

genderace

The use of racial anti-discrimination laws

Gender and citizenship in a multicultural context

WP4

General Report

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1. Introduction

Since the adoption of the "Race" Directive¹, 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. However, some of these institutions do not have such a database yet, such as in UK. This is why it was necessary to collect cases from different sources.

The objective of WP4 is to analyse the gender facet of complaints lodged for discrimination based on ethnic origin or "race". The aim is to achieve a better understanding of the impact of gender on the experience of racial discrimination. The quantitative data assembled from the complaints should reveal not only the exact number of complaints lodged by women and men who are in contact with the bodies set up to receive them but also the legal or administrative instruments they employed when they were faced with discrimination.

The second objective of this research is to obtain better understanding on how gender influences the way complaints are processed and the extent to which gender may intervene in the methods adopted to settle a dispute. Lastly, an analysis of the complaints will enable us to verify whether there are cases of multiple discrimination based on both gender and ethnic origin, and to explore how the institutions process these cases.

Data were thus collected from the competent bodies where possible in the six countries participating in the research: Bulgaria, France, Germany, Spain, Sweden and the United Kingdom. The analysis of this information required adopting a strict methodology (2) which was followed to compile a sample (3). The impact of gender on the experience of racial discrimination was analysed on the basis of some 900 complaints (4) to have a clearer picture of: gender differences in the use of the resources (5) and the methods employed to settle disputes (6). Policy recommendations were then formulated (8) on the basis of this information.

2. Methodology

2.1 Construction of the sample

It was decided that the sample compiled should contain some 1000 complaints (160 per country) lodged over the past five years in order to account for any impact of national transposition of the "Race" directive.

The researchers' first step was to identify possible sources for the data they sought, primarily from the institutions competent to receive them, such as equality bodies, or NGOs as the "Race" Directive stipulates that they are competent to act on behalf of the complainant or provide support or advice agencies.²

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,

¹ Directive 2000/43/EC of 20 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. O.J. N° L182 of 19 July 2000.

² See Article 7 of the Directive: "Member states shall ensure that associations, organisations and other legal entities, which have, in accordance with the criteria laid by their national law, a legitimate interest in ensuring that the provision of this Directive are complied with, may engage, either on behalf or in support of the complainant in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive".

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 anti-discrimination offices sent the promised data rendered anonymous because they were understaffed and too busy to find time to do any work on files.

We should thus highlight a noticeable difference between the number of organisations potentially capable of providing information and the information actually collected.

2.1.1 Data provided by a variety of sources

The information sources are primarily:

- ❖ Equality bodies
- ❖ Local anti-discrimination offices
- ❖ NGOs

Other sources were also used, such as the Employment Tribunals in England, because they conduct yearly analyses of cases of job-related discrimination. In Germany, faced with the difficulty in gathering data, the researchers also called on the European Forum for Migration Studies/Institute at the University of Bamberg, which provided information on three cases of discrimination.

1: Sources per country

Country	Organisations/other sources	Tasks	Complaints
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			available
<i>Sweden</i>	DÖ	Defend against discrimination on the grounds of ethnic origin and religion	112
	JÄMO	Monitoring of equal rights for men and women	22
	Local AD agency	Combat discrimination based on race, gender, religion and other grounds	26
<i>Bulgaria</i>	Ombudsman	Propose to the authority to take measures to stop or prevent discrimination	21
	Commission for protection from discrimination (CPD)	Combat discrimination based on race, gender, religion and other grounds, including cases of multiple discrimination	128
	Case law		7
<i>Spain</i>	Antidiscrimination office of Barcelona		75
	SOS-Racism		160
	Fundacion Secretariado Gitano		68
<i>France</i>	HALDE	Equality body	74 deliberations + 19 law cases
	MRAP	NGO fighting against racism	65
<i>UK</i>	Employment Tribunals		100 + 11 law cases
	Citizen Advice Bureaux	Advice on discrimination	6
	Law Centres (in London)	Provides local help in social welfare law: legal advice/representation service	43
<i>Germany</i>	Anti-discrimination Office of Hannover	Claims on the ground of ethnic origin	46
	Anti-discrimination Network of Berlin		91
	European Forum on Migration Studies of Bamberg University		3

A difference should also be noted between the local information sources in decentralised countries, such as Germany or Spain, and national sources.

In the UK it was necessary to use several different data sources to obtain 160 claimant files. One is a representative national sample; the other are few cases, non representative, collected in specific boroughs of London. These are of different status

which will be interesting for comparison within the UK but on the other hand raise challenging questions about comparison between states.

2: Geographical location of the sources

Countries	National Antidiscrimination Office	Local AD Office	NGOs	Divers
<i>France</i>	HALDE		MRAP	Case law from tribunals
<i>Spain</i>		Office of Barcelona	Sos-Racism Fundación Gitano	
<i>Bulgaria</i>	CPD Ombudsman			Case law from tribunals and district courts
<i>Sweden</i>	- Dö (race) - JämO (gender)	Office of Malmö		
<i>Germany</i>		Office of Hannover (Germany)	AD Network in Berlin	Research Center
<i>UK</i>			Citizen Advice Bureaux - Law Centres	-Employment Tribunals

Accordingly the results of this study are to be interpreted in the light of the sources consulted and their diversity. They do not claim to be exhaustive nor to represent the full picture of cases processed in each country.

