



Tackling Multiple Discrimination

Practices, policies and laws



“I am a lesbian
Christian.
I work as
a teacher”

“I am a black
religious man
working
in Europe”



“I am a Muslim
woman working
as a legal advisor.
I aspire to
become a judge”



“I refuse to leave
the labour market
because of my
age and hearing
impairment”



“I am a deaf gay
man. I want to
be a father”



Tackling Multiple Discrimination

Practices, policies and laws

European Commission

Directorate-General for Employment, Social Affairs and Equal Opportunities

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Executive Summary

Discrimination can be experienced on more than one ground

If the reality of discrimination and inequality is to be tackled, workable solutions to combat the existence of Multiple Discrimination have to be found.

This report was commissioned by the European Commission and its findings are based on a literature review, questionnaires and roundtable meetings with stakeholders from Ministries, National Equality Bodies and NGOs in ten Member States of the European Union held from January to May 2007. The main purpose of the report is to identify effects of Multiple Discrimination, to analyse how the different actors involved in the fight against discrimination tackle it, to highlight good practice and prepare recommendations on how situations of Multiple Discrimination could best be addressed.

The survey among Ministries, Equality Bodies and NGOs carried out for this report illustrates that despite the recognition reflected in anti-discrimination and equal treatment legislation, Multiple Discrimination, as a concept remains somewhat obscure. Hence most institutions and organisations concerned with anti-discrimination legislation and policy are still focused on the single ground approach. Dialogue with National Equality Bodies, for example, shows that the legal practice involved in handling complaints of Multiple Discrimination in most European Member States currently risks misrepresenting the reality of discrimination as it is experienced by individuals. Arguably it ignores the magnitude of the complaints and also fails to recognise the indignity suffered by the complainants.

Minority women seem to be most vulnerable to Multiple Discrimination. However, lack of research, registered complaints and cross-sectional data contribute to the continued invisibility of the phenomenon of Multiple Discrimination for other disadvantaged groups as well: older ethnic minorities, black persons with a disability, etc.

*“It is really difficult sometimes being gay and having a disability.”
(Maya Schleimann, 22 years)*

*“It hurts me to see how the Roma women are treated.”
(Renáta Sztojka, 44 years)*

Multiple Discrimination happens in all spheres of social life. The labour market, however, appears to be the sector where Multiple Discrimination occurs most often. In many Member States, the scope of anti-discrimination legislation outside employment and occupation is limited to only gender and race/ethnic origin. This could be the reason for the lack of visibility of Multiple Discrimination in sectors such as education, access to goods and services, social protection, etc. Lack of data again adds to an incomplete picture of which intersectional groups are vulnerable and in which sectors Multiple Discrimination occurs. Lack of data also means insufficient knowledge about the extent of Multiple Discrimination.

Generally the stakeholders who participated in the study had a high level of understanding of the phenomenon of Multiple Discrimination, yet there are differences in how Member States have transformed such understanding into concrete practice. Differences in understanding appear to correlate to the length of time Member States have had anti-discrimination and equal treatment legislation and policies in place, whether the legislation is a single anti-discrimination and equal treatment act, whether the National Equality Body has a mandate for single or multiple grounds and lastly, whether active anti-discrimination NGOs are present.

The majority of Ministries, NGOs and Equality Bodies surveyed for this report do not have specific strategies, action plans, awareness-raising or monitoring activities targeting Multiple Discrimination. The absence of such activities can be partly explained by lack of specific legislation, insufficient awareness of the phenomenon, limited capacity/funding and partly because tackling discrimination as such seems to be a challenge in itself.

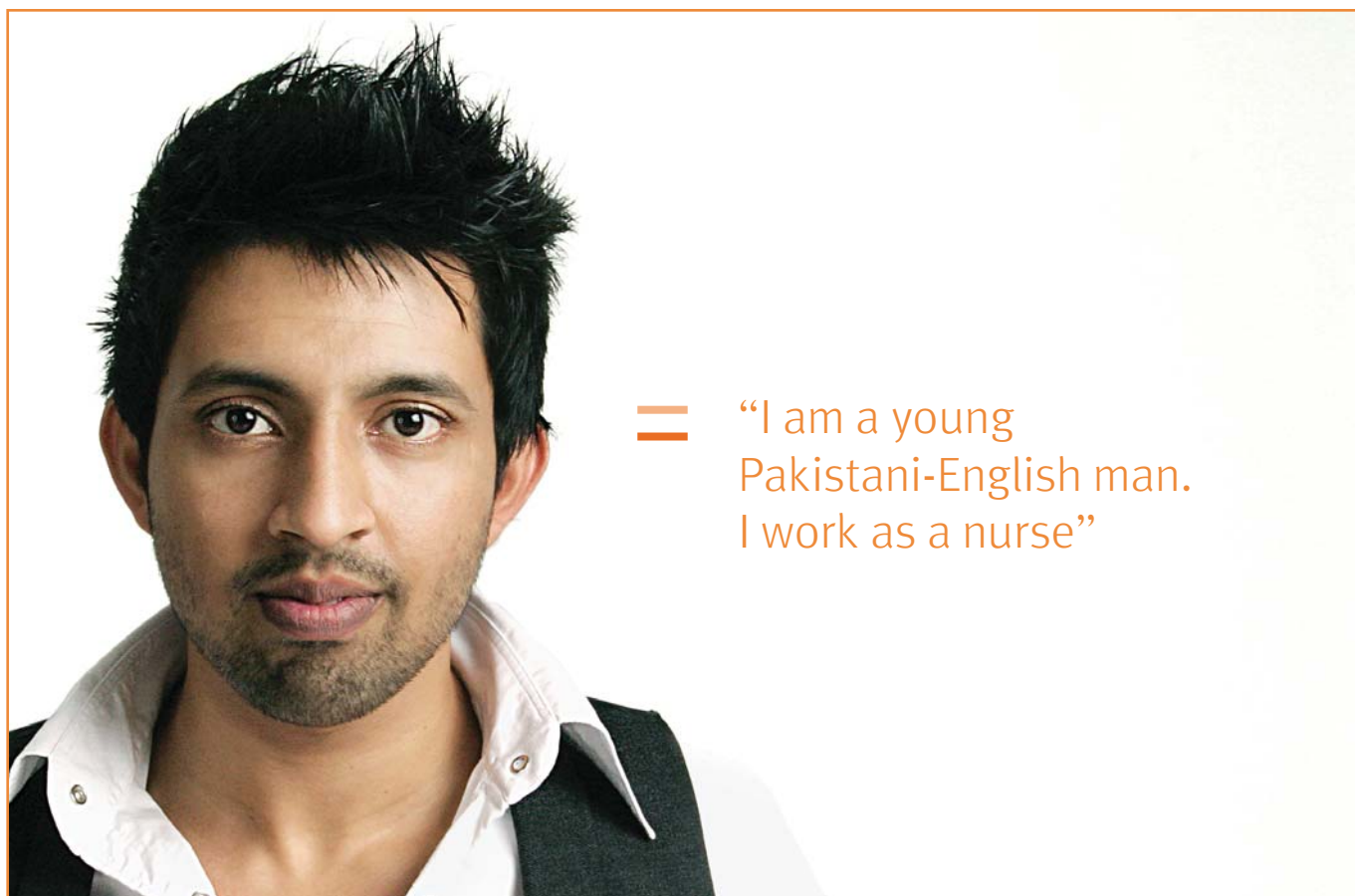
There is, however, a growing movement towards thinking in terms of, and working across, the various grounds of discrimination. In some Member States, stakeholders are working actively through committees, partnerships and networks to promote cooperation across grounds and to develop effective approaches to Multiple Discrimination. This report identifies some good practice examples.

NGOs with a history of cooperating with organisations and institutions working in other discrimination areas have a greater awareness of discrimination across the six grounds. Cooperation increases the possibility to ensure that political strategies, activities and social groups are accessible and inclusive. For NGOs, forming coalitions with other vulnerable groups makes lobbying efforts and advocacy activities more powerful. Collaborating obviously also widens the possibilities for mediating in conflicts between different grounds.

It is vitally important for a cohesive European society that everyone enjoys equal opportunities and levels of protection. The case stories of Alberto, Maya, Roya, Renáta, and

Kassem included in the report illustrate the detrimental effect that Multiple Discrimination has on the individual. Whether experienced or perceived, Multiple Discrimination denies individuals their human dignity and right to equal treatment and opportunities.

The report recommends action to increase both the capacity to recognize and identify occurrences of Multiple Discrimination and awareness of the need to combat them as such. The report also recommends a more holistic and integrated approach to anti-discrimination in general. Discrimination based on two or more of the grounds protected by the Article 13 directives must be tackled and the current challenges in identifying the actual occurrence of discrimination on multiple grounds must be addressed. Therefore it is imperative to monitor and track the unique ways in which people experience Multiple Discrimination through numerous tools and strategies: research, legislation, awareness-raising, training and education, data collection, collection and dissemination of good practice and the promotion of multiple-ground NGOs.



The report puts forward a number of recommendations, including:

Recommendation No 1: Research

The European Commission should encourage research into effective protection mechanisms and legal frameworks to handle cases of Multiple Discrimination. Research institutions should develop the conceptual tools to analyse the experience, situation and identity of intersectional groups and investigate how and where Institutional Multiple Discrimination manifests itself.

Recommendation No 2: Legislation

The scope of the existing anti-discrimination legislation does not provide effective protection against Multiple Discrimination in areas outside employment and occupation.

EU anti-discrimination and equal treatment legislation should cover age, disability, religion/belief and sexual orientation in the fields of: (a) social protection, including social security and healthcare; (b) social advantages; (c) education; (d) access to and supply of goods and services that are available to the public, including housing. The new legislation must provide provisions to address Multiple Discrimination.

Recommendation No 3: Awareness-raising

The European Commission should ensure a continued and consistent focus on Multiple Discrimination through supporting a legacy from the ‘European Year for Equal Opportunities for All’. Moreover, Multiple Discrimination must be factored into all equality mainstreaming and impact assessment tools in EU policies, strategies, action plans and provision of financial support for activities. A further recommendation is that NGOs establish forums and networks to promote understanding, dialogue and cooperation across the various grounds.

Recommendation No 4: Promoting good practice

Social Partners and National Equality Bodies should encourage innovation among service providers and employers in responding to Multiple Discrimination by, for example, funding pilot projects. Case studies of good practice in employment and service provision must also be developed and promoted.

Recommendation No 5: Data Collection

Member States should develop strategies to collect equality data taking into account, as a minimum, all protected grounds in the fields of social life where discrimination is prohibited.

Recommendation No 6: Training and Education

Member States should encourage and promote National Equality Bodies to develop integrated approaches to their work. Staff at National Equality Bodies must be trained in both recognising and handling cases of Multiple Discrimination.

Recommendation No 7: Multiple-ground NGOs

To address the needs and represent the interests of intersectional groups, the European Commission should develop funding sources for multiple-ground NGOs.

Introduction

Principles of non-discrimination and equal treatment are imperative for pluralistic and democratic European societies and are laid down in the EU Treaties as fundamental principles. Moreover the implementation of international human rights conventions, EU equal opportunities and anti-discrimination legislation and the EU Charter for Fundamental Rights seek to ensure that all human beings are free from discrimination and enjoy effective protection and the right to equal treatment and equal opportunities.

With the incorporation of Article 13 into the EC Treaty in 1999, the adoption of the two anti-discrimination directives in 2000, the Community action programme to combat discrimination, PROGRESS¹ and the 2007 European Year of Equal Opportunities for All, the EU and its Member States have experienced a dynamic development in anti-discrimination legislation and substantial initiatives to raise awareness of discrimination. With the addition of the new grounds of discrimination, such as race or ethnic origin, age, disability, religion or belief and sexual orientation, the concept of Multiple Discrimination has grown in importance. In its Communication “Non-Discrimination and Equal Opportunities – A Framework Strategy” adopted in June 2005, the European Commission recognised that the implementation and enforcement of anti-discrimination legislation on an individual level is not enough to tackle the multifaceted and deep-rooted patterns of inequality experienced by some groups². Despite the recognition reflected in anti-discrimination legislation, Multiple Discrimination as a phenomenon remains to be explored.

This report is the result of a study examining Multiple Discrimination in ten Member States in the European Union. The study has applied the “participatory action method” and entailed participation by over 100 stakeholders across the EU in roundtable meetings where the phenomenon of Multiple Discrimination was discussed. Thus the content of the report reflects the voice of those stakeholders who were able to participate and contribute their knowledge and expertise.

The study has combined methods of qualitative and quantitative research and explores Multiple Discrimination from different perspectives. It demonstrates the general understanding of the phenomenon and identifies forms, effects and common themes. A central aim of the study has been to identify good practice and prepare recommendations on how situations of Multiple Discrimination could best be addressed by all the stakeholders active in the fight against discrimination.

Acknowledging that tackling discrimination on a single ground is a challenge and in itself necessitates analysis, the authors hope that this report will help to develop an understanding and awareness of Multiple Discrimination, highlight the value of implementing a horizontal approach, and stimulate further action.

For the purposes of this report, Multiple Discrimination shall be 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. Although it is recognised that grounds such as class and 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. The term “Multiple Discrimination” will be applied as an umbrella term for all situations where discrimination occurs on more than one ground, unless the context necessitates a differentiation in terminology. The application of the term is in accordance with the study’s terms of reference and also with human rights discourse where “Multiple Discrimination” is the term most commonly used to describe the phenomenon.

The study has been carried out on behalf of the European Commission, conducted in close liaison with the Commission, under the supervision of a steering group consisting of representatives of the contractor, the Commission, NGOs, public authorities and experts.

Part 1: Methodology and Legal Perspective



1. Methodological approach to the study

1.1 Participatory Action Research method

The method used in the Multiple Discrimination study is Participatory Action Research (PAR). PAR is an interactive method based on mutual dialogue rather than gathering information and knowledge through single approach interviews.

