of race and gender discrimination

An important element of the Genderace project has been the creation of a **Glossary** of terms covering race and gender discrimination. This serves as a vital tool in allowing us to challenge existing terminology used in the discourse around discrimination and to consider the implications of the use of such terms for those ascribed them.

As the GendeRace framework works from an exploration of baseline concepts related to "race", gender, discrimination and intersectionality, we recognise the significance of the language as fundamental to our work. Through the production of a Glossary (WP6) we are enabled to better examine and develop the most effective terms and concepts, which are available on the project Intranet and regularly updated.

From an appreciation of the nature of the key terms used as often contested and debated, partners are provided with a means to contribute terminology they deem to be most appropriate. This allows ongoing discourse to be maintained as well as the achievement of shared understandings for use within project documentation.

Significantly, the creation of this common set of terms is also targeted at the wider audience across the European Union, encouraging awareness and debate on the implications of the use of terminology for those defined by it.

Work on the Glossary commenced in March 2008, and thus far 87 central concepts, mainly focused on race, gender, intersectionality and discrimination have been negotiated and approved by the partnership.

We see each project meeting as a useful opportunity for partners to engage in discussion and consensus around the Glossary. At the most recent meeting in Barcelona (19th-20th March 2009), an activity session was held in which the partnership established a core set of 15 'umbrella' terms seen as most valuable.

GendeRace Aims

Focusing specifically on "race", ethnic and gender discrimination, the project's objectives are:

- ❖ To deepen understanding of the impact of gender on the experience of racial/ethnic discrimination;
- ❖ To improve the knowledge of the combined effects of racial/ethnic and gender discrimination in order to reveal the various forms of specific discrimination that women experience;
- ❖ To deepen 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 expectations of the complainants;
- ❖ To test key theories concerning the e

> **GendeRace project website launched**
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> The GendeRace project has launched its new website at:
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> **http://genderace.ulb.ac.be**
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> The site explains the aims of the research and shows the work of the project so far

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ground specific approach to antidiscrimination legislation on the treatment of double discrimination based on "race"/ethnicity and gender;

- ❖ To develop practical tools to assess the effectiveness of policies and practices in the field of antidiscrimination in order to take into account the intersectional dimension of discrimination.

GendeRace Partners

The GendeRace project is being carried out by a partnership of research team in 6 European member states, co-ordinated by the Université Libre de Burxelles (ULB) and the University of Barcelona (UB).

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The other partners are: the Social Policy Research Centre (SPRC) of Middelex University in the UK; the Centre for Technology and Society at the Technical University of Berlin (TUB); The Kalmar University in Sweden and the Centre for Minority Studies and intercultural Relations (IMIR) in Bulgaria.

The Genderace Project was presented at the EYO annual conference in Cologne, by Dr. Olga Jubany Baucells, and at the Second European Conference on Multidimensional Equality Law, which took place in Leeds in March 2009, raising great interest and stimulating some valuable feedback from participants.