2.1.2 Issues with the data collection guide

To ensure that all the partners collected data in a coordinated manner, a common data collection guide was prepared. It was to cover general information on the complainant (age, sex, origin, family status, residential status, profession, education). Information was also to be collected on the discrimination experienced and the context (ground, sector, relation with the perpetrator,...) as well as the method adopted to settle the dispute.

The guide had to be revised to take specific national circumstances into account, whilst maintaining a common data collection structure for the categories to be used. The objective was a guide that could be adapted to each national context, given different customs in data collection, categorisation and dispute settlement. Lastly, the discrimination motives, especially those concerning origin and nationality, had to be reworked in common in order to encompass all the national differences.

Data collection methods, the categories used and the data collected vary widely not only from one country to another but also within one country. These differences must be taken into consideration and may influence the interpretation of the data.

2.1.3 Limits of the study and interpretation of the results

The information collected under WP4 only covers cases where people lodged a complaint when they were victims of discrimination. Consequently the study cannot claim to trace the reality of discrimination actually experienced in each country. The analysis is restricted to the information provided to the institutions or to the organisation giving advice and not to the complainants' overall experience of discrimination.

The complaints are a weak indicator of the reality of discrimination experience since many instances of discrimination are unlikely to spawn a complaint.³ This is due to the fact that the 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.⁴

Furthermore, not all countries have invested the same efforts in campaigns to inform the public about these bodies competence to receive complaints. Some have launched vast information campaigns in the media, others only limited campaigns, and some none at all.⁵ These actions, or non-actions, have an undeniable impact on the volume of complaints.

In addition, 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 descriptive data drawn from the sample thus neither can nor should be interpreted as representative of the people exposed to discrimination. They reflect the analysis of the information available to the researchers.

³ Makkonen Timo (2007) European Handbook on Equality data, Luxembourg: Office for Official Publications of the European Communities, p. 65.

⁴ Ombudsman against Ethnic Discrimination Newsletter 2002 : 1, available at <http://www.do.se>

⁵ FRA Annual report 2008, Vienna, Chapter 2.

2.2 Specific issues in conducting international comparative research

2.2.1 Differences in the meaning of basic concepts

In the framework of transnational comparative studies, problems often arise in the interpretation of the concepts used, even if all the partners were in agreement initially. In the GendeRace project, although the partners agreed on a "dynamic" definition of the terms *Race* and *Ethnicity*, seen as a social construct, national differences soon emerged. These differences in interpretation, or the use or non-use of concepts, had a direct impact on data collection possibilities.

This was the case for the term "Race" the use of which is excluded from official discourse in countries like Germany or France for historical reasons. As a result data could not be collected on this basis. The same applied for the term "ethnicity" – the UK alone officially collects ethnic data, based on a self-declaration system. On the other hand, these countries did not always systematically collect data on the complaints' country of origin. In the final sample, for example, this information was only provided for complaints lodged with the Citizen Advice Bureaus (CABs) and the Law Centres.

Sweden also collects data on complaints based on ethnic origin. However, if the person holds Swedish nationality and was born outside Sweden, it is hard to find information on national origin for the system does not foresee a field for the country of origin.

In other European countries, a person's origin can be discerned on the basis of birthplace or nationality. This is the case for Germany and France. These data, however, are not encoded systematically. In France, for example, the HALDE's data entry system differentiates people on the basis of their nationality. If the person is French, but of

foreign origin, the origin must be deduced from information in the statements. In Germany, the data collected are based on the person's country of origin. In Bulgaria the ethnic origin is indicated only if the complainant considers that necessary – mainly in cases of complaint for discrimination on ethnic or religious grounds. There is no unified system in all countries and only some centres collect this type of information.

Due to this potential problem of interpretation, this is why the GendeRace project has devoted a whole Work Package to elaborate a glossary, which has in turn helped the elaboration of WP4.

2.2.2 Contextualisation of the results

In a transnational project, the data collected must be contextualised so they make sense in relation to other more general data. Contextualisation can be defined as "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 we have analysed and data we have gathered".⁶

According to Brannen and Nilsen, contextualisation leads to interpreting results in the light of the literature already existing on the subject under study. In the GendeRace project, the results obtained under WP4 are thus analysed in relation to the state of play established at the start of the project (WP2) as well as the literature on multiple discrimination and the theory of intersectionality (WP3).

The results are also placed in perspective in relation to national data, especially concerning the populations most exposed to discrimination in a national context, the most frequent motives for discrimination, and the sectors in which it occurs most often (see WP2, annexes).

⁶ Brannen, J. and Nilsen, (2006) *Contextualisation in cross- national comparative qualitative/ biographical research*. ESRC NCRM TRAINING Institute of Education, London.

2.2.3 The availability and coverage of comparable statistical data

A notable difference in the various countries' collection methods

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 Great Britain, one of the first European countries to have adopted anti-discrimination 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 anti-discrimination policies.

On the other hand, public anti-discrimination 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 system set up by the HALDE will also be used by the local centres developing throughout the territory. 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. This means it is practically impossible to

draw up national statistics since the collection and categorisation methods are not harmonised.

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 recognise discrimination differently. Thus, a combination of recent immigration flows alongside recent anti-discrimination 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.

Another aspect to be taken into account are emerging differences in the main groups of people who are targets of discrimination in the countries concerned. In countries where immigration is longstanding, moreover, the people exposed to discrimination can be either citizens of foreign origin settled in the country for several generations or else newly arrived foreigners. This is especially true in France, Germany and the UK. In countries that have only recently seen immigration flows, such as Spain or Bulgaria, the main targets of discrimination are Roma and recent immigrants, or in the case of Bulgaria members of ethnic minorities as Turks and religious ones as Bulgarian – Muslims (Pomaks).

The data sought do not exist or are inaccessible

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 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.⁷ 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

⁷ 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.

research programme, signing an agreement with the research body and obtaining prior authorisation from the CNIL.

In Germany, two governmental anti-discrimination offices refused to transmit their data, while two local anti-discrimination 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.

And lastly 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 files or at least to its decision. The team, however, did not obtain access to the archives of the NGOs they contacted.

In Sweden, however, transfer of the data was largely facilitated for the researchers. They had direct access to the complaint files submitted to Dö and JämO, even if the latter were not rendered anonymous.

Consequently, some information could only be collected by analysing the files, and this only when the researchers were authorised to consult them.

These variations in access, as well as collection and categorisation methods must be taken into consideration when analysing the results. Nevertheless, thanks to the partners' use of a common grid to collect data, it was possible to harmonise the results in order to highlight the main common traits.

3. Presentation of the sample

The sample is composed of 914 complaints, with a greater number concerning women. This does not reflect the general tendency in the project countries. For example in France, Germany, Spain and Sweden men show a greater tendency to lodge complaints for discrimination based on "race" or ethnic origin. The overrepresentation of women in this sample can be explained by the wish to obtain information on a large number of cases involving women, in order to study whether there are specific features in their experience of discrimination.

3. Total number of cases according to gender

Countries	Number of cases	Women	Men	Other (couple, family...)
<i>France</i>	158	62	87	9
<i>Spain</i> ⁸	140	86	38	4
<i>UK</i>	110	91	69	0
<i>Germany</i>	140	53	82	5
<i>Sweden</i>	160	96	64	0
<i>Bulgaria</i>	156	72	71	13
TOTAL	864	429	392	31

⁸ For Spain, the sex of the complainant is unknown in 12 cases.

Very little information could be obtained on the complainants' age, and no age data were available from Germany. In Bulgaria, the description of the facts themselves indicated the age of minors or pensioners, but the number was too low to be significant.

Nevertheless, the even partial information garnered in the other countries shows that the population group who lodge complaints are of working age, generally between 25 and 55 years of age. This tendency is confirmed in the UK where the age of all the complainants was available: 73.8% were aged 25-55, with a spike between 36-45 (28.8%).⁹

3.1 The complainants' country of origin

In all the countries concerned, with the notable exception of Germany, the majority of the complainants are citizens of their country of residence. The German exception can likely be explained by restrictive naturalisation laws in force until the early 2000s, which were amended recently to make it easier to obtain citizenship and by the description/ascription of complainants through the sources who may perceive and often do not ask about the recent citizenship of the complainants. It would be interesting to monitor the evolution in the complainant population in forthcoming years to see if the amended citizenship legislation has a significant impact on the complainants' nationality.

⁹ In this country we also noted age differences depending on the institution consulted: those who submitted complaints for legal remedy were slightly older than the others: 62% were from 36 to 55 years of age, compared to 69% between 18-45 in the Law Centres.

4. Country of origin

Country	Total	Citizens	Country of origin	Ethnicity/Origin	Unknown
<i>France</i>	143	103 (65,19%)	13 Sub-Saharan Africa 11 North Africa	North African (59%) Sub-Saharan Africa (23%)	15
<i>Spain</i>	105	58 (79,45%)		31 Roma 8 White 8 South/Central American	67
<i>UK¹⁰</i>	49	18	9 Indian sub continent 6 Eastern Europe	White Black Indians	111
<i>Germany</i>	92 ¹¹	13	36 Turkey 16 North Africa 5 Middle East 4 Sub-Saharan Africa		9
<i>Sweden</i>		32 (of 109)	40 Middle Eastern 29 Eastern Europe 21 North Africa 20 Sub Saharan Africa 14 South/Central America		11
<i>Bulgaria</i>		84	6 Former Soviet Union Republics 1 Western Europe 1 UK 1 Romania 1 Sub-Saharan Africa	31 Roma 12 Turks 5 Pomaks	18

¹⁰ The country of origin is available just for the CABs/Law Centres cases.

¹¹ The 46 cases from Hannover are excluded because they do not include any information on the complainants' country of origin.

In most of the cases, the country of origin or the ethnic origin mentioned corresponds to the populations the most discriminated against or most exposed to discrimination in the national context (see WP2, Annexes). This is why, even if the data are occasionally incomplete, they can nevertheless be seen as a representative sample.

3.2 Employment status and education

The sample contains little data on the complainants' education level and job situation, for the bodies only report this information if it has a direct relation to the case. The sample, however, shows that the complainants generally have a fairly high level of education: 41 or 49 cases in France have a higher education diploma. This is also the case for 34 out of 84 cases in Sweden and for nearly half the complainants in the Employment Tribunal sample in the UK .¹²

As for employment, the small amount of information obtained nevertheless shows that in all the countries the majority of the complainants are employed. This is the case in France (34 of the 60 cases), Spain (44 out of 68), the UK (79.3% of the complainants before the Employment tribunal and 53.1% who consulted the Advice Centres), and Sweden (72 out of 112).¹³

Thus the complainants generally have a good education and the majority are of working age and employed.

¹² In Spain information was obtained on only 9 complainants, 5 of which had attended secondary school. No information was available for Germany (Annex 4).

¹³ Here again, Germany was unable to obtain any information in this area (Annex 4). In Bulgaria, most of the complainants were employed in the public sector and were primarily Turks (Annex 6).

4. Impact of gender on the experience of discrimination

One of our initial hypotheses was that complainants' would experience different types of discrimination depending on their gender. The results obtained partially confirm this hypothesis as we will see.

4.1 Sectors of discrimination

The most common sector for discrimination is employment. This can be said for the whole sample (335 cases out of 914), with the exception of Spain (21,42%). This is due to the fact that employment is generally the main sector of discrimination in all countries (see WP2, Annexes). This is also because almost all the UK cases come from Employment Tribunals.

We also note a large number of complaints for refused access to goods and services in all the countries concerned. Here, however gender differences emerge in some countries.

Men seem to be more frequent targets of discrimination in the area of private goods and services, especially leisure spots such as discotheques or bars. The tendency is especially clear in Germany (19 cases of refused access) and Sweden. Men are also more frequent victims of discrimination by police officers and the judiciary. This can be seen in the results for Spain (26.6% complaints from men compared to 2.5% from women), Sweden (22% compared to 3%) and Germany (10 cases compared to 4). These results mainly concern young men who are Muslims or of African origin, apparently victims of ethnic profiling where they are seen as dangerous because of the amalgamation with terrorism.

Women, on the other hand, tend to lodge more complaints than men regarding access to public services. One reason may be because they are the ones most in contact with these services, as they handle all the administrative procedures for their family. Likewise, we also see that they lodge more complaints than men in the areas of housing and education, likely due to a division of labour between husband and wife, with the woman acting on behalf of the family when it comes to housing and for the children in education. Complaints by women in this sector may also arise from disputes about Muslim women wearing the *hijab* at education facilities, at work or in training, especially in France and Germany.

Moreover, women appear to experience a different type of racism. While men tend to be targets of access racism, women are more exposed to relational racism, which develops in relationships established over time, at the workplace or in dealings with neighbours. This was observed in Germany, Spain and Sweden.

Two countries reported a specific feature: complaints lodged by Roma. Results from Bulgaria show that the Roma, men and women alike, are particular targets for discrimination in access to public and private goods and services (13 cases) and they also lodged complaints in the employment sector for unjustified dismissal. Roma Informational Agency DEFACTO notifies about discriminatory media expressions and the complaints submitted by it usually consider Roma as victims of discrimination. Furthermore, the first CPD panel contains several cases where Roma were refused access to public places such as restaurants. On the other hand, there is no trace of complaints by women for discrimination caused by the family. The Bulgarian team's conclusion is either that certain Roma behaviours which external observers deem discriminatory towards women are not experienced as such by Roma women, or that these women do not want to expose this publicly for fear of shedding a bad light on their whole community.

In the case of Spain, a greater number of Roma women than men lodge complaints, and they are also the ones who lodge the greatest number of complaints based on multiple

forms of discrimination. We should add that in the full sample, women are the main targets of multiple discrimination.

4. Sectors where the discrimination occurred¹⁴

Sectors	Total
Education	64
Employment	335
Housing	77
Public Health Services	17
Access to public spaces	32
Justice System	17
Police	59
Private goods and services	107
Public goods and services	95
Multiple sectors of discrimination	32
Other	39
Medias	13

4.2 Perpetrators of discrimination

Our original intention was to contextualise acts of discrimination by gathering personal data on the socio-economic profile of both the complainant and the alleged perpetrator. The interest in crossing these data lies in exploring whether there may be a relation of

¹⁴ The data presented in the tables are those available in the individual country studies.

dominance between the two parties based on age, gender or profession. However, very little information could be collected on the perpetrators.

Nevertheless we were able to establish that the most frequent perpetrator of a discriminatory act is the employer or direct superior in the private and public sectors. In most cases the perpetrator is a citizen of the country concerned. Cases of discrimination involving an employee and a superior thus reflect a process of domination between a two groups of people, where the dominated group are seen as different and deemed to be inferior. Thus the discrimination appears as legitimate.

These domination relations based on the person's origin occasionally go hand in hand with gender-based domination. This is the case in Spain, for example, where employers are more often men, and women experience more discrimination than men. We have also seen that even when the superior is a woman, discrimination is still more frequent towards women than men (France, Spain, Sweden).

Lastly, men experience more discrimination by the police and the judiciary, as we have seen already in the section on sectors.

5. Alleged perpetrators of discrimination¹⁵

Relationship of alleged perpetrator of discrimination to complainant	Total
Superior/employer ¹⁶	263
Colleague	24
Property owner	34
Neighbour	25
Passer-by	9
Law enforcement agents	41
Private goods or services provider	80
Public goods or services provider	161
Personal relations	5
Unknown	261
Multiple agents	11

Information from Spain, UK, Bulgaria, Germany, France (Sweden missing)

However in some countries pre-existing systems only recognise discrimination in certain types of relationship such as employer/employee, service provider/service receiver. This is particularly true in the UK where there is a distinct bias in the sample towards discrimination in employment situations. For example, neighbours maybe the largest source of actual discrimination but there are few legal remedies so it is not recorded.

¹⁵ The data presented in the tables are those available in the individual country studies.

4.3 Grounds for the complaint

The very heart of this work is an analysis of the grounds for discrimination. Indeed, these are the data that can truly point to cases of multiple discrimination for the analysis can bring them out.

Ethnic origin is clearly the most frequent criterion cited. Several factors can explain this, in particular the composition of the sample, for in most cases the data were provided by anti-racism organisations.

The sample contains 107 complaints based on multiple discrimination, including race and gender. This category also covers a portion of the disputes linked to religious discrimination. For example, in France, Germany and Spain we find complaints related to wearing of the *hijab* and religious emblems in general. Women lodge more complaints for multiple discrimination in France (13% based on race and gender compared to 2% based on multiple grounds for men).

Nevertheless, depending on the country involved, the researchers did not all have equal success in collecting these data. Some countries, such as France, Germany and Spain did not foresee the possibility of recording a complaint based on more than one motive. In France, however, this possibility will be integrated in the new complaint registration under preparation by the HALDE. This body's horizontal competence for all types of discrimination also caters to this additional data implementation.

Hopefully this option will also become available in Sweden and the UK, which have recently grouped their separate institutions dealing with either gender or origin into single bodies.

In the project, researchers were able to detect possible cases of multiple discrimination in Sweden with the help of legal experts working at JämO. Likewise in France, the HALDE queried its database first on the origin criteria, then on gender and made comparisons to pinpoint cases of multiple discrimination. Once rendered anonymous, the data were transmitted to the researchers. No Spanish organisations, except the Fundación Secretariado Gitano, work with the concept of multiple discrimination nor register files under this term. Concepts relating to discrimination are new in this country and the bodies working in this area already find it hard to implement them, even on the basis of just one criterion. CPD in Bulgaria has a separate Panel for multiple discrimination and the complaints of this type increase as a result of the activities of the CPD and NGOs experts.

Lastly, analysis of the files themselves enabled the researchers to detect some cases of multiple discrimination.

The low number of complaints based on multiple discrimination can be explained by various factors:

To begin with, laws may prohibit legal remedy procedures for cases involving more than one motive, as is the case in Spain.

Distinct anti-discrimination laws for each motive may also preclude files citing multiple forms of discrimination.

The organisations competent to receive and process complaints, such as anti-racism bodies, are accustomed to working on a sole ground for discrimination, the one in which they specialise. In France and Spain, for example, these organisations are either not well-versed in the concept or else do not use it, considering it will not

work in court. They thus tend to favour an approach based on a single motive, with the motive chosen being the one for which the most evidence can be collected.

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. In Sweden, for example, we observed that even when a complaint mentions several motives, it is nevertheless handled as if it were based on a sole criteria.

Even when just one body is competent for all types of discrimination, it does not necessarily take multiple discrimination into account. In France, for example, the HALDE EDP system had not foreseen the possibility to encode several motives in the same complaint file. Furthermore the working culture developed in this organisation is not based on a multi-sectorial approach to complaints.

Lastly, disputes linked to religious discrimination are emerging. In several countries, these cases primarily concern Muslims (Bulgaria, France, Germany, Sweden). In certain countries, we observed gender differences. Muslim men show a greater tendency to be targets of discrimination by the police force and the judiciary, and in Germany and Sweden they lodge complaints for refused access to recreation areas. Women's complaints primarily concern the *hijab* and refused access in the public and private sector, as seen in France and Germany.

6. Grounds of discrimination¹⁷

Ground(s) of discrimination	Total
<i>Race / ethnic origin</i>	550
<i>Religious beliefs</i>	68
<i>Sex/Gender</i>	83
<i>Nationality/citizenship</i>	35
<i>Overseas</i>	4
<i>Sex/origin</i>	47
<i>Multiple grounds</i>	60
<i>Other</i>	67

Sources: France, Spain, Sweden, Bulgaria, Germany, UK

4.4 Little variety in the types of discrimination

The majority of the complaints concern direct discrimination. The concept of indirect discrimination, unknown in some countries and introduced by transposition of European directives in national law, is still rarely cited. One reason may be that this concept is still relatively unfamiliar for the NGOs competent to receive complaints. Furthermore it requires a specific method of proof that the NGOs may find hard to implement.

On the other hand, although the sample contains few complaints for harassment, it is nevertheless the second type of discrimination identified in many countries. This is the case for Bulgaria, France and Sweden, where harassment occurs at the workplace and is perpetrated by the hierarchical superior. In Spain and Sweden, women are more frequent targets of harassment, especially at the workplace or in disputes with

¹⁷ The data presented in the tables are those available in the individual country studies.

neighbours. In France, one case of harassment based on double motives – sexism and racism - was identified. The complaint was lodged by a woman.

7. Types of discrimination¹⁸

Type of discrimination	Total
<i>Direct discrimination</i> ¹⁹	492
<i>Indirect discrimination</i> ²⁰	107
<i>Harassment</i>	100
<i>Instruction to discriminate</i>	10
<i>Victimisation</i>	9

5. The reaction to discrimination: using the resources

We analysed how the complainants used the resources available in order to determine whether men and women seek the assistance of different resources when they are targets of discrimination. The research partners were asked to collect information on the actors who intervened on behalf of the complainants (trade unions, NGOs, equality bodies, lawyers, legal experts, private individuals). They were also asked to try to determine whether the victims lodged the complaints themselves or if other people helped back their complaint.

There were limitations to the information collected in this area because the organisations did not record this in their files. Nonetheless, a certain number of common features could be identified:

¹⁸ The data presented in the tables are those available in the individual country studies.

¹⁹ Direct discrimination is explicit and deliberate discrimination.

²⁰ Indirect forms of discrimination are based on measures apparently neutral, yet which end up barring a person or group of persons from a service or a right.

- ❖ The complainants massively consult equality bodies, even where these organisations are relatively recent, as in France and Bulgaria. These entities provide the complainants with legal counsel and free handling of their case until it is closed. In Spain, however, the complainants find it easier to consult NGOs. This is likely due to the fact that most complainants in Spain are migrants, not citizens of foreign origin as in most of the other countries. As we saw above, a correlation can be established between a stable legal status and consulting institutions. However, this is also because in Spain further equality bodies than the local Antidiscrimination Office in Barcelona are missing, although the new Equality Law plans to create a national one very similar to HALDE in France.

- ❖ The complainants also seek out associations which for the most part offer legal follow-up free of charge, even though in many cases (as in France and Spain) these associations have fewer finances and less staff than the equality bodies. In Sweden, however, the NGOs offer little assistance in supporting complaints and deploy most of their resources in prevention and the fight against structural discrimination. UK is in the same position.

- ❖ It happens that several organisations are consulted at the same time, either at the complainant's initiative or as suggested by the organisations themselves. In France, some associations ask the HALDE to intervene in some of their cases, knowing that the latter has powers of inquiry which enable it to intervene more efficiently. The case in Bulgaria is similar according to the experts interviewed. We have also found cases where trade unions and equality bodies worked together, as in Sweden where the Dö and JämO transfer some complaints to the trade unions when the complainants are members. In Spain as well, some complaints are submitted both to the courts and to NGOs. This possibly reflects the strategies employed by the complainants to maximise their chances or at least obtain as much information as possible.

As regards gender differences, it appears that:

- ❖ **More men than women lodge complaints based on ethnic origin and "race"** even if deeper analysis reveals differences according to the sector or the community, for example among the Roma.

Several explanations can be proposed:

The more fragile a woman's resident or socio-economic status, the less she tends to submit a complaint. For example, according to data from the Hannover Centre in Germany, 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. In Spain as well, non-European migrant women without a stable resident status lodge fewer complaints than men. In Bulgaria, information from the CPD shows that women belonging to ethnic minorities rarely lodge complaints.

On the other hand, a correlation seems to be established between the educational level and the ability to launch legal proceedings after experiencing discrimination, especially among women. This is particularly the case with Roma women in Bulgaria, where we see that women with a sound educational level coupled with the social prestige of having a job are more sensitive to discriminatory practices and show greater confidence in defending their rights (Annex 6). The case is similar in Sweden where female students lodge more complaints than their male counterparts (Annex 5).

Furthermore, complainants with a more stable legal status, such as citizenship of the country or a long-term resident visa, show a greater tendency to lodge complaints. This is the case in Spain, especially for European men and Roma women.

- ❖ **Women who are not citizens or who are of foreign origin lodge fewer gender-based complaints than other women.** This is the case in the UK where those who lodge complaints are primarily *white* (33 compared to 4 for women of ethnic minorities). Likewise in Bulgaria we see that women belonging to a minority group never lodge gender-based complaints.