Participatory Action Research recognises the unique insight of organisations, associations and individuals with experiences of discrimination, and presents their stories, knowledge and expertise. The intention behind using this approach was to ensure the participation of Ministries, NGOs, National Equality Bodies and Social Partners, whilst also encouraging collaboration and mutual dialogue among different practitioners and actors working with anti-discrimination cases. At the same time, it was an opportunity to raise awareness on Multiple Discrimination.

1.2 Selection of Member States and stakeholders

For the purpose of study ten Member States were selected: Denmark, France, Greece, Hungary, Ireland, Lithuania, Romania, Sweden, the Netherlands and the United Kingdom. These ten Member States were selected to ensure important differences were represented. For example, the geographical spread includes countries from all parts of the EU, and encompasses both “old” and “new” EU members. Therefore, different traditions, experiences and practices working with anti-discrimination work could be represented. The geographical diversity also allowed for the inclusion of Member States with Roma and Traveller communities.

Four categories of stakeholder were identified for the purpose of the study:

- National Equality Bodies;
- Ministries responsible for equal opportunities and non-discrimination;
- European, national and local NGOs (that work to defend the rights of victims of discrimination);
- European and national social partner organisations.

In order to identify relevant stakeholders of each kind, in all ten Member States different networks were asked to provide assistance. The primary network was the National Equality Bodies who were contacted through Equinet, the European Network of Specialised Equality Bodies. The National Equality Bodies provided the contact information of relevant persons in Ministries, NGOs and Social Partners. Where relevant, other stakeholders working nationally on anti-discrimination were also invited to participate in the study. The European Social Platform was another valuable network for the study. The members of the Platform provided connections to NGOs at the national level and supplied contact details of potential interviewees.

1.3 Collection of empirical data

The phenomenon of Multiple Discrimination was explored using four methods of data collection: literature review, electronic questionnaires, roundtable meetings and individual face-to-face interviews with five individuals who had experienced actual or perceived Multiple Discrimination.

1.3.1 Literature review

The study began with a literature review which aimed to map the relevant academic works on the subject of Multiple Discrimination. The review covered accessible material from EU Member States as well as from the USA and Canada. The purpose of the literature review was to obtain an overview of existing knowledge and analyses in the field of Multiple Discrimination

as a basis to prepare for the next steps in the study - namely data collection through field work, description and analysis and preparation of recommendations.

1.3.2 Electronic questionnaires

Four separate electronic questionnaires were developed targeting each of the categories of stakeholders and 73 questionnaires were completed. The main aim of the electronic questionnaires was to provide the study with a snapshot of how the respective Member States understood and addressed Multiple Discrimination on the national level. The questions included in the questionnaires centred on legislation, awareness-raising and monitoring efforts, strategies for handling complaints, co-operation and partnerships.

1.3.3 Roundtable meetings

Between March and April 2007 32 roundtable meetings were held with representatives from the Ministries, National Equality Bodies, NGOs and, where possible, Social Partners across the 10 participating Member States. Separate roundtable meetings were held for each category of stakeholder in each country. Participants were invited from all six protected grounds of discrimination, and efforts were made to ensure representation of as many grounds as possible at each discussion. One aim of the roundtables was to follow-up on the electronic questionnaires and to gain a deeper understanding of the national contexts in which

Multiple Discrimination occurs. Another objective was to identify practices and collect recommendations on how to fight against Multiple Discrimination. Meetings lasted approximately two hours and the number of participants varied from 3 to 15.

Knowledge sharing was an important result bringing together the different participants working within the same field. Participants were treated as equal partners in the study and encouraged to use it as an opportunity to have their opinions heard. They discussed relevant themes concerning discrimination and exchanged ideas and experiences, and for some participants it was the first time they had been given the opportunity to contribute to such a forum. In addition these meetings demonstrated the value of a horizontal approach to discrimination.

Anonymous quotes from participants in the roundtables and questionnaires are marked in italics throughout the report.

1.3.4 Case stories

In order to provide the study with concrete cases of Multiple Discrimination, five individual interviews were carried out with persons who had experienced actual or perceived Multiple Discrimination. The purpose of the individual interviews was to promote an understanding of the effect that actual or perceived Multiple Discrimination has on the individual. The five individuals interviewed came from different Member States and represented different combinations of the six discrimination grounds.

2. Literature review

2.1 Introduction

This review is limited to six grounds of discrimination, covering gender, race and ethnic origin, religion and belief, disability, age and sexual orientation. As a consequence, class and socio economic status are excluded as discrimination grounds even though it is recognised by the authors that discrimination on these grounds has a significant bearing on the lives of individuals vulnerable to discrimination.

In the search for relevant material the authors covered EU Member States and third countries as well. We used internet resources and searched the following databases: “Index of Legal Periodicals”, which covers more than 700 journals from English speaking countries and “Index to Foreign Legal Periodicals”, which covers articles on legal science outside the jurisdictions of the USA and Canada in more than 450 journals, and “Sociological Abstracts” covering articles in more than 1700 journals. In the review we also searched publications from official organisations and institutions, for example, equality bodies. The complete results of our searches can be found in the bibliography.

2.2 Multiple Discrimination – a new concept

The academic interest in identifying and understanding the phenomenon of Multiple Discrimination is relatively new. The phenomenon has been explored and the concept developed mainly by sociological and legal scholars.

In a historical context, the concept and definition of “Multiple Discrimination” was introduced in the late 1980s. As a term, it was largely introduced in the USA by the

African American scholar Kimberlé Crenshaw³. Together with other scholars, Crenshaw identified the approach of Critical Race Theory and called attention to the many ways in which race and gender interacted to shape experiences of black women. The argument put forward was that individuals can belong to several disadvantaged groups at the same time, and potentially suffer specific forms of discrimination⁴. Thus, Crenshaw and other scholars began criticising the single ground approach for neither providing adequate protection nor a full picture of the phenomenon. To them a single issue analysis of discrimination did not reflect reality⁵.

In his article ‘Multiple, Compound and Intersectional Discrimination’, Finnish scholar, Timo Makkonen (2002) covers the development of the concept of Multiple Discrimination since Crenshaw quite comprehensively. The most recent development in the field stems from the UN World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban, South Africa in 2001, where Multiple Discrimination was recognised by the international community and actions against the phenomenon were adopted:

“We recognize that racism, racial discrimination, xenophobia and related intolerance occur on the grounds of race, colour, descent or national or ethnic origin and that victims can suffer multiple or aggravated forms of discrimination based on other related grounds such as sex, language, religion, political or other opinion, social origin, property, birth or other status”⁶.

According to Makkonen the Durban Conference was “a major international breakthrough” as after Durban the concept of Multiple Discrimination was increasingly recognised in different human rights fora, both governmental and non-governmental⁷.



“I am a Jewish woman.
I love to sing
black gospel”

2.3 Defining Multiple Discrimination

In the literature the phenomenon of Multiple Discrimination has been given several meanings and definitions. However, most of the scholars agree that the term ‘Multiple Discrimination’ describes the first of three situations where a person can be subjected to discrimination on more than one ground. The other two situations are compound discrimination and intersectional discrimination.

Multiple Discrimination describes a situation where discrimination takes place on the basis of several grounds operating separately. For instance an ethnic minority woman may experience discrimination on the basis of her gender in one situation and because of her ethnic origin in another. A different term used to describe this form of discrimination is additive discrimination⁸.

Compound Discrimination, in contrast to Multiple Discrimination, describes a situation where a person suffers discrimination on the basis of two or more grounds at the same time and where one ground adds to discrimination on another ground – in other words one ground gets compounded by one or more other discrimination grounds. An example of this situation is given by Moon in her article *discrimination – problems compounded or solutions found?*⁹ Moon refers to a UK case, *Perera v Civil Service Commission (no 2)* where the employer had set up a series of requirements, such as age, experience in the UK, command of English and nationality. Mr. Perera did not get the

position because “the lack of one factor did not prevent him getting the job but it did make it less likely, and the lack of two factors decreased yet further his chances of selection for the job”¹⁰.

Intersectional Discrimination refers to a situation where several grounds operate and interact with each other at the same time in such a way that they are inseparable¹¹. Makkonen gives the following example: “minority women may be subject to particular types of prejudices and stereotypes. They may face specific types of racial discrimination, not experienced by minority men”¹².

The existing literature points to these three concepts to describe discrimination experienced on more than one ground. However scholars understand and use the terms interchangeably. Makkonen’s example illustrating intersectional discrimination is referred to as compound Discrimination by Shoben when describing the interaction of race and gender in employment discrimination in the United States¹³. Sometimes the term Multiple Discrimination has been used to refer to additive or accumulative¹⁴ discrimination on one hand, or as a general term for both additive and intersectional discrimination¹⁵ on the other.

2.4 Different approaches

2.4.1 The single ground approach

Based on the material available, it is possible to conclude that Multiple Discrimination has mainly been given academic attention in the USA, in Canada and in the United Kingdom and Ireland¹⁶. In recent years, the phenomenon has been researched from a legal perspective and has concentrated on criticising the single ground approach¹⁷.

To understand the birth of the single ground approach, Makkonen emphasises the historical context where different issues such as gender, disability and race were considered separately by single-issue movements. The single-issue movements “have kept considerable distance from each other”, and therefore given birth to separate treaty bodies and conventions¹⁸.

Dasvarma and Loh (2002) argue that this historical approach to discrimination - one factor at a time - has important implications in practice. They illustrate their argument by referring to the problem of trafficking in women, which has largely been defined as a gender issue, but in their opinion completely ignores the racial aspect of the problem.

Dasvarma and Loh state that this interpretation loses sight of which women are most at risk for trafficking and ignores the racially motivated ill-treatment which they may endure in their host countries¹⁹.

Dasvarma and Loh further note that the Human Rights and Equal Opportunity Commission in Australia has segregated anti-race and anti-sex discrimination mechanisms. For some victims this means that they “have to compartmentalise their experiences of discrimination and choose one over the other when making claims of discrimination to the HREOC”²⁰.

Duclos (1993) and Pothier (2001) also support the arguments of Dasvarma and Loh. Both criticise the single ground approach for not embracing the real experience of minority women and subsequently not providing adequate protection to victims of Multiple Discrimination. Duclos examines cases of sexual and racial discrimination and investigates whether Canadian law adequately addressed racial minority women. According to Chege, Duclos’ research showed that the courts did not take the “multi-dimensionality” of individuals’ identity into account and that by “adopting a single issue approach cases of racism were treated simply without a gender perspective and vice versa”²¹.

From the above discussion it can be concluded that academic scholars on Multiple Discrimination are critical of looking at discrimination one ground at a time. They consider that this approach ignores the profound impact which multiple discrimination has, the depth of vulnerability some individuals experience, and disregards those situated at the intersection of several grounds.

2.4.2 The intersectional approach

A common factor in studies of Multiple Discrimination is their legal approach and evaluation of discrimination and equality law. It is the intersectional *analysis and approach* to and handling of Multiple Discrimination, which has been the focus of research attention. As mentioned already the main criticism of anti-discrimination law is that it is pursued on a single ground basis.

The intersectional methodological approach has mainly received attention in the jurisdictions of the USA, Canada, Ireland and the United Kingdom. In other Member States of the European Union the concept of Intersectionality has not received as much attention. Chege argues that this could be explained partly by the fact that the grounds of

discrimination have only recently been introduced into EU equality law²².

The Ontario Human Rights Commission in Canada has been a strong advocate of the intersectional approach. In 2001 they published a discussion paper on the intersectional approach to discrimination, which describes the methodology and initiatives of this approach:

“We will never address the problem of discrimination completely, or ferret it out in all its forms, if we continue to focus on abstract categories and generalizations rather than specific effects. By looking at the grounds for the distinction instead of at the impact of the distinction...we risk undertaking an analysis that is distanced and desensitized from real people’s real experiences.... More often than not, disadvantage arises from the way in which society treats particular individuals, rather than from any characteristic inherent in those individuals.”²³

The Ontario Commission cites one case, which illustrates this approach. In the *Mercier*²⁴ decision the Supreme Court of Canada indicated that the “determination of what constitutes a disability should be based on whether the person has experienced “social handicapping” rather than focusing on bio-medical conditions or limitations²⁵.

In her article “Double Trouble: Multiple Discrimination and EU Law” Fredman (2005) argues that judges and lawmakers have been fearful of opening “Pandora’s box” to claims of Multiple Discrimination. She highlights that courts in the United States remain concerned at the possibility of a flood of claims by numerous subgroups. This led the courts to hold that cases including multiple grounds should be restricted to a combination of only two grounds. The impact of other grounds was thus ignored leaving a result described as “paradoxical” as the “more a person differs from the norm, the more likely she is to experience Multiple Discrimination”²⁶.

In this context the Ontario Commission remains critical of the strategic choice to leave out or ignore additional grounds of discrimination²⁷. Smith (2005) also criticizes the common practice in Ireland, where lawyers and union officials advise complainants to frame their case in a manner “that stays within the boundaries of the categorical-comparator approach”²⁸. Hannett shares this view and concludes that claimants pleading Multiple Discrimination find that there is no way to describe their experiences of

discrimination under the current statutory regime²⁹. While some tribunal decisions acknowledge that discrimination may be experienced at multiple levels, this appears not to be reflected in awards or remedies³⁰.

2.5 Causes of Multiple Discrimination

In the literature reviewed, identifying the causes of Multiple Discrimination is first and foremost done by pointing to the causes of discrimination in general. Prejudice and stereotyping are mentioned in the literature as main causes of discrimination. A study done by Stonewall in 2001 shows that people who are prejudiced against any ethnic minority are twice as likely as the general

population to be prejudiced against gay or lesbian people, and four times as likely to be prejudiced against disabled people³¹. There were four minority groups against whom respondents most frequently expressed prejudice: refugees and asylum seekers, travellers and Roma, people from ethnic minorities, and gay or lesbian people. A follow-up to that study was made again by Stonewall in 2004 and further explores the causes of prejudice³².

Writing about young men from ethnic minority groups in Britain, Hann notes how the media plays an important part in shaping our perceptions of identity, including how we see things and how we see ourselves. An important aspect Hann notes is the way areas such as race, criminality, asylum seekers, refugees, culture, immigration and Islam are represented³³. This can, in effect, be the cause of discrimination experienced by persons belonging to these groups.

In the United Kingdom several studies refer to the “institutionalisation of racism” as a key factor causing discrimination in, for instance, the health sector. Racism becomes institutionalised when “things are done in a way which assumes that all clients are from the same background as the majority population”³⁴.

In a study on equal treatment in Denmark³⁵, all six grounds of discrimination were described in relation to the following grounds history of emancipation: use and

understanding of the principle of equal treatment, different forms of discrimination existing on the particular ground, core issues regarding discrimination and finally the interaction of one ground with others, identifying Multiple Discrimination. The study clearly illustrated that institutional discrimination existed on all the grounds, due to an underlying understanding in Danish society of who is “normal” and who is not considered to be “normal”³⁶.

2.6 Concluding remarks

The concept of Multiple Discrimination took shape in the 1980s by recognising the experiences of black women. Its distinct forms of race and gender discrimination were taken to the forefront of the legal arena by Crenshaw. The concept of Multiple Discrimination has subsequently been given several meanings and relates to different situations of discrimination occurring on more than one ground. The scholars in the field, be it human rights or sociology, use different terms to describe the different situations where individuals are subject to discrimination on more than one ground.

The literature on Multiple Discrimination outlines the need to acknowledge that individuals have multiple identities. The experience of discrimination therefore should be addressed by an intersectional approach rather than a single ground approach. Most of the legal scholars agree that the present anti-discrimination legislation in many EU Member States fails to meet the needs of victims experiencing Multiple Discrimination. There are however examples of intersectional practice. The Ontario Human Rights Commission in Canada has been active in promoting an understanding of Multiple Discrimination by incorporating an intersectional approach in their equality work. Apart from the need to develop the intersectional approach and other legal mechanisms to tackle Multiple Discrimination there is a need to identify substantive practice to prevent and combat Multiple Discrimination. The literature makes references to the need for developing substantive measures and initiatives but fails to bring examples to light.

The literature reviewed shows an understanding of the causes of Multiple Discrimination. However several scholars point out that in order to bring about awareness and promote an understanding of the phenomenon of Multiple Discrimination more in-depth knowledge is needed. Ideally, far more nuanced research would contribute to

existing scholarship by analysing additional intersectional groups. It is pointed out that the theoretical development in this field could lead to creation of hierarchies between and within the different intersectional groups when the focus is only on particular grounds. Creation of a hierarchy can lead to “disappearance” or lack of acknowledgment of other intersectional groups i.e. young Muslim homosexual men.

3. Exploring Multiple Discrimination from a legal perspective

This chapter explores the approach of different legal frameworks to Multiple Discrimination. It provides a short overview of how existing legislation within the EU and in Australia, Canada and the USA addresses Multiple Discrimination. This overview is partly based on a review carried out by the “European Network of Legal Experts in the Non-Discrimination Field” for this study. It should be noted that in Australia, Canada and the USA, the term Intersectional Discrimination rather than Multiple Discrimination is applied to describe a situation where more than one protected ground is involved.

3.1 Jurisdictions of the European Union

The existing EU anti-discrimination and equal treatment legislation does not make express provision to prohibit Multiple Discrimination. Despite this EU Directives do recognise that different grounds can intersect. In relation to gender the preamble to both the Race and the Employment Equality Directives stipulate that “in implementing the principle of equal treatment, the Community should, in accordance with Article 3(2) of the Treaty, aim to eliminate inequalities, and to promote equality between men and women, especially since women are often the victims of multiple discrimination.” Both these directives also require that, in accordance with the principle of gender mainstreaming, the implementation reports to be drawn up by the Commission shall provide an assessment of the impact of the measures taken regarding women and men.

It can be argued that EU employment anti-discrimination and equal treatment legislation does encompass the possibility of addressing Multiple Discrimination on all protected grounds of gender, age, disability, race or ethnic origin, religion or belief and sexual orientation. Recitals 2, 3, and 10 of the Employment Equality Directive also make it clear that the Directive is intended to work together with existing provisions in relation to race and gender, because they make direct reference to the other grounds. The Directive also contemplates situations where there could be an intersection between religion and other rights (Article 4 [2]) and age and gender rights (Article 6 [2]).

In theory all EU Member States which have transposed EU anti-discrimination and equal treatment legislation could address Multiple Discrimination, at least in the field of employment. However as EU legislation does not include an explicit provision, most Member States do not address Multiple Discrimination. The absence of such legal provisions is demonstrated by the aforementioned review carried out for this study by the European Network of Legal Experts at the beginning of 2007.

Their review shows that, of the EU countries they surveyed, only Austria, Germany and Spain specifically address Multiple Discrimination in their legislation.

The German Equal Treatment Act (AGG 14.08.2006) was adopted in 2006. Section 4 of this Act provides that where “Discrimination is based on several of the grounds...[it] is only capable of being justified...if the justification applies to all the grounds liable for the difference of treatment.” This appears to assume that claims of Multiple Discrimination will be admissible, however, there are no further explicit provisions and it is still too early to assess how cases on this will develop.

Bahl v the Law Society, UK [2004] IRLR 799

An Asian woman claimed that she had been subject to discriminatory treatment both on the grounds of her race or ethnic origin and of her gender. The Employment Tribunal ruled that she could be compared to a white man, so that the effect of her race and her sex could be considered. However, both the Employment Appeal Tribunal and the Court of Appeal ruled that this was not possible because each ground had to be disaggregated, separately considered, and a ruling made on it, even if the claimant had experienced them as inextricably linked³⁷.

The Austrian Disability Equality Act stipulates that authorities have discretion to take account of any Multiple Discrimination when assessing the award of damages although it does not have any further provisions that deal with Multiple Discrimination.

Spanish legislation relating to equality between women and men provides that “authorities shall, in the preparation of studies and statistics, devise and introduce the necessary mechanisms and indicators to show the incidence of other variables whose recurrence generates situations of Multiple Discrimination in the various spheres of action”. Spanish law does not include specific guidelines on how to deal with claims of Multiple Discrimination although it does introduce a duty of cross-sectional equality mainstreaming.

The Legal Expert Review did not cover Romania in its study. In Romania, the law regarding Equality between Men and Women (Act 340/2006, Article 4h) mentions Multiple Discrimination directly by defining it as an act of discrimination, based on two or more grounds of discrimination. The Romanian Equal Treatment Act (2006) covers the grounds of age, disability, race and ethnic origin, religion and belief, and sexual orientation. The Act provides that discrimination on two or more grounds is to be treated as an “aggravating circumstance”.

Thus Austrian, German and Romanian law contain the only specific provisions in the EU Member States’ legislation on how to handle Multiple Discrimination. Nevertheless, a limited amount of case law has emerged on the issue in EU. Case law from Denmark, Latvia, Sweden, Ireland and the United Kingdom demonstrate that Multiple Discrimination cases are identified and do reach dispute resolution bodies. However, it should be noted that in

processing cases each ground is often handled separately. So that if, for example, a case involves the grounds of race and gender, the allegation of race discrimination is usually considered separately from the allegation of gender discrimination and not as inextricably linked with the gender discrimination.

Discussions at the roundtables with Equality Bodies showed that it is common practice for legal advisors handling cases involving more than one ground to apply a pragmatic and tactical approach to cases of Multiple Discrimination. This leads them to make a strategic decision to “choose the strongest ground” and to leave out other grounds of discrimination because they are difficult to prove, either vertically ground by ground, or in combination.

A relevant issue which emerges is the question of recognising and representing discrimination. Does the single ground legal approach fail to reflect experiences of discrimination? Arguably, when a case of discrimination on two or more grounds goes through a “trimming process” there is a risk of misrepresenting the multilayered experience of discrimination.

The respondents of the study reported that practice with handling cases on multiple grounds was dominated by a pragmatic approach to what is possible and attainable within their respective legal frameworks. Several of the respondents from the National Equality Bodies and the legal experts reported that they often found that the judiciary was rigid and not accustomed or trained to handle cases involving multiple grounds. Furthermore, it became evident that cases of Multiple Discrimination can lead to problems of finding evidence and identifying the appropriate comparators. A legal practitioner from the UK offered the following illustration:

“We had a client who was a young Muslim man dressed in traditional dress. He was dismissed from a call centre job during his probation period. In the short time he was there, several incidents occurred which indicated other staff viewed him as a potential terrorist. For example, a female colleague, who stumbled across him unexpectedly in a corridor one day when he was praying, screamed. Her explanation of her reaction and the general context of remarks made to the man indicated that she had been terrified because momentarily she had not recognised him and had seen an image which she associated with Muslim terrorists. There was no reason whatsoever to associate the man with terrorism, and the connection was clearly made solely because he was a young Muslim man in religious dress. He brought a claim for religious and sex discrimination. The employers defended the case by separating the issues of religious and sex discrimination. They said: (a) they employed other men and (b) they had just taken on a Muslim woman. It was clear the real problem was the combination of characteristics in the man’s case. In reality, only Muslim men are associated with terrorism and likely to come across this sort of prejudice (indeed, probably only young Muslim men). This case was settled so the issue was not tested in the Employment Tribunal.”
Legal Expert, the UK

“I am a lesbian Christian. I work as a teacher”



As it stands now, only two EU Directives (the Racial Equality Directive 2000/43/EC and the Directive on Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation 2006/54/EC) require Member States to establish Equality Bodies to protect against discrimination and promote equality. Several of the respondents highlighted that in order to address Multiple Discrimination effectively, it is necessary to have National Equality Bodies that cover all protected grounds in all fields.

Most of the equality bodies set up by Member States deal with a number of different grounds for discrimination which are not limited to either race or gender³⁸. Other equality bodies such as those in the United Kingdom³⁹, Italy⁴⁰, Finland⁴¹, Portugal⁴² and Denmark⁴³ cover single grounds. At the time of writing three Member States (Denmark, Sweden and the United Kingdom⁴⁴) are in the

“The only way national legislation changes to enable us to tackle Multiple Discrimination is if there is an EU Directive (...) We need a Directive that says discrimination on all six grounds and in all sectors should be prohibited. At the same time, Member States have to establish Single Equality Bodies to assist victims.”
NGO, Denmark

process of establishing a Single Equality Body (a National Equality Body that covers all protected grounds). It has been argued that one of the most important advantages of a Single Equality Body is that it will be able to address Multiple Discrimination. Respondents from all stakeholder groups mentioned that the existence of a Single Equality Body makes accessing information and advice about discrimination easier for the complainant. Some respondents asserted that it is not appropriate for a complainant with multiple identity characteristics to be forced to choose which ground of discrimination has been violated and then to seek redress at the appropriate Equality Body.

3.2 Australia

In Australia cases involving intersectional discrimination have not yet reached the Courts although they are increasingly being recognised by the Human Rights and Equal Opportunity Commission (HREOC) as well as by researchers, and NGOs.

HREOC Social Justice Reports 2004

Intersectional discrimination, or intersectionality, refers to the connection between aspects of identity, such as race, gender, sexuality, religion, culture, disability and age. An intersectional approach asserts that aspects of identity are inter-connected and discussing them in isolation from each other results in concrete disadvantage. 'Intersectional discrimination' refers to the types of discrimination or disadvantages that compound on each other and are inseparable.

Australian legislation is silent about Multiple Discrimination; it does, however, encompass a broad prohibition against discrimination.

The Human Rights and Equal Opportunity Commission is a permanent, independent statutory authority with responsibility for the following Acts of Parliament: Human Rights and Equal Opportunity Commission Act 1986; Racial Discrimination Act 1975; Sex Discrimination Act 1984; Disability Discrimination Act 1992. Under the law administered by the Commission individual complaints may be submitted about unlawful discrimination on the basis of sex, race, age and disability. Complaints may also be made about discrimination in employment on the additional grounds of age, sexual preference, having a criminal record.

In the case of breaches of human rights action may be taken against the Commonwealth government authorities. The Commission will investigate and try to conciliate complaints which are covered by the law. If a complaint cannot be resolved, the matter may be taken to the Federal Court for determination.

Even though the Commission has the power to handle individual complaints they do not appear to have developed a consistent pattern for applying an intersectional approach.

Case law from the Australian courts does not show any examples of Multiple Discrimination or application of an intersectional approach to discrimination⁴⁵. The absence of provisions to counter Multiple Discrimination has been criticised by a number of stakeholders.

Jennifer Nielsen, *How Mainstream Law Makes Aboriginal Women 'Disappear', criticizing the handling of discrimination of Aboriginal women Martin's case (1998) and V v Red Cross (1999).*

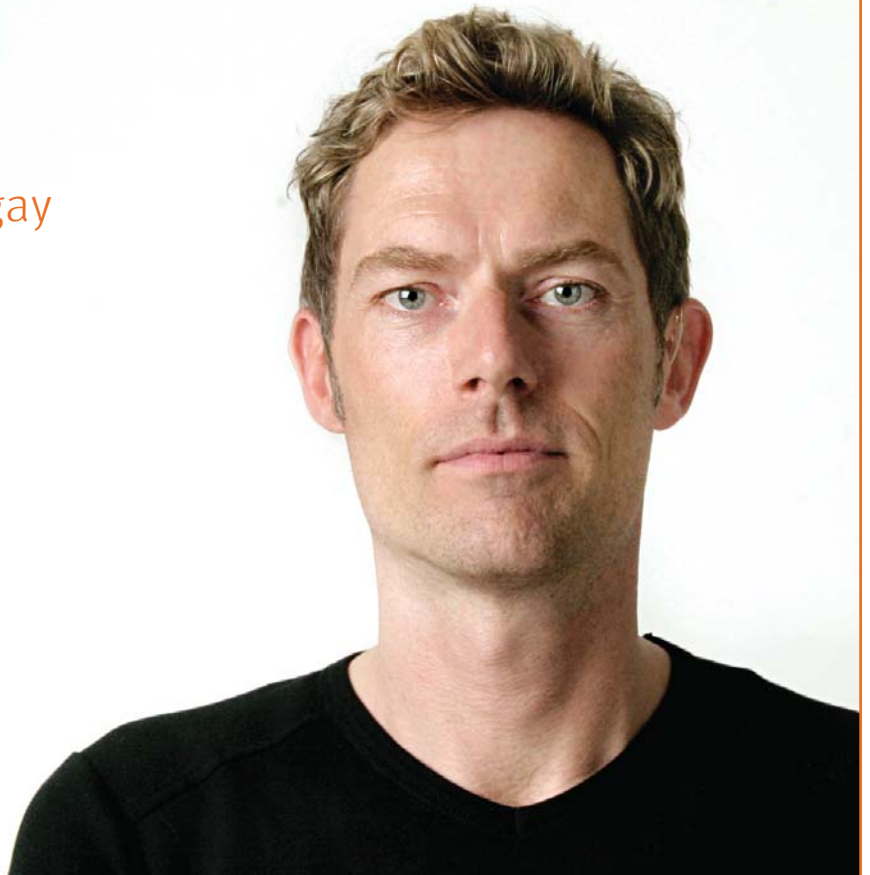
"[...], these laws require Aboriginal women to 'pluck out some aspect of [themselves] and present this as the meaningful whole, eclipsing or denying other parts of self' [...] In doing so, they continue to force Aboriginal women to (re)present their identity by reference to mainstream law's benchmark, so it can propagate its space by means of the 'apparent legitimacy [of its]outcomes' [...] This makes it unlikely that an Aboriginal woman could complain of both sex and race discrimination against a white woman, and thus the full extent of an Aboriginal woman's experience remains unknowable to mainstream law."

3.3 Canada

The Canadian Charter of Rights and Freedoms of 1982 is part of the Canadian Constitution dating back to 1867. The Charter applies to all levels of government in Canada whether at federal, provincial, territorial or municipal levels. The equality clause in section 15 is an open ended anti-discrimination clause which encompasses race, national or ethnic origin colour, religion, sex, age or mental or physical disability. It is not exhaustive and thus allows for further grounds to be added to the list by the courts. This enables the Courts to consider cases where the alleged discrimination arises from a combination of recognised grounds.

The Canadian Human Rights Act of 1985 prohibits discrimination on the basis of race, national or ethnic origin, colour, religion, age, sex, marital status, family status, sexual orientation, disability and conviction for which a pardon has been granted. This is a closed list of grounds which cannot be extended by the Courts so it was not possible for the Courts to consider cases of intersectional discrimination. In order to correct this situation the Canadian Human Rights Act section 3(1) was amended in 1998 in order to add a clause setting out that a discriminatory practice includes a practice based on one or more prohibited grounds of discrimination or on the effect of a combination of prohibited grounds. The Supreme Court of Canada and other courts and tribunals have addressed the issue of multiple grounds of discrimination and intersecting grounds on a number of occasions⁴⁶.

— “I am a deaf gay man. I want to be a father”



Mossop case (1993), Supreme Court of Canada, Madam Justice L’Heureux-Dubé, dissenting opinion:

“[...] it is increasingly recognized that categories of discrimination may overlap, and that individuals may suffer historical exclusion on the basis of both race and gender, age and physical handicap or some other combination.” “[...] categorizing such discrimination as primarily racially oriented, or primarily gender-oriented, misconceives the reality of discrimination as it is experienced by individuals. Discrimination may be experienced on many grounds, and where this is the case, it is not really meaningful to assert that it is one or the other. It may be more realistic to recognize that both forms of discrimination may be present and intersect.”

The Canadian Human Rights Commission (CHRC) administers the Canadian Human Rights Act (CHRA) and is responsible for the enforcement of employers’ obligations under the Employment Equity Act (EEA). Additionally, all provinces in Canada have a Human Rights Commission, established according to a Human Rights Code. In some instances, prohibited grounds for employment differ from those for the provision of services⁴⁷.

The Ontario Human Rights Commission has played an important role in addressing and exploring the issue of Multiple Discrimination. In a discussion paper the Commission sets out the possible applications of an intersectional approach to human rights claims⁴⁸. The Commission has developed specific tools to facilitate the consistent application of an intersectional analysis in all areas of the Commission’s daily work. The Commission estimated that between April 1997 and December 2000 48% of the complaints that they received included more than one ground. Their discussion paper argues that in cases of discrimination on multiple grounds the discrimination experienced is different from that experienced on any of the individual grounds. They describe this as *‘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...’*⁴⁹.

Such an approach permits the particular experience to be both acknowledged and remedied. In particular, they pointed out the difficulties suffered by older people with disabilities, people with disabilities from ethnic minority groups and people from ethnic minority who have a particular religion. They argue that taking an intersectional

approach leads to a greater focus on society’s response to the individual and a lesser focus on what category the person may fit into.

In several cases, the Human Rights Tribunal of Ontario has found that intersectionality of discrimination was decisive in the assessment of the complaint. The decision *Baylis-Flannery v. Walter DeWilde* represents the first case in which the Human Rights Tribunal explicitly recognised and applied the concept of intersectionality with respect to both liability and remedy.

Baylis-Flannery v. Walter DeWilde c.o.b. as Tri Community Physiotherapy (No. 2) (H.R.T.O.) (2003)

The Human Rights Tribunal of Ontario ruled that the respondent discriminated against the complainant because of her race and gender, sexually and racially harassed her, made sexual advances, and ultimately terminated her employment because she objected to his conduct. The Tribunal found that the intersectionality of the discrimination based on gender and race exacerbated the complainant’s mental anguish. They found that the respondent sexually and racially harassed the complainant because she was a young black woman over whom he could assert economic power and control. He also repeatedly diminished her because of his racist assumptions about the sexual promiscuity of black women.

Radek v. Henderson Development July 13, 2005

The Tribunal found that Ms. Radek was treated differently because of being Aboriginal and disabled. She was rudely questioned and followed when she entered the mall. When she objected to this treatment she was told that she had to leave. The Tribunal also found that the discriminatory treatment of Ms. Radek was not an isolated incident, but part of a larger pattern of discriminatory treatment of Aboriginal people and people with disabilities by Henderson and Securiguard. The Tribunal concluded that Henderson and Securiguard discriminated against Ms. Radek, and discriminated systemically against Aboriginal and disabled persons.

Database of Cases Available at: www.chrt-tcdp.gc.ca/search/index_e.asp?searchtype=cases

The development of the intersectional approach has probably been assisted by the amendment to section 3(1) of the Canadian Human Rights Act, which inevitably drew attention to the need for Courts, Human Rights Commissions and Tribunals to consider whether intersectional discrimination has occurred. The discussion paper of the Ontario Human Rights Commission and decisions of the Human Rights Tribunals in the provinces have underlined the practical effect and importance of having an analytical tool to tackle Multiple Discrimination.

The Canadian courts' understanding of a proper intersectional approach and analysis is still in its infancy. Even if there is an increased awareness and recognition of an intersectional approach, some uncertainty still remains regarding how to apply an intersectional analysis to the facts. Hence there is still a risk of compartmentalisation of grounds and overlapping forms of discrimination can still be obscured, since the practical application in a specific case is difficult.

Nevertheless, it has been pointed out by the Ontario Human Rights Commission⁵⁰ that “ [...] some significant developments have occurred and include: (1) a recognition by the Supreme Court that an intersection of grounds can be recognised as a new analogous ground where social context, historical disadvantage and essential human dignity are involved [...] (2) the application of a contextual analysis, focusing on society's response to the individual and its construction of identity that includes examination of historical disadvantage, social, political and cultural context and socio-economic issues [...] (3) the use of statistical evidence to illustrate the particular circumstances of groups identified by an intersection of grounds [...] (4) findings of discrimination based on all the grounds that make up a complainant's identity and not just those that are the least complex or controversial [...] and (5) the rejection of individuals or groups that are identified by some but not all of the same grounds as the complainant as being inappropriate for comparison to the complainant [...]”.

3.4 The United States

An intersectional approach to discrimination cannot be derived directly from the United States Constitution, nor from federal law or statutory law on the domestic level. At the federal level, protection against discrimination is afforded by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution from 1870. It covers discrimination by the State governments on the basis of race, colour or national origin. Domestic law provides protection through enforcement of the constitutional provisions and a variety of statutes, which typically provide judicial and/or administrative remedies. Hence for the most part State statutory protections can be inferred from the United States Constitution and federal law.

Case law from the court system seems to reflect that no overall intersectional approach has been developed. Thus, the Courts do not usually identify claims based on intersection of two or more grounds, but leave it to the victim of discrimination to decide the ground on which the case is to be reviewed. As a consequence, the complainant will have to choose between the different grounds of discrimination relevant for the case, or submit two or more separate claims⁵¹.

However one institution, The United States Equal Employment Opportunity Commission (EEOC)⁵², has taken the lead in introducing, discussing and applying an intersectional approach to discrimination. This step may pave the way for a broader understanding and acceptance of cases involving more than one ground of discrimination.

The EEOC is an independent federal agency created to enforce Title VII of the Civil Rights Act of 1964 as well as other acts⁵³. Title VII of the Civil Rights Act covers employment discrimination based on race, colour, religion, sex and national origin, whereas other grounds are covered by other laws. Among other things, the Act prohibits discrimination against a subgroup of persons in a racial group because they have certain attributes in addition to their race. Thus, for example, it would violate Title VII for an employer to reject black women with preschool age children, while not rejecting other women with preschool age children⁵⁴.

The EEOC has published a Compliance Manual on racial discrimination⁵⁵ and has recently added a revised section on race and colour discrimination which includes the question of intersectionality. The section provides guidance on analysing charges of race and colour discrimination under Title VII of the Civil Rights Act of 1964 and explains about intersection of grounds:

“Title VII prohibits discrimination not just because of one protected trait (e.g., race), but also because of the intersection of two or more protected bases (e.g., race and sex). For example, Title VII prohibits discrimination against African American women even if the employer does not discriminate against White women or African American men⁵⁶. Likewise, Title VII protects Asian American women from discrimination based on stereotypes and assumptions about them “even in the absence of discrimination against Asian American men or White women⁵⁷.” The law also prohibits individuals from being subjected to discrimination because of the intersection of their race and a trait covered by another EEO statute – e.g., race and disability⁵⁸, or race and age⁵⁹.”

The EEOC has launched an enforcement guidance document in order to assist investigators, employees and employers in the handling of intersectional cases. The guidance document facilitates awareness-raising and the application of a practical approach to the issue of intersectional discrimination for specific vulnerable groups (in this case caregivers). As such, the guidance document paves the way for broadening the intersectional approach to go beyond race and colour.

Enforcement Guidance: Unlawful Disparate Treatment of Workers with Caregiving Responsibilities⁶⁰

In addition to sex discrimination, race or national origin discrimination may be a further employment barrier faced by women of color who are caregivers. For example, a Latina working mother might be subjected to discrimination by her supervisor based on his stereotypical notions about working mothers or pregnant workers, as well as his hostility toward Latinos generally. Women of color also may be subjected to intersectional discrimination that is specifically directed toward women of a particular race or ethnic origin, rather than toward all women, resulting, for example, in less favorable treatment of an African American working mother than her white counterpart.

The subject of Intersectional Discrimination is also a focus of the meetings of the EEOC. Recently, the topic of neutral hiring criteria and other forms of employment testing was discussed with a view to the consequences of such practices and in particular the adverse impact on African Americans and other protected groups⁶¹. It was also stressed that the EEOC should initiate a dialogue with employers in order to make them more sensitive to the issue of intersectionality and to encourage them to take affirmative steps to combat intersectional discrimination⁶².

The EEOC’s documents and discussions seem to indicate a tendency towards mainstreaming the intersectional approach, an increased awareness of the issue and the possibility of embracing several types of grounds to form the background of a single case. Moreover, the work of the EEOC suggests a specific focus on the groups of persons who are vulnerable due to their race, gender and disability.

This is a new trend and it is primarily centred on the practice of the EEOC. It has its genesis in the experience of complainants. Difficulties in registering complaints covering discrimination on more than one ground, mean complainants have to accept a disjunction of the grounds of discrimination and their cases are not handled with the acknowledgement of combined factors. The work done by the EEOC may over time have an impact on case law within the field of employment legislation, but generally it has not yet reached the courts.

3.5 Concluding remarks

EU anti-discrimination and equal treatment legislation does recognise 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 which would, in turn, provide more effective protection for individuals and groups experiencing Multiple Discrimination. The transposition of the Race and Employment Equality Directives has played a major role in establishing a common understanding of direct and indirect discrimination by providing a common definition for these forms of discrimination. Similarly, an EU definition of Multiple Discrimination is needed in order to create a common understanding of the phenomenon of Multiple Discrimination.

Currently, Multiple Discrimination in the EU can be legally tackled in the field of employment as all six grounds of gender, age, race or ethnic origin, disability, religion or belief and sexual orientation are covered. The existing case law on Multiple Discrimination in different countries also shows that it is possible, in the field of employment, to handle cases of discrimination where more than one ground is involved, although this may mean that the grounds are argued separately.

Outside the field of employment and occupation, only discrimination on grounds of gender and ethnic origin are protected by EU law. The lack of legislation against discrimination outside employment and occupation on the grounds of age, disability, religion/belief and sexual orientation is not only a problem for persons who are subject to discrimination on those particular grounds but also when these grounds are combined with existing grounds. For example, if a person is subject to discrimination involving, sexual orientation and ethnic origin in access to healthcare, it is possible to bring a case but only on the ground of ethnic origin. By doing so, the person does not receive recognition of having been discriminated against as a result of the intersection of the two grounds in the health sector. Additionally, in cases where none of the involved grounds is protected, for instance age and religion, the potential claimant has no protection against discrimination outside of employment and occupation. This effectively fails to promote equal treatment and opportunities for all citizens in all fields and consequently does not recognise individuals' multiple identities.

Multiple Discrimination is, from a legal perspective, much more complex than meets the eye. This becomes evident in cases where two or more prohibited grounds intersect and have a combined effect on the victim. If each ground has to be disaggregated and separately considered, such treatment risks neglecting the combined experience of discrimination. There is a need for further research on this issue 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.

In contrast to the EU, a widespread awareness of Multiple Discrimination has been developed in Canada and the USA. Institutions and agencies with a mandate to enforce or promote non-discrimination in these two countries have explored ways of understanding and applying an intersectional approach within their legal framework. In Canada, courts, tribunals and commissions have been instrumental in fostering the judicial system's recognition of intersectional discrimination. They have developed the application of a contextual analysis in cases where the historical disadvantage, social, political and cultural context or socio-economic issues have an impact on the construction of the individual's identity and society's response to this identity. The explicit recognition of the possibility of discrimination on a combination of grounds in the Canadian Human Rights Act has undoubtedly helped the development of this law. No such terminology is used in US and Australian legislation on discrimination, however.

Part 2: Results, good practice and suggestions



4. Exploring Multiple Discrimination

This chapter explores how Multiple Discrimination is understood and attempts to provide a rudimentary picture of which groups are vulnerable to Multiple Discrimination and in which spheres of life Multiple Discrimination occurs. It further demonstrates the effect Multiple Discrimination has on the individual and highlights good practice addressing the phenomenon.

The content of this chapter is based partly on the questionnaires and roundtable meetings held with the stakeholder groups in the ten participating Member States. The stakeholder groups of Ministries, National Equality Bodies and NGOs are discussed in separate sections when relevant. As the number of social partners responding to the study was limited, it was not possible to explore any themes for this group.

4.1 Contextualising Multiple Discrimination

Literature on Multiple Discrimination indicates that in order to explore the phenomenon of Multiple Discrimination, it is important to examine the context in which discrimination arises. By contextualising discrimination we shed light on the historical, social, cultural and political processes and developments which have significance for the occurrence of discrimination – and hence Multiple Discrimination – in society.

The EU is comprised of 27 Member States and at least 27 unique socio-economic, cultural and political settings. The ten Member States chosen for the purpose of this study represent not only different geographical areas of the EU, but also different contexts in which the principles of equal treatment and non-discrimination have evolved and been put into practice. It was a natural starting point of the study to examine and discuss at the roundtables how and where Multiple Discrimination is perpetrated.

Most of the participants in the roundtables could describe and link the impact of the socio-economic, cultural and political development in their Member State to the prevalent attitudes towards persons belonging to vulnerable groups in society. Since the context for each Member State differs it is not possible to paint a general picture. The stakeholders, however, identified several themes that could be applied to contextualise Multiple Discrimination.

Generally there were notable differences between the time of entry into EU membership and the subsequent introduction of anti-discrimination legislation in the individual Member States. Whilst attention has been broadened to include discrimination on a range of additional grounds in the last decade, several of the Member States in the study had only just recently transposed the EU directives and can be regarded as relatively “new players” in the field of European equality.

The recent introduction of EU anti-discrimination legislation bears significance in terms of general efforts to address and combat discrimination. In Hungary, for example, a Ministry respondent voiced the opinion that it is too early to explore the concept of Multiple Discrimination because a comprehensive understanding of single ground discrimination has yet to be gained. The respondent mentioned that understanding and tackling Multiple Discrimination necessitates a more thorough understanding of discrimination and what it means on one ground, before embarking upon more grounds. Other respondents from the Ministries, National Equality Bodies and NGOs also made reference to challenges such as the struggle against general social inequality, unemployment and poverty in their societies. These challenges demand a great deal of attention, which often leads to their prioritisation within the wider context of discrimination. At the same time, however, a number of respondents pointed out that there is a link between poverty and unemployment and the experience of discrimination, since persons vulnerable to discrimination are often also those who are impoverished and unemployed. One respondent called it:

“a vicious circle” for some groups of individuals who cannot get jobs because they are poor and because they belong to the Roma community – a community often perceived as being lazy – but when they come to get jobs they don’t get any! And therefore they remain poor and have to resort to other means of income which is often through crime - so the situation goes round and round.”
NGO, Romania

The perception that it is too early to address Multiple Discrimination was not shared by all participants in the study. Respondents from a group of legal experts in Britain saw anti-discrimination work as part of an evolutionary cycle, where the understanding of discrimination on single grounds is now so well-developed that it leads to a dynamic understanding of discrimination, which in effect includes recognition of multiple identities, and therefore of Multiple Discrimination.

Furthermore, initiatives such as the “For Diversity – Against Discrimination” campaign and the European Year of Equal Opportunities 2007 were cited by Ministry respondents as important initiatives which have had an impact on understanding the horizontal approach and which have opened up avenues to thinking along the lines of equal rights for all.

Generally the role and influence of civil society in promoting equal treatment is also an important contextual factor in understanding Multiple Discrimination. Here it was possible to see differences between the Member States studied with respect to how well-established and recognised NGOs are, and whether they enter into and are included in partnerships and collaboration with other institutions, both governmental and non-governmental. This also means variations in funding of resources and

in NGO influence and capacity in the political processes and legislation. The more involved the NGO community seemed to be, the more awareness on discrimination issues could be identified. The more cooperation there was between different NGOs, the more developed was the understanding of Multiple Discrimination.

The role of the media was also raised in several roundtables as a contextual factor in understanding Multiple Discrimination. Here it was the ability of the media to fuse stereotypes and prejudices and the impact of this on the general public that was mentioned. Much has been researched and written on the important role of media in shaping perceptions of identity and how we see others and ourselves. Hann argues that there is a media preoccupation and even obsession with stereotyping various groups⁶³. This was an argument which was highlighted in the study by several respondents from NGOs and National Equality Bodies. Respondents mentioned that after the 9/11 incident in New York and Washington D.C., parts of the media had played an active role in prejudiced reporting against ethnic minority Muslim men, creating images of these men as potential terrorists. One respondent believed that this tendency is a contributory factor in creating and increasing prejudice and hostile behaviour against some religious groups wearing traditional religious clothing.

4.2 Identifying Multiple Discrimination

The focus of this section is to examine how the participating stakeholders understand Multiple Discrimination on a practical level. The question put to all stakeholder groups was: Does your organisation/institution have a definition or common understanding of Multiple Discrimination? Furthermore respondents were asked to illustrate their understanding by providing either a fictional or a real example of Multiple Discrimination.

Ministries

Among the respondents from Ministries, few answered that they had a working definition of Multiple Discrimination, since nearly none of the Member States has Multiple Discrimination (nor any other related terminology) mentioned in their legislation. The lack of a working definition could also be explained by the fact that in most Member States, issues concerning equal treatment and combating discrimination are dispersed amongst different Ministries. It is not uncommon, for example, that one Ministry deals with gender issues, another Ministry with race and ethnic origin and a third Ministry with disability – often without any cooperation between the three. A Ministry respondent in Romania explained that their legislation regarding gender equality did make reference to Multiple Discrimination but that it had not yet been invoked. Furthermore, as a result of the figures put forward by the National Equality Body on the number of cases involving Roma women, the Equal Treatment Act in Romania had been amended to recognise that when a person is subject to discrimination on more than one ground it is considered an “*aggravated circumstance*”.

Some Ministry respondents explained that even though the national legislation did not include provisions for a definition of Multiple Discrimination, it was still possible to address Multiple Discrimination. For those Member States which have not gone beyond the scope of EU anti-discrimination legislation, it is technically possible to raise a Multiple Discrimination case in relation to the employment field. However the respondent from a Ministry added that:

“(...) it will still be up to the judge to decide whether the case should be treated as multiple or single ground(...) more often than not, one ground will be chosen because it is easier to test discrimination on one ground rather than two or more especially if the case is intersectional.”

Ministry, Denmark

A Ministry respondent in Ireland explained that their anti-discrimination equal treatment legislation was dealt with in one Ministry that covered all grounds and fields, within and outside of the labour market:

“We started anti-discrimination legislation after accession into the European Union. In the 1990s we already had protection for gender but there was an increasing demand for protection on other grounds as well. Inspired by Canada and Australia we would, rather than set up parallel structures, establish a single legislative framework.”

Ministry, Ireland

Though not many of the respondents from Ministries had a working definition of Multiple Discrimination, most of the respondents had an understanding of the phenomenon. A respondent said:

“Multiple Discrimination is the combination of discrimination on two or more grounds. Discrimination of migrant women, discrimination of disabled women, discrimination of black homosexuals, discrimination of ethnic youth.”

Ministry, Netherlands

Another respondent answered:

“One can imagine the case of an old woman from the Roma community, who could face discrimination on the grounds of her age and ethnic origin.”

Ministry, Romania

National Equality Bodies

The majority of National Equality Bodies which participated in the study were bodies covering more than one discrimination ground in their mandate. Despite being Single Equality Bodies, most of them did not approach discrimination horizontally and therefore did not have a working definition of Multiple Discrimination. The reason for failing to address Multiple Discrimination was often a lack of legal provisions dictating their mandates. Not having a working definition, however, was not a hindrance to understanding the phenomenon or to recognising cases with multiple grounds:

“(...) after having had numerous complaints from women with a Roma background where the women could not discern whether discrimination was due to their ethnic origin or their gender, we [the Equality Body] made a suggestion to amend the equal treatment act so that we could handle cases of Multiple Discrimination. The legislation was amended to the effect that if a person were subject to discrimination on more than one ground it would be considered an aggravated situation.”
National Equality Body, Romania

Other Single Equality Body respondents also had a definition of the phenomenon, even though the definitions were not considered as working definitions for the whole institution. Their definitions of Multiple Discrimination stemmed partly from experiences with case handling where the complainant either perceived the discrimination they had been subject to as multiple or where the Equality Body had identified multiple grounds in the case:

“It is discrimination covering multiple strands. Not putting people in boxes and recognising that people have multiple identities. Black Minority Ethnic women can be confronted with both race and/or sex discrimination and face barriers based on race and/or sex on the labour market.”
National Equality Body, Britain

As well as replying to questions to define the phenomenon, respondents were also asked to provide examples of Multiple Discrimination, either fictional examples or

from actual cases. Even though the National Equality Body they represented had not agreed upon or developed a definition or common understanding, the majority of respondents were able to provide specific examples of Multiple Discrimination:

“We have recently settled a case concerning both sex discrimination and discrimination due to ethnic origin. A Russian woman filed a complaint to the legal unit accusing her employer of discriminatory treatment on several grounds: the fact that she is a woman combined with her ethnic origin especially her language skills. She stated that she was treated in a less favourable way than her male and female colleagues during her vocational training as a police officer.”
National Equality Body, Sweden

As mentioned, the level of understanding and awareness of Multiple Discrimination is quite developed among National Equality Bodies that cover more than one ground because, in their daily practice they meet and deal with individuals seeking redress on the basis of multiple grounds.

NGOs

Among the stakeholder group of NGOs the same pattern as with Ministries and National Equality Bodies became apparent. The majority of NGOs replied that they did not have a working definition or a common understanding of the phenomenon. However, among NGOs that have been working in the field of anti-discrimination for a long period of time, the understanding of the phenomenon was well-developed:

“An elderly woman with an Asian ethnic background with headscarf applied for a job as a receptionist. She is faced with discrimination because of her ethnic origin, because she is a woman and because she is a practicing Muslim who wears a headscarf. On top of this, she may also be discriminated against because she is elderly.”
NGO, Denmark

— “I refuse to leave the labour market because of my age and hearing impairment”



Another respondent stated:

“Multiple Discrimination occurs when a Romani woman is treated less favourably in a hospital than a person who is not Romani. So, she is discriminated against both because of her Roma origin and because of her female gender.”
NGO, Hungary

A respondent raised the idea that the more an individual differs from the perceived “norm”, the more vulnerable that individual is in terms of being subject to Multiple Discrimination:

“Imagine a person who comes from any country outside the EU, Iran for example, who is transsexual. That person has a different ethnic origin, religion and gender identity to the majority and will surely be subject to Multiple Discrimination.”
NGO, Greece

Despite a high level of understanding of the phenomenon of Multiple Discrimination, most of the NGOs participating in the study represent and work with one ground of discrimination as their primary focus. However in recent years, the number of NGOs that represent multiple ground groups has increased. Such multiple ground organisations typically work with two or more grounds of discrimination and their work is based on a common understanding of institutional Multiple Discrimination.

The reasons why members of multiple identity groups are increasingly establishing their own movements, communities and NGOs are worth noting. Respondents cited single ground NGOs’ difficulties, and sometimes failure, in being inclusive and representative of all members as well as the need of intersectional groups to identify, “speak up” and articulate their own interests as the main motivation for starting their own initiatives.

4.3 Who is vulnerable to Multiple Discrimination?

Once we recognise that all human beings have multiple identities, the answer to the question : “Who is vulnerable to Multiple Discrimination?” becomes simple: all individuals are potentially vulnerable.

Ministries

Most Ministry respondents believed that persons at the intersection of gender and ethnic origin were particularly vulnerable to discrimination. The respondents from Member States with migrant communities pointed especially to the vulnerable position of migrant women due to their lack of knowledge of the Member State’s language. This lack of language skills means they are unaware of their rights and do not know where to seek help:

“However, in its work the Ministry does try to empower ethnic minority women on the basis of their special situation and needs, so as to create increased gender equality among ethnic minorities.”
Ministry, Denmark

In some Member States, several of the Ministry respondents pointed to the fact that the situation of Roma women is even worse than that of the Roma population in general. Thus one respondent suggested that being a Roma woman should be recognised as a separate ground for discrimination.

“The Roma women face discrimination within their own communities due to traditional views on women and also suffer outside of their communities because of women’s generally lower status in society and general prejudices against Roma people.”
Ministry, Romania

The fact that Roma women are subject to trafficking was also mentioned by several respondents.

Furthermore, almost every Ministry respondent mentioned projects and initiatives targeting ethnic minority women, thus confirming the perception that ethnic minority women are seen as a group that is particularly vulnerable to Multiple Discrimination.

However, the intersection of gender and race also comprises ethnic minority men – in particular young ethnic minority men; a group which in recent years has received increasing attention amongst the Ministries and other stakeholders. One respondent explained that:

“There is focus on this group of individuals because statistics show that the rate of school drop-out among young ethnic minority men has risen drastically and because studies show that this group is more vulnerable to racial profiling than other groups of youngsters.”
Ministry, Denmark

National Equality Bodies

Respondents from the National Equality Bodies also pointed to the intersection of gender and ethnic origin - ethnic minority women – to be the group of individuals most vulnerable to Multiple Discrimination. Respondents based this on the number of cases handled by the Equality Bodies. One of the Equality Body respondents referred to a relevant study which showed that:

“Bangladeshi, Pakistani and Black Caribbean women under 35 in employment were 2-3 times more likely than white women to be asked questions at a job interview about their plans for marriage or children as stereotypes prevail that Asian women will not be interested in a career once they get married.”⁶⁴

NGOs

As mentioned earlier, the majority of respondents from NGOs represented one ground of discrimination. Inevitably this meant that, say, an NGO representing gay, lesbian, bisexual and transgender persons would refer to examples regarding the groups they represent, such as being a gay Muslim or gay and an older person, and perceive these as vulnerable groups.

NGOs meet and represent victims of discrimination who – due to lack of legislation on the grounds in question, or because discrimination on that particular ground is not prohibited – may not be visible to the other stakeholders. Therefore the NGO respondents gave a broader picture of who is vulnerable to Multiple Discrimination than the respondents from the Ministries and National Equality Bodies were able to do.

However, the NGO respondents also pointed to the intersection of gender and ethnic origin. When participants from Roma rights NGOs spoke about the challenges they meet in addressing discrimination against Roma women, gender and Roma background were discussed as high-risk grounds. Data from the questionnaires in the study also show that NGOs working with the Roma communities often cite women belonging to Roma community as being particularly vulnerable to multiple forms of discrimination.

It is also noteworthy how some participants in the study reported that disadvantaged groups discriminate against other groups and that individuals also experience discrimination in the NGO/voluntary sector. Examples of such discrimination were raised and discussed by several respondents. This phenomenon was highlighted by a respondent from an LGBT organisation:

“A lesbian Muslim woman who is kicked out of her house because of her sexual orientation and has a hard time finding a place in the LGBT community because of her Muslim background.”
NGO, Netherlands

A vulnerable group which is given little attention in the discourse of Multiple Discrimination is transsexuals. The problems surrounding discrimination faced by transsexual people were discussed by NGO participants in one Member State. The respondents stated that experiences of stigma and exclusion of transsexuals remain largely hidden. Transsexuals have a desire to live and be accepted as members of the opposite gender, however this group is seen by many as part of a particular subgroup of a wider “transgender” population that includes different gender identities, including individuals who cross-dress, without any desire for permanent gender change. On top of that, there is a widespread prejudice that transsexualism is an orientation towards people of the same sex. Thus, it can be argued that transsexuals are at risk of intersectional discrimination. As a consequence it can be difficult to prove whether discrimination has occurred because of gender or a perceived same-sex preference or both.

Multiple Discrimination against children who belong to multiply disadvantaged groups is worth noting. Some NGO respondents voiced their concern about children who are directly or indirectly subject to Multiple Discrimination. The discrimination that children are subject to because they are young is compounded by additional factors such as refugee or ethnic minority status, a disability and/or sexual minority orientation, etc. One of the respondents mentioned a study on ethnic discrimination of children with disabilities in the UK showing that information about disabled children in these groups is scarce and this may lead to these children “falling between two stools”⁶⁵.

Respondents also highlighted that, for persons belonging to the intersections of identity, the risk prevails that they might not be accepted by any group or be forced to choose one aspect of their identity over the other. They may not be able to find a community, NGO or movement which embraces their full identity.

Finally respondents also pinpointed some important differences between groups vulnerable to discrimination. Race, gender, age and some forms of disability are visible characteristics, while sexual orientation and religion and some forms of disability are mostly invisible.

4.4 Where does Multiple Discrimination occur?

The stakeholder groups participating in the study were asked to identify the sectors in which they observe Multiple Discrimination. Sectors in this context include employment, housing, social security, education, goods and services, etc.

Ministries

Most Ministry respondents identified labour and employment as the sector where Multiple Discrimination most often occurs. The assessment was made on the basis of existing data and national case law regarding discrimination on a single ground. Many of the respondents pointed out that in accordance with existing data and national case law, discrimination on a single ground mostly occurs in the labour market and hence the respondents reasoned that Multiple Discrimination is prevalent in the same sector.

Some Ministry respondents noted the material scope of the existing anti-discrimination legislation. They explained that their legislation was most developed with regard to employment and occupation; in both these areas all six grounds are covered. This is not the case for sectors outside employment and occupation, where, for most of the Member States, legislation is limited to gender, race and ethnic origin. However, the respondents did not rule out the existence of Multiple Discrimination in other sectors.

National Equality Bodies

The replies from the Equality Bodies were in line with respondents from the Ministries. They also pointed to the labour market as the sector where Multiple Discrimination most frequently occurs.

However, apart from having a mandate to assist victims of discrimination, Equality Bodies also conduct studies and surveys in the field. One respondent referred to a study they had undertaken on ethnic minority young men, which showed that this group of individuals was particularly vulnerable to discrimination in the field of goods and services by being denied access to night clubs because of their gender, age and race⁶⁶.

Other examples in the field of goods and services were mentioned, such as housing, newspaper advertisements and Internet sites. However, as the respondents explained, while the studies conducted in these fields had the purpose of looking at discrimination on the single ground of race and ethnic origin, it was still plausible that Multiple Discrimination occurred as well.

NGOs

The NGO respondents also highlighted employment as the sector where Multiple Discrimination most frequently arises. However, they could also point to other areas. For instance, an LGBT organisation mentioned the fields of social security and goods and services, particularly in relation to older gay people's access to care in homes for the elderly.

4.5 Effects of Multiple Discrimination

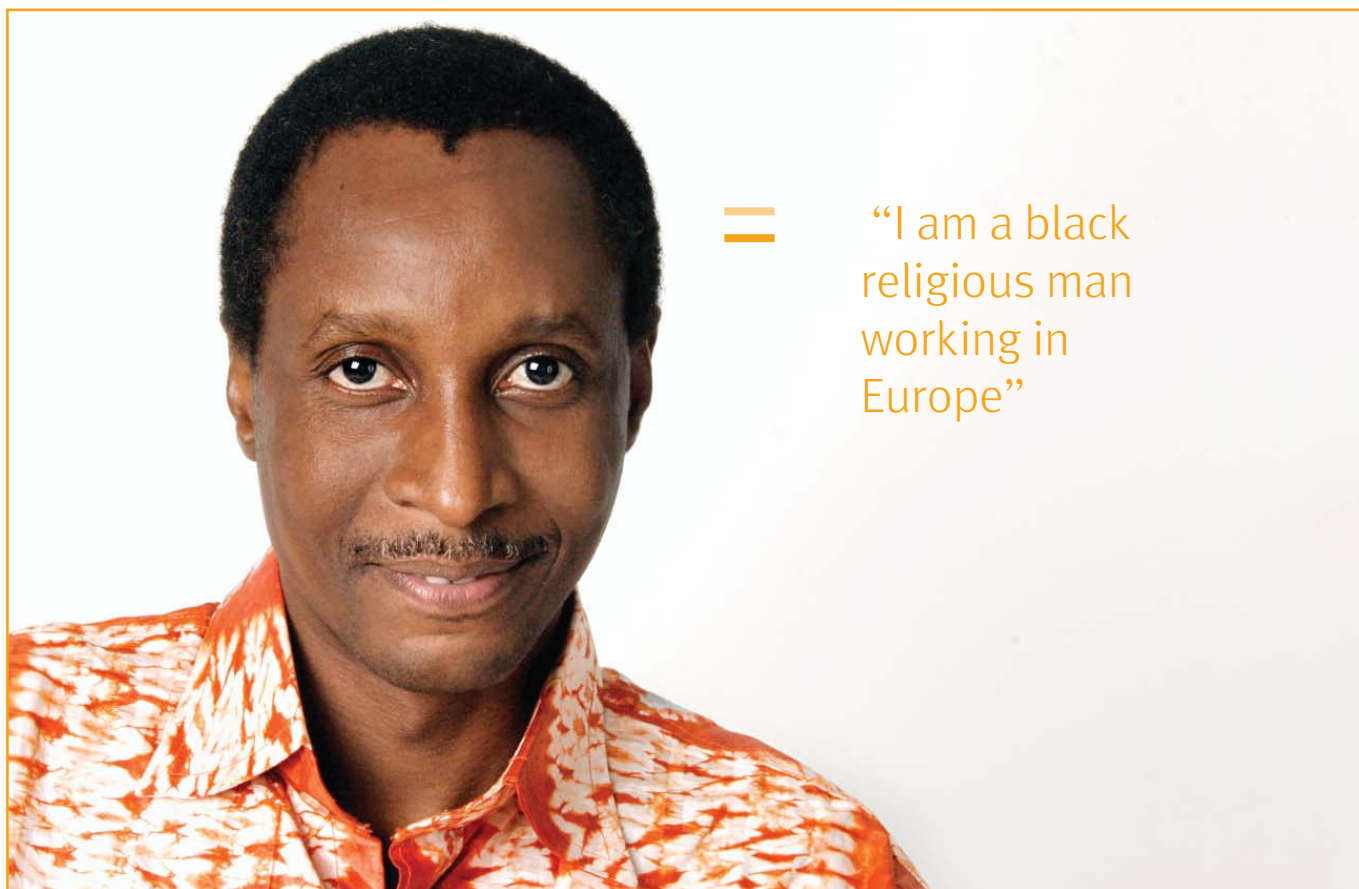
In the literature on discrimination it is widely documented that discrimination has a direct bearing on the psychological well-being of the individual and that such experiences have been found to increase symptoms related to anxiety and depression⁶⁷. Zappone et. al (2003) highlight the personal consequences for individuals subjected to Multiple Discrimination and their sense of exclusion from society⁶⁸.

To illustrate the effects of experienced or perceived Multiple Discrimination eight individuals were interviewed for the purpose of this study. The cases chosen for this study demonstrate that there is widespread ignorance about different cultures, personal characteristics

and lifestyles as well as a lack of recognition of multiple identities. Many individuals face daily questions and stereotyped comments which are prejudiced and discriminatory in nature. A consequence can be that members of societies feel excluded and marginalised.

To ensure the anonymity of the interviewee, participants' real names and the names of locations and places have been changed and pseudonyms have been used.

The five case studies presented here bear testimony to the damaging effect that experienced or perceived discrimination can have on an individual. Even if discriminatory comments or behaviour are not deliberate or intended to cause offence, the effects can be just as damaging⁶⁹.



Race and religion

Kassem Hassani, 41 years of age, applied for a job as a unit manager at a Municipality and was called to an interview for the vacant position. During the interview he was faced with questions regarding his presumed Muslim background and his opinion and attitude towards women in the workplace. Kassem Hassani filed a complaint with a local complaints body, claiming to have been subjected to discrimination during the job interview, but lost the case.

Kassem Hassani:

“The questions they asked had to do with ethnic origin and religious background. One question they asked was “ As a Muslim what is your view on there being so many women in this workplace”? The answer I gave was that for integrity reasons I do not answer those types of questions. “I don’t see any difference between me and anybody else who has been sitting on this chair”. And then they rephrased the question. “Yes, but you who come from a Muslim country, you still represent a certain culture”. I repeated the same answer. And then they went on and asked the question in a similar manner.”

“It affected my health in a discernable way. It started about a month and half after the interview. It affected me for a whole year where I didn’t feel well. This interview made me lose my feeling of security. Normally speaking I am a secure person: I can do different jobs, take on assignments and I am a social person but I wasn’t managing that well. I started to hesitate in applying for jobs I knew I was interested in.”

Sexual orientation and disability

Maya Schleimann, 22 years of age, a university student of literature, finds that the combination of being gay and a wheel-chair user leads to isolation due to lack of accessibility to the LGBT community. She also finds that she is subject to Multiple Discrimination when met with the prejudice that she is not suitable as a parent due to her sexual orientation and even less suitable when her potential role as a lesbian parent is considered in conjunction with her disability.

Maya Schleimann:

“It is really difficult sometimes being gay and having a disability, especially when it comes to accessibility. Generally it is extremely difficult getting around in the city and in terms of meeting people it becomes a real problem that there isn’t a single place which is accessible and gay or just gay friendly. It is obviously quite difficult to become part of a community that you can’t access.”

“People always assume that I am heterosexual and if I tell them I am not, they typically say that it is just a phase implying that it is better, more correct or natural to be heterosexual. There is also the assumption that you are a bad parent if you are gay, which obviously is made even worse if you have a disability.”

“On a bad day I can easily think that I simply cause too much trouble and inconvenience for others. Then I think I should know twice as much as anybody else to even justify that I am here. It is not fair but quite often I think I should do more or be more than others in order to compensate.”

Marital status, religion, age and race

Alberto Morales, 48 years of age, applied to a university for a vacant position and was invited to an interview. When not appointed he felt that he was subject to discrimination on the grounds of marital status, religion, age, race as well as on political grounds. Since political grounds are not a protected ground in his Member State, he could not include this ground when filing his complaint. At the first hearing of his claim Alberto Morales withdrew his complaints of discrimination on the grounds of marital status and religion and for strategic reasons narrowed it down to age and race. He was successful in his complaint.

Alberto Morales:

“I was detecting hostility in the interview situation and also some idea that I wasn’t familiar with this country. I was being treated like a foreigner. People were talking to me about this and that, as if I didn’t know about it. They had their minds made up that I was a foreigner and I wouldn’t be able to understand. In a way you are made to be a foreigner.”

“I believe the prejudices were multiple. I could feel it going on – the discrimination or the prejudice maybe. I felt the hostility in the interview and I couldn’t understand it. I would have liked to have taken action on political grounds as well but the law doesn’t allow me to.”

“My view would be that it is in some way artificial to choose facets of your identity as if you can separate them or leave out one element but in practice, given the nature of the equality legislation, given the way the tribunals work, you have to say this ground here is the one where there is the strongest probability.”

Race and gender

Renáta Sztojka, 44 years of age, a Romani woman and mother of six children was, by an official of the local city council, threatened with having the social benefits she was rightfully entitled to cut if she did not carry out difficult and degrading physical work for the council. According to a local NGO specialising in handling cases of discrimination against Roma people, the official of the local council intentionally picked Roma women for such work although there were other unemployed persons (Roma men and non-Roma women). Renáta Sztojka was successful in her complaint, however, on the grounds of race and ethnic origin.

Renáta Sztojka:

“The town clerk would call me a stinking Gypsy in her office. She humiliated quite a few Roma women. She told us to our face that she thought we were riffraff and all we wanted to do was “dodge” work (avoid being employed). She thought we were just living off others.”

“It was wintertime when women were set the task of shovelling snow, me included. We had to work eight hours a day in minus 20 degrees including Saturdays and Sundays. On the thirtieth day of cleaning I actually fainted and the doctor had to be called. I told him that no matter what happens I will work throughout the 30 days because otherwise the town clerk will not give me the benefit I am entitled to and my children will not have anything to eat.”

“It hurts me to see how the Roma women are treated. I find it difficult to find the right words for this but I think that I as a person am worth just as much as any other person. However I have to do twice as much to prove my worth than other non-Roma people.”

Religion, race and gender

Roya Arian, 43 years of age, is a qualified nurse who has held several jobs in the health sector. She wears a headscarf and has, on numerous occasions, experienced negative comments about her wearing the scarf at work. There have been incidents where patients associate her with terrorists and refuse treatment from a Muslim woman. She feels that the Danish cartoon crisis had a significant impact on people's reactions to her. Both colleagues and people in management positions question her in a disrespectful manner about wearing a headscarf. She has also been subject to indiscreet comments and questioning about "who does what?" in her household, implying that as a Muslim woman she must be oppressed by her husband.

Roya Arian:

"I worked in a care home for elderly people. I don't understand what goes on in people's minds. One of the residents asked me one day all day long "Are you a Muslim? Are you a Muslim?" There were also residents who would not allow me in their rooms, because I am a Muslim and wear a headscarf."

"Especially in the workplace I face the prejudice that women from a Muslim culture are not self-aware. I have heard from many colleagues "So what does your husband do? Who does the cleaning and the cooking? Who does the shopping and takes care of the kids?" They ask a lot of private questions which assume that I cannot stand up for myself and they should teach me how."

"It still affects me psychologically. It actually bothers me all the time. You become really sensitive and almost paranoid at times. When you don't get the respect that you deserve it really affects you. I can tell that I have become more introverted as a person and I don't trust people. I just stick to myself most of the time."



4.6 Addressing Multiple Discrimination

A central objective of the study was to identify experiences in addressing and tackling Multiple Discrimination on a practical level. The specific fields of practice which were of interest to the study were those of existing strategies or action plans to address or combat Multiple Discrimination, and promotional or awareness-raising activities and/or monitoring efforts targeting Multiple Discrimination.

Ministries

Most Ministry respondents answered that they did not have strategies, action plans, promotional, awareness or monitoring activities regarding Multiple Discrimination. This was explained by the lack of legal provisions and

insufficient knowledge of the phenomenon of Multiple Discrimination. Furthermore, as mentioned earlier, individual Ministries often deal with one specific ground of discrimination and therefore did not have the incentive to initiate strategies or activities to directly address Multiple Discrimination.

Some Ministry respondents said that they did not have activities as such that addressed Multiple Discrimination, but that their governments were in the process of either revising or contemplating amendments to existing anti-discrimination legislation which could in practice make it possible to have activities targeting the phenomenon of Multiple Discrimination in the future. These changes included, for instance, single equal treatment legislation, collection of data on discrimination or the establishment of single equality bodies.

One respondent from a Ministry explained that apart from other initiatives to combat Multiple Discrimination they had recently set up a working group on equality proof-

ing, where the aim is to ensure that policies and legislation incorporate the equality perspective horizontally. During the course of the roundtables, however, it became evident that, despite a lack of “conscious” activities, quite a few of the Ministries were able to identify projects that could be considered – if not directly then indirectly – to address Multiple Discrimination. In particular, these include projects developed within the framework of the European Year for Equal Opportunities 2007. Only in Romania, the Ministry responsible for the Year, could recount specific activities targeting Multiple Discrimination.

Respondents also mentioned projects with other objectives, such as alleviation of poverty or integration projects that nevertheless recognise specific intersections of grounds – particularly the intersection of gender and ethnic origin.

National Equality Bodies

Several Equality Bodies conduct research on multiply disadvantaged groups, whilst only a few have developed strategies or action plans, or promotional or awareness-raising activities to target Multiple Discrimination. As mentioned earlier, one Equality Body, for instance, conducted a formal investigation into the position of Black Minority Ethnic Women in the labour market⁷⁰. In the same context, another respondent highlighted the importance of implementing a multi-ground perspective in research and promotional work.

Since the majority of respondents from the Equality Bodies were advisors from a legal background the focus was placed mainly on the legal challenges in tackling discrimination on more than one ground. As pointed out in the literature review results from the roundtables also show that it is common practice for legal advisors to apply a pragmatic, tactical one ground approach to cases of Multiple Discrimination.

“We had a case where a man was harassed at his workplace. They thought he was gay because he was considered very feminine. It was hard to know who should take the case because it had to do with both gender and sexual orientation.”
Equality Body, Sweden

The Equality Body respondents made reference to specific case work where several grounds operate and interact with each other. One respondent illustrated the challenging nature of handling cases which were intersectional when there were separate Equality Bodies for separate grounds of discrimination.

The example also illustrates that the notion of an identity in itself is enough to trigger discriminatory behaviour; and if one falls outside the scope of what is considered “normal” for the male gender, one can be subject to discrimination.

The European Year for Equal Opportunities for All 2007 was also mentioned by some of the Equality Body respondents as having given them the opportunity to work horizontally and address the phenomenon of Multiple Discrimination. The Year has enabled them to have conferences, seminars and projects that involved promoting equal treatment on particular intersections of discrimination grounds.

NGOs

Most NGO respondents answered that they have not implemented strategies, action plans, promotional awareness or monitoring activities directly regarding Multiple Discrimination. However NGO respondents were becoming increasingly aware that their members have multiple identities, so they are either contemplating or have already initiated projects and activities aiming to support members who might be vulnerable to Multiple Discrimination. It also seemed that conducting studies or participating in research was a way of addressing Multiple Discrimination for the NGOs. A respondent explained:

“We have programmes on sexual orientation and ethnic origin/religion, and activities for LGBT people with a disability (deaf as well as mentally disabled) and activities for older and young LGBT people.”
NGO, The Netherlands

While such activities do not aim to address discrimination or Multiple Discrimination directly, they represent an increasing awareness and aspiration to recognise the diversity of a sub-group and accommodate the interests of members within it.

According to the NGOs, initiating projects and campaigns across grounds is not always straightforward. Due to their mandate many organisations focus their attention on one particular ground and finding a common platform for cross-sectional activities becomes cumbersome due to different interests and lack of recognition of discrimination on other grounds. As already mentioned respondents identified examples of conflicts due to ignorance, prejudiced attitudes, racism and stereotypes within and between NGOs as a factor which makes co-operation difficult:

“We were refused office space from a disability organisation that had plenty of space because we work with LGBT people.”
NGO, Lithuania

Another respondent explained:

“Not being a minority in society, women face other problems than minorities do – therefore we have plenty to do on our own.”
NGO, The Netherlands

Organisations providing support to one vulnerable group could be expected to be more understanding and accepting of individuals who have experienced prejudice, isolation and discrimination on other grounds. However, the evidence gathered in the course of this study show that individuals do not necessarily refrain from discriminating against others even though they might have experienced discrimination themselves. Nonetheless, despite conflicts of interest and other difficulties, it was possible to identify several NGOs who entered into collaboration with other NGOs.

“We usually cooperate with other NGOs dealing with discrimination in order to share knowledge and experience on the legal framework of non-discrimination. In this way we have knowledge on discrimination against women, disabled people and homosexuals.”
NGO, Hungary

“We even had the Roma NGO participate in the Gay Parade!”
NGO, Romania

“It took us two years to find a common platform to understand equal treatment on other grounds than our own and another year to find common actions to combat the phenomenon of discrimination that was cross sectional.”
NGO, Denmark

4.7 The Extent of Multiple Discrimination

A question asked during the roundtables by the participating stakeholders was: “What is the extent of Multiple Discrimination?” It was possible to identify data in two of the Member States surveyed in the study which are indicative of how often the phenomenon of Multiple Discrimination presents itself.

In the 2001 annual report from the Commission for Racial Equality, figures from Britain show that about 70 per cent of formal complaints were from women and the largest number were from Caribbean women. Because there are separate Equality Bodies rather than a single structure in Britain, these women had to decide and underline the racial discrimination rather than the gender dimension of their cases⁷¹.

The figures produced in Ireland by the Equality Tribunal for 2005 show that under the Employment Equality Act, almost 25 per cent of claimants allege Multiple Discrimination; and under the Equal Status Act, more than 25 per cent of claimants cite Multiple Discrimination.⁷² The figures for 2006 show that under the Employment Equality Act, 21 per cent of the cases involve multiple grounds while under the Equal Status Act, the figure is almost 30 per cent⁷³.

It is worth noting that respondents generally had different impressions of the extent of Multiple Discrimination. Participants from Equality Bodies in some Member States mentioned that they seldom received or treated cases on multiple grounds, while statistics from the Equality Body in say, Ireland show that between 20-30 per cent of their cases are on multiple grounds. The lack of available data shows that measuring Multiple Discrimination is a difficult task⁷⁴.

— “I am a young Danish woman with dyslexia”



4.8 Concluding remarks

The discussions with the three stakeholders groups demonstrated that Multiple Discrimination is understood from different points of reference and perspectives. In order to tackle the phenomenon it is necessary to understand the different socio-economic, cultural, historical and political contexts in which the stakeholders operate. These contexts affect the extent of knowledge, awareness and willingness to address the causes and effects of Multiple Discrimination. While for some of the stakeholders, tackling Multiple Discrimination was a question of going beyond the EU directives on equal treatment, for other stakeholders it was an area and phenomenon to be dealt with in the future as the present challenge was to tackle discrimination on one ground.

Relatively few of the respondents had a working definition of Multiple Discrimination. Nevertheless, there was generally a high level of understanding of the phenomenon of Multiple Discrimination among most of the respondents. The respondents, through their examples, illustrated their recognition of individuals possessing more than one identity which in effect makes them vulnerable to discrimination on more than one ground.

It must be noted that a number of respondents pointed out they had not thought of Multiple Discrimination prior to participating in the study and that it was only during the process of completing the questionnaire and at the roundtables that they had become aware of the phenomenon.

Among participants in the study, it was widely perceived that gender (women) and race is an intersectional group which is vulnerable to Multiple Discrimination. The grounds of gender and ethnic origin (in particular ethnic minority women) were raised in every roundtable meeting as a group subject to Multiple Discrimination. The observations put forward are not to suggest that this group is more vulnerable than others, but it could suggest that it is given more attention than other groups. Reports and research material collected during the course of this study also confirm this tendency.

Other intersectional groups highlighted as being vulnerable to Multiple Discrimination were disabled women, elderly women, young ethnic minority men, disabled LGBT, elderly LGBT, young LGBT and the elderly disabled. The fact that people can and do belong to several disadvantaged groups at the same time is recognised among the stakeholders in the study, but focus both among gov-

ernmental and non-governmental institutions is mainly placed on one ground of discrimination. The fact that certain combinations remain largely invisible may be partly explained by the fact that data is lacking for these groups. Furthermore it is likely that victims (of certain combinations) are reluctant to bring forward claims of discrimination either because of a lack of awareness of rights, or because it does not seem “worth the trouble”.

The phenomenon of Multiple Discrimination can manifest itself in any sector. The labour market, however, is singled out as the sector where Multiple Discrimination most often arises. This could partly be explained by the fact that anti-discrimination legislation is most developed in the areas of employment and occupation. In this sector, case law exists, some data is available and numerous studies have been conducted. In general, there has been a widespread focus on combating discrimination and promoting diversity and equal treatment in employment and occupation.

The individual case stories shed light on the effects that experienced or perceived Multiple Discrimination has on individuals.

Most stakeholders answered that they did not have strategies, action plans, awareness-raising or monitoring activities directly targeting Multiple Discrimination. The reasons behind this apparent lack of focus on Multiple Discrimination were the existing legal provisions and insufficient knowledge of the phenomenon of Multiple Discrimination. Initiatives such as the European Year for Equal Opportunities for All 2007 were noted to be useful in encouraging and committing all actors to a more horizontal approach to promoting equal treatment and combating discrimination.

Many of the NGO respondents noted that for persons belonging to the intersections of identities, the risk prevails that they might be forced to choose one aspect of their identity over the other/s. They may not find a community or movement which embraces their full identity. This can be problematic when an individual belongs to a vulnerable group and is seeking social and emotional support through participation in NGO movements and organisations.

Another tendency identified in this context was that NGOs which have a history of cooperating with other NGOs (and other institutions) working in other discrimination areas apparently have a greater awareness of discrimination across the six grounds. Such collaborations seem to cre-

ate greater awareness which furthers the chances of ensuring that political strategies, activities and social groups are accessible to and inclusive of the multiple identities and interests of their members.

Common initiatives promote dialogue and understanding. The results are potentially a greater awareness of Multiple Discrimination and a greater ability to address the issue more effectively. Forming coalitions with other vulnerable groups makes lobbying efforts and advocacy activities more powerful. Collaborating obviously also widens the

possibilities for mediating in conflicts between different grounds.

It is evident that Multiple Discrimination exists. However a lack of documentation and statistical data makes the phenomenon of Multiple Discrimination less visible and lowers incentives to recognise the phenomenon and to find effective mechanisms to combat it. Lack of data means that there is an unbalanced image of which intersectional groups are vulnerable, and in which sectors Multiple Discrimination occurs.

5. Good Practice

This chapter highlights seven examples of good practice identified in the course of this study. Some of these have been selected because they directly and innovatively target Multiple Discrimination. Others have been selected because they undertake a conscious horizontal approach to combating discrimination. Arguably the horizontal ap-

proach as a working method makes a systematic and holistic process possible, with the aim of developing common strategies in combating discrimination and Multiple Discrimination. Furthermore, all the examples contain elements of cooperation which promote dialogue and understanding across the grounds and contribute to a greater awareness of Multiple Discrimination.

Ministry of Justice, Ireland

In Ireland, the Ministry of Justice established a Working Group on Equality Proofing in accordance with a national social partnership agreement, which includes representatives of Government Departments, Agencies and the Social Partners. The Working Group started its work in 2000 and aims to provide an ongoing focus on equality proofing issues. Equality proofing is similar to gender mainstreaming strategies where the equality perspective is incorporated into policies and legislations and entails impact assessment and compliance.

In 2003 the Working Group started a project to develop a model for an integrated approach to equality proofing that covered poverty, gender and the eight other grounds covered under Irish anti-discrimination legislation.

The model produced was then applied, as a pilot exercise, to a broad strategic policy and to an expenditure review, the National Action Plan Against Racism and the Back to Education Allowance Expenditure Review, respectively. An integrated proofing process allows for administrative simplicity in policy making with the one process encompassing poverty and equality.

An integrated process also allows for a focus on multiple identities. The integrated proofing model stood up well to the test provided by the pilot exercises. The pilot exercise concluded, however, that the model needed further development and modification. The Working Group plans to carry out further pilot exercises.

The Equality Authority, Ireland

The Equality Authority, with a statutory mandate that covers nine different grounds, has identified the situation and experience of people at the intersections between these grounds as an important focus in their work. The Equality Authority organised a seminar on gays and lesbians with disabilities and commissioned research on members of minority ethnic groups with disabilities. The Equality Authority has worked on the problem of Multiple Discrimination with human rights and equality bodies in Ireland, Northern Ireland and Britain. In 2003 the Equality Authority co-ordinated a joint research project on multiple identity groups: Re-thinking Identity.

In its work of promoting good practice in employment and service provision, the Equality Authority has included a focus on the diversity within each ground covered by the equality legislation and this supports a practice that includes multiple identity and Multiple Discrimination issues. In terms of casework on discrimination, people can come forward and submit complaints on more than one ground. This makes it possible to register data on multiple ground cases. In 2006, 9% of all Equality Authority case files covered multiple grounds.

Action Plan for an Inclusive Society, Denmark

In 2003 the Danish Institute for Human Rights established the Equal Treatment Committee, consisting of civil society and governmental organisations and independent experts representing the six grounds of race and ethnic origin, gender, religion and belief, age, disability and sexual orientation. The purpose of setting up the Committee was to create a platform from where the members of the committee could find a common ground to promote equal treatment and combat discrimination from a horizontal cross-ground perspective. Prior to the establishment of the Committee, the organisations representing the different grounds concentrated their efforts largely on their own respective areas.

In 2006, after a study mapping the status of equal treatment in Denmark, the Committee embarked upon an action plan for an inclusive society. The objective of the action plan was to promote equal treatment for all and to fight against the phenomenon of discrimination for all sections of society. The action plan involved awareness-raising seminars to be held with all the members of the organisations participating in the action plan and workshops with representatives from the organisations to recommend common initiatives, a consensus conference where civil society organisations agreed and signed a Declaration for an Inclusive Society and, lastly, an event to involve politicians by inviting all the Danish Parliament members to a hearing to discuss the Declaration and their views on an inclusive society.

The Declaration for an Inclusive Society was signed by 22 different NGOs and has led to a new action plan (2007-2010) to fulfil the objectives of the Declaration and make it operational. Several organisations are now working at the intersection of their grounds and cooperate on common projects.

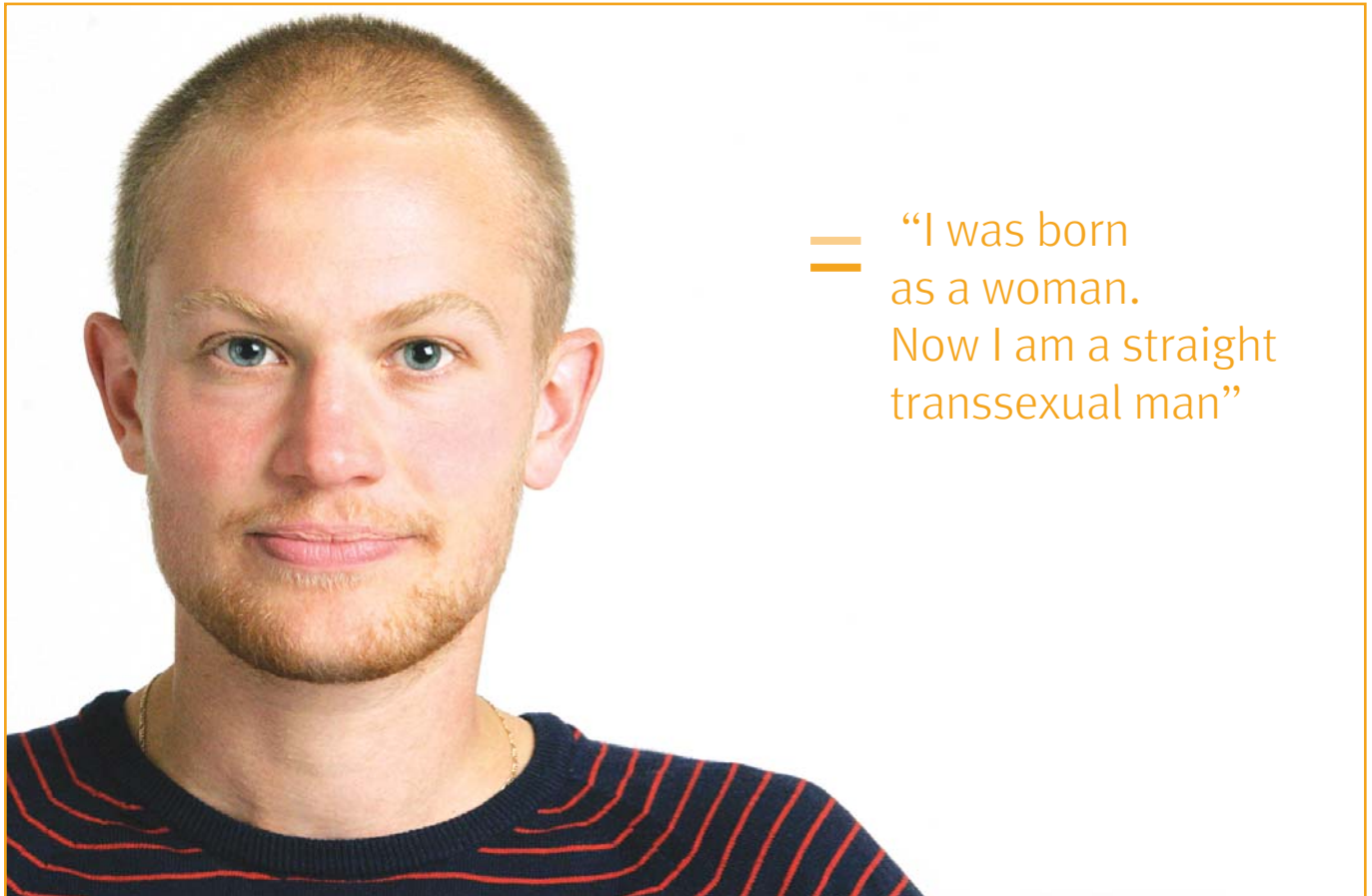
The National Council for Combating Discrimination (NCCD), Romania

The NCCD is Romania's national equality body. Through its case work, the body became aware of a disproportionate number of cases involving Roma women. NCCD found that it was difficult to handle these cases because it was not clear whether the person was discriminated on the ground of race and ethnic origin or on the ground of gender. NCCD found that the grounds were so interrelated that they advised the Government to amend the Equal Treatment Act. The Act was amended to the effect that if an individual was found to be discriminated on two or more grounds it would be considered as an "aggravating circumstance".

The Equalities National Council of Black and Minority Ethnic Disabled People and Carers (ENC), UK

People with intersectional identities are tentatively beginning to form new social networks and/or groups. The ENC was founded in 1997 and is a service user and carer led enterprise. It consists of 22 staff members who are volunteers, advocates, and trainee social work students - all from a Black and Minority Ethnic background. The ENC has over 200 people receiving advocacy support and another 3000 members across England. ENC provides independent living advocacy services which cut across service provision of health, social care, criminal justice system, housing, education, employment, welfare benefits etc.

As one of few multiple ground organisations the ENC represents people experiencing Multiple Discrimination. Its establishment represents an intersectional voice and it was founded on the need for an agency which deals in a cross-cutting manner with the needs of disabled people from Black communities.



The Swedish Rheumatism Association, Sweden

The Swedish Rheumatism Association is an example of an NGO which has become increasingly aware that the group which they represent is not homogeneous. The organisation has had to recognise that rheumatic patients at particular intersections of grounds do not get the treatment and support they are entitled to, or do not have access to treatment and support due to, for instance, lack of language skills.

The Association therefore, started the NIKE project in 2004. This project strives to help strengthen the group of women with a rheumatic disease and an immigrant background. It is an objective of the project, through training, to help the women acquire a good knowledge of their disease and of their rights and opportunities in Sweden. So far training courses have been conducted in 6 cities in Sweden. After they have completed their training, these women are to create activities for women of their own language community and to form a link between these women and local rheumatism associations.

In addition, cooperation has been established with the Ombudsman in charge of discrimination on grounds of race and ethnic origin. Ombudsman staff have been training 70 women involved in the NIKE project about discrimination and the women are now documenting their experiences on discrimination within the Swedish Health Care system.

The Equality and Diversity Forum, UK

The Equality and Diversity Forum (EDF) is a network of national organisations committed to progress on age, disability, gender, race, religion and belief, sexual orientation and broader equality and human rights issues. The Forum was established in January 2002 to promote dialogue and understanding across the separate equality ‘strands’, and to ensure that policy debate on proposals for discrimination legislation and a single equality body recognises the cross-cutting nature of equality issues. It has played a key role in building consensus and co-operation between organisations that had not worked together before. Experience of promoting change with respect to disability, gender and race is highly relevant in developing proposals and guidance on age, religion and belief, and sexual orientation: the Forum has organised sessions focussed on sharing best practices and commissioned a series of forward-looking research papers to advance the policy debate.

Since its establishment in 2002, the Equality and Diversity Forum has played a significant role in addressing Multiple Discrimination by:

- Bringing together organisations working on different areas of discrimination, allowing them to identify areas of overlapping concern, including issues of intersectional and Multiple Discrimination.
- Influencing the establishment of a strong and independent Commission for Equality and Human Rights, commencing in October 2007, able to provide protection against all forms of discrimination, including Multiple Discrimination.
- Facilitating resolution of conflict between equality interests both by sustained work to create relationships of trust between organisations that previously did not work together and by specific interventions.
- Lobbying for improvements to discrimination law to recognise Multiple Discrimination. The recently published Government consultation on discrimination legislation asks for evidence that the law needs to be changed to provide protection to people experiencing discrimination on more than one ground. EDF is collecting this evidence to show that the law does need to be amended.
- Raising awareness of Multiple Discrimination among policy makers, service providers, lawyers and more widely through EDF publications and seminars.

6. Recommendations and suggestions

While the views and experiences gathered during the course of this study provide a useful insight into the phenomenon of Multiple Discrimination, it should be noted again that they are derived from a small-scale qualitative research exercise. This study therefore touches the surface and is indicative of the themes and challenges to reflect and react upon. This chapter puts forward the recommendations and suggestions identified in collaboration with the participants in the study.

Recommendation No 1: Research on Multiple Discrimination

This study has been useful in identifying how Multiple Discrimination is understood among the different stakeholder groups and what the effects of the phenomenon are. The study also showed a general absence of knowledge about how to address and combat Multiple Discrimination effectively from both a legal and from an awareness-raising point of view. There is a need for further examination of the legal implications of Multiple Discrimination in order to provide solutions to challenges such as the burden of proof and damage assessment in cases involving two or more grounds.

Suggestions to the European Commission:

- Research on developing effective protection mechanisms and legal frameworks to handle Multiple Discrimination cases.

Suggestions to research institutions:

- Research to develop the conceptual tools to analyse the experience, situation and identity of intersectional groups.
- Research on institutional Multiple Discrimination. The objective of this research would be to examine how and where institutional Multiple Discrimination manifests itself.

Recommendation No 2: Legislation addressing Multiple Discrimination

The scope of the existing EU anti-discrimination legislation does not provide effective protection against Multiple Discrimination in areas outside employment and occupation. Effective protection requires legislation that covers all six grounds, in all spheres of life. Furthermore, current legislation does not define the concept of Multiple Discrimination, including intersectional discrimination.

