



## Policy Brief

# genderace

**The use of racial anti-discrimination laws**  
Gender and citizenship in a multicultural context

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## KEY FINDINGS AND POLICY RECOMMENDATIONS

The GendeRace research project, coordinated by the Free University of Brussels (ULB) and the University of Barcelona (UB) has been carried out by six teams in France, Bulgaria, Germany, Spain, Sweden and the UK. Beginning in February 2008 and ending in July 2010, GendeRace is funded by the European Commission Seventh Framework programme for Research.

### **New knowledge, new concepts and European added values**

Based on a study of 914 case law and complaint files, 120 interviews of foreign nationals and members of ethnic minorities and over 60 interviews of stakeholders, NGOs and social partners, including lawyers dealing with complaints, the research reveals key insights on those making use of the legal and institutional framework when confronted with discrimination.

Our findings reveal that despite a tendency towards a ‘one law, one equality body’ approach in the six countries and no legal prohibition of multiple discrimination, the multiple ground approach is still applied only very exceptionally. This is for various reasons, such as legal experts’ one ground competency, the absence of an operational definition and methodology and the difficulties complainants may have in identifying their experiences as multiple.

The research demonstrates the significant impact that gender has on racialised/ethnicised discrimination despite a frequent lack of perception by those affected by and dealing with racial discrimination. Gender makes a difference in where and how individuals experience discrimination and in how they react to and handle the situation.

Both women and men face intersectional discrimination. Gendered racialisation is based on societal gendered images amongst racialised minorities. It appears that women are more often the victims of harassment and of intra-group discrimination, with men most commonly facing discrimination in public places of recreation or leisure.

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The project has revealed a greater tendency to lodge complaints on the part of men, with women more inclined to settle a complaint. Women also display a greater tendency to disregard gender discrimination, even when confronted with multiple discrimination.

Many interviewees, both men and women, have difficulties in articulating the nature of their experience as discrimination and this is even more so in cases of multiple discrimination.

## **Key policy messages and recommendations for policymakers, stakeholders, Trade Unions and civil society**

The research has identified a number of important messages, with a range of policy implications at both European and national levels. These 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

### *Gendered access and exercise of rights*

The socio-demographic data on complainants/claims gathered through the analysis of complaints/claims and interviews demonstrates that those using legal remedy when exposed to discrimination are primarily citizens of foreign origin with a high level of education and in steady employment.

A gender perspective suggests that women must often fulfil a double burden of domestic and economic responsibility, reducing the likelihood of them filing a complaint or increasing the probability that they will settle if they do so. In contrast, men appear to pursue cases further. They lodge more claims and complaints than women, revealing a tendency to better identify and assert their rights.

We therefore recommend:

- ❖ The promotion of information and awareness campaigns to inform community-level and informal organisations/networks of the importance of legal proceedings, particularly amongst the most vulnerable communities (migrant women, Roma, Muslims)
- ❖ Investment of more public financial resources for organisations in charge of assisting victims of discrimination to cover the costs of the legal proceedings
- ❖ That financial provision be made in fostering cooperation between NGOs working on single-ground areas of discrimination. This should be focused towards the development of networks for multi-ground dialogue and operational understandings of intersectionality

Responsibility rests not only with policymakers. We also argue that civil society organisations and Trade Unions, women’s and minority organisations in particular, have a responsibility to ensure that anti-discrimination legislation is applied to all victims. Specifically, we recommend:

- ❖ The adoption of greater initiative by associations in developing litigation strategies for multiple discrimination
- ❖ The possibility of lodging class actions should be made available and recommended to enable women, particularly women of foreign origin, to make progress on the issue of multiple discrimination more quickly and on a larger scale.
- ❖ Development of case law on multiple discrimination by lawyers as a way to impact the legal framework and promote its development within the European directives
- ❖ More assistance from Trade Unions to victims of multiple discrimination at the workplace and more promotion of ethnic minorities and migrants, especially women, within Trade Unions.

### *The impact of “One single Law and One single Equality body” approach on the handling of multiple discrimination*

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 as it provides an equal 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. Therefore, there is a need to clarify the concept of multiple and intersectional discrimination and to make the concept of intersectionality useful and valuable. Our message to policymakers and to civil society organisations is that there is a need for

- ❖ An operational definition of **multiple and intersectional** discrimination that meets the standards set out in Article 21 of the Charter of Fundamental Rights of European Union<sup>1</sup> which has an open list on the prohibited grounds, which could enable the offering of protection from multiple discrimination
- ❖ A specific legal methodological framework to attend to cases of multiple and intersectional discrimination which takes into consideration the sociological context to better understand the complexities of the phenomenon of discrimination.