The low number of complaints by women who are foreign or of foreign origin thus may reflect a process of dual-domination: as a foreigner (or perceived as such) and as a woman subject to relations of domination in society and in the family.

These women also seem to receive little support from social players, in particular women's organisations. This is the case in Spain and France where the women's organisations are highly focussed on political action and do not provide legal support to back women's' complaints. In Germany there are special bodies and women's organisations that have traditionally been set up to address gender discrimination. They only provide legal support in such cases of gender discrimination but not of racial/ethnic discrimination. The women's' organisations in Bulgaria are quite aware of the problem of multiple discrimination and the specific problems faced by women of ethnic minorities. Nevertheless they only provide legal support for women who are victims of domestic violence, not for cases of discrimination since it is usually not formulated by the victims.

- ❖ In general the complainants rarely consult trade unions, and women even less so, despite the fact that the sample contains a majority of cases of discrimination on the job in France, Spain, Germany, Sweden, Bulgaria and UK. The trade unions only support the complainants when there is a question of discrimination related to union activities (Bulgaria, France). Their support is even more rare in cases of racial and/or gender-related discrimination, especially in France, Bulgaria and Sweden. In the latter country, it even appears that trade unions almost act solely on behalf of men when they become involved to support a complaint.

When women do obtain assistance to support their complaint, this is usually from someone close to them, a spouse (Bulgaria), family member or else friends, supporting persons (Germany).

- ❖ **The Roma community, both in Spain and Bulgaria, present a specific profile when it comes to gender differences in the use of resources.** This community seems to be quite active in defending their rights, men and women alike. According to the Bulgarian team, this is the result of an active information policy by NGOs and public bodies towards this community.

In Spain, Roma women are even more active in defending their rights than men, according to information from the *Fundacion Secretariado Gitano* (70% from women). This illustrates their role in the social structure within the Roma community where they display more initiative than Roma men (Annex 2).

On the other hand, the other countries show hardly any complaints lodged by Roma, illustrating the need for information campaigns focussing on this community. This is also because Roma are numerically few and in the case of the UK, for instance, it was not possible to access information concerning the type of discrimination they may most often experience.

6. Processing the complaint

The methods used to settle disputes were analysed from the gender perspective to check whether the complainant's gender has an impact on handling of the complaint or the solutions proposed.

The results show first of all that a number of common traits exist in the countries concerned.

There are also certain collective tendencies in case processing methods:

- ❖ The bodies generally prefer to use mediation or conciliation to settle disputes between neighbours, those concerning access to goods and services (in Spain and Sweden, in particular for refused access to discotheques) and housing or employment (in Germany). This dispute settlement mode seems better adapted to the sectors concerned since the persons involved are often obliged to maintain their relations. The results of such mediation generally favour the complainant. In Spain, for example, of the 46 cases identified, 43 were settled by a decision in favour of the complainant. In Sweden, of the 34 mediation cases, 22 were settled by this means.

- ❖ Legal remedy is rare in all the countries. In Spain and France, it is primarily used in penal law by associations. Such proceedings rarely lead to a decision in favour of the complainant. In the United Kingdom, for instance, judgments by the employment tribunal favour the defendant in 17.1% of cases and the complainant in 4.5%. In Sweden, only 8% of cases are brought to court and few lead to a verdict in favour of the complainant, with the noteworthy exception of

discrimination in access to private services, as a result of the use of situation tests.

- ❖ In Bulgaria and France, the establishment of equality bodies has resulted in new dispute settlement methods for disputes based on discrimination. The CPD and the HALDE hand down decisions whose main objective is to recognise victims' rights by determining whether or not discrimination exists. Both are administrative bodies that are not entitled to impose penalties. Their decisions are therefore primarily symbolic in scope. Their strength resides in the publicity the institutions give to their decisions through the media, particularly in France, as a means of putting pressure on both those guilty of discrimination and society at large. In France, if discrimination is recognised, the recommendations issued may concern not only those at fault but also, more generally, legislation or administrative practices, with the obligation to bring about the required changes within a given time period. The situation in Bulgaria is similar with regard to the powers of the CPD.

Possible differences between men and women arose in the two countries that have had non-discrimination laws the longest, namely the United Kingdom and Sweden. In Sweden, a correlation seems to exist between the gender nature of discriminatory experiences and the methods used to address them. In employment, for instance, organisations that combat discrimination redirect complaints by men to unions more often than complaints by women (38% compared with 17%). This is likely the result of a higher rate of trade union membership among men; most importantly, women are also sometimes victims of racial discrimination by local trade union representatives who can be fellow workers, as some cases showed. Seeking help from them therefore makes no sense. Women also lodge fewer complaints in court than men (6% compared with 13%).

In the United Kingdom, what varies according to gender is the method of dispute settlement through the judiciary. Cases brought to the employment tribunal are more often settled through an agreement between the parties when the complainants are

women (44.3% compared with 36% for men), as men tend to take the judicial process through to its conclusion more often than women.

We suggest the hypothesis that the gender differences that emerge may result, at least in the case of Sweden, from relations of dominance between men and women. Mediation decisions and court verdicts are generally more favourable to men. It may be supposed that men use the system more effectively than women because they are better educated, as shown in the analysis of the Swedish sample.

In the other countries, no significant difference between women and men was identified.

7. Conclusion

- ❖ **The population that uses legal remedy when exposed to discrimination is primarily made up of citizens of foreign origin with a high level of education and in steady employment.**

Information and awareness campaigns targeting other population groups, whose presence is limited at best, are necessary. More financial and psychological support is also needed.

- ❖ **Although men and women principally lodge complaints concerning employment, they can experience different discrimination** in other sectors:

- Women are subject to discrimination mostly in access to goods and public services, as well as in education and housing;
- Men are victims of discrimination by the police and the judiciary as well as racism in access to goods and private services, particularly recreational activities;
- This division between men and women reflects the gender-based division of tasks in couples, since women handle tasks for the entire family with the public services;
- These differences also result from a differentiated and gender-based construction of the representation of foreign men and women or those assumed to be foreign, with men being considered dangerous, especially young Muslim and African men, and women seen more as victims.

As a result, men and women can experience different types of racism: men are more exposed to access racism by unknown parties, whereas women are more often victims of relational racism with people they have known for a long time in the neighbourhood, or through employment, in the form of harassment.

Lastly, two categories of population are particularly exposed to discrimination against both men and women: the Roma and Muslims.

- ❖ **Foreign women or women of foreign origin lodge fewer complaints than foreign men or men of foreign origin on the ground of ethnic origin, on the one hand, and than European women on the ground of gender, on the other, because:**
 - They may have a narrower support network than men, particularly from unions and women's NGOs, which are more focused on combating domestic violence than discrimination;
 - They have difficulty recognising the discrimination of which they are victims, especially gender discrimination. Foreign women tend to identify first ethnic origin as a ground of discrimination rather than gender.

- ❖ **Gender has little impact on the processing of complaints, the majority of which are handled through mediation and/or recommendations and only very rarely through legal remedy.**

However, in the United Kingdom and Sweden, men use legal remedy more often than women and the complaints lodged by women are handled through mediation or end with an agreement between the parties before a final court verdict is issued.

In conclusion, although elements of comparison were found to exist between the different countries, the fact remains that it is necessary to place multiple discrimination into a national and historic context to understand its significance, notably in terms of the legislative and institutional framework for combating discrimination and each country's migratory history²¹.

What is more, the results bring to light only known cases of discrimination classified as such by organisations. This work must therefore be supplemented by a qualitative approach. In-depth interviews with complainants will make it possible to re-establish the facts leading to the experience of discrimination, the reasons for the action and the feeling of discrimination.

However, the results enable us to formulate a number of policy recommendations at this stage with a view to improving the handling and knowledge of intersectional discrimination on grounds of gender and race.

²¹ Vieten U. (2008), "Intersectionality Scope and Multidimensional Equality within the European Union: Traversing National Boundaries of Inequality", in Dagmar Schiek; Victoria Chege (Eds), *European Union Non-Discrimination Law Comparative Perspectives on Multidimensional Equality Law*, Routledge-Cavendish, UK.

8. Policy recommendations

We should highlight that the following recommendations are provisional as they are only based on one part of the fieldwork and need to be contrasted with the results from other WPs, as well as defined in consultation with experts and stakeholders.

However analysis of the complaints revealed the shortcomings of complaint registration systems, the lack of information among certain social players and the difficulty for complainants to identify discrimination they may experience.

❖ Data collection must be enhanced through:

- Standardisation of collection methods at national level so as to allow better identification of discriminated groups, the contexts in which discrimination occurs and the circumstances that often lead to discrimination experiences;
- Higher visibility for multiple discrimination 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.

❖ Knowledge of discrimination phenomena, including multiple discrimination, should be encouraged through:

- The publication of complaint statistics (analysis of grounds, sectors of occurrence, types of discrimination from a gender perspective) in the annual activity reports of equality bodies;
- Easier access to data for researchers by making complaints totally anonymous;
- The introduction of socio-demographic data on complainants 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 (age, nationality, ethnic origin, training, profession, family situation, etc.). 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;
- 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.

❖ **The handling of complaints could be improved through:**

- Development of an internal methodology allowing adequate treatment of cases of multiple discrimination, including dialogue between services where organisations have divided their tasks on the basis of the different grounds of discrimination covered.
- Implementation of collaboration protocols between racial and gender non-discrimination bodies when the institutions are separate, including meetings between the different bodies to deal with cases of multiple discrimination and harmonised encoding systems to encourage visibility of such cases in both institutions.

- ❖ **Awareness and training actions on multiple discrimination** (how to detect, analyse and handle it legally) **are needed for:**
- Groups most exposed to discrimination, to strengthen their exercise of their 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 or remedy such cases;

 - Law professionals (judges, lawyers, legal experts, etc.) so that they can develop specific defence methods for such cases.

The GENDERACE Team is responsible for the content of the report which does not necessarily reflect the view of the Commission, nor can the Commission accept responsibility for the accuracy or completeness of information it contains.