### *A need for unified statistics on [multiple] discrimination*

Despite a need for accurate data for assessing the scale and nature of discrimination experienced, GendeRace’s findings point out that data on (multiple) discrimination is still very scarce and not coordinated in any meaningful sense at national and local levels. Therefore, the development of a system for gathering information on complaints handled by national equality bodies and NGOs is essential. Our key policy message addressed to all stakeholders underlines the need for:

- ❖ Adoption of similar criteria for data collection, data recording and public availability by national equality bodies in order to allow comparative analyses of the phenomenon at the

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<sup>1</sup> 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.

European level. It should include the possibility of registering multiple grounds, thus multiple discrimination

- ❖ More coordination between organisations and institutions at national and local levels to ensure following of similar guidelines in collecting cases of discrimination (common methods), thus permitting a clear national picture on discrimination
- ❖ More quantitative and qualitative data and statistics on case-law studies regarding issues of (multiple) discrimination
- ❖ 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 more accurately target non-discrimination policies

### *The impact of the multiplicity of grounds on gender equality*

In the majority of the countries studied, racialised and ethnicised discrimination is more perceptible to those making use of new protective legislation for reporting discrimination. Until recently, discrimination based specifically on one's racialised or ethnicised identity had not been recognised as a ground for discrimination in several countries. As a result, we find a backlog of persons with the perception that they are being discriminated against due primarily to ascriptions associated with their group of origin. As a result, pure gender discrimination is less apparent to those making official complaints than their 'other' apparent racialised or ethnicised differences.

Stakeholders have affirmed that organisations 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. In several countries, 'race' maintains a higher profile in the media than gender. There is a perception that the battle on sex discrimination has been won and that it is now time to move on, to the battle against race discrimination.

The gender-specific elements of racialised discrimination are rarely apparent to victims of discrimination and the institutions. This is a compelling reason for more specified, contextualised and intersectional approaches to multiple discrimination. Positive action and gender mainstreaming must take into consideration the intersectional impact of racialised, ethnicised discrimination. Our message to policymakers is that there is a need for:

- ❖ 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 the 'race' ground at the European level (extension of the protection to education, media and advertising)
- ❖ The enhancement of the European Union *Equal Treatment Directives* provisions by further developing positive duties to advance equality and to fight against structural 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
- ❖ A focus on the role of national equality bodies in setting, enforcing and monitoring standards for gender mainstreaming to policies and programmes both externally and internally to the labour market to ensure a planned and systemic approach to gender equality. Gender mainstreaming methodologies should include a focus on the specific needs, situations and experiences of different groups of men and women

- ❖ Increased visibility of gender differences in the experience of discrimination by producing gendered statistics (analysis of grounds, sectors of occurrence, types of discrimination) and reports of multiple discrimination cases within annual activity reports and websites of national equality bodies

Nonetheless, the results of our analysis have allowed us to unearth specific models of good practice at the institutional level, revealing that the essential idea and concept of multiple discrimination is slowly gaining ground at European and national levels. Worth mentioning is the adoption of a multiple approach by the European Commission in 2007 – *A European Year of Equal Opportunities for All* where the European Commission clearly called for the introduction of gender mainstreaming in all antidiscrimination lobbies' programmes and for a cross-fertilisation of good practice between communities. This multiple approach is also present in the initiative: 2010 – *European Year for Combating 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. At national level, the following table below provides examples of how partner countries have begun to integrate the concept.

- ***The UK Equality Bill: A first step to approaching multiple discrimination***  
The Government Equalities Office has set out a proposal for a legal provision for inclusion in the Equality Bill which would provide protection from multiple discrimination<sup>2</sup>.

*In Germany some anti-discrimination offices use a horizontal approach that stresses the aspect of multidimensional disadvantages.*

- ***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)<sup>3</sup>, 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 to the creation of the Equality body as a means of combating discrimination.
- ***The multiple discrimination perspective adopted by the Fundación Secretariado Gitano<sup>4</sup> 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 make information on multiple discrimination available 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.

*In Sweden, The new Ombudsman's office is organised in a horizontal manner, which may foster multiple discrimination claims*

<sup>2</sup> 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.

<sup>3</sup> 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)'.

<sup>4</sup> FSG is an NGO with offices throughout Spain with the Roma community.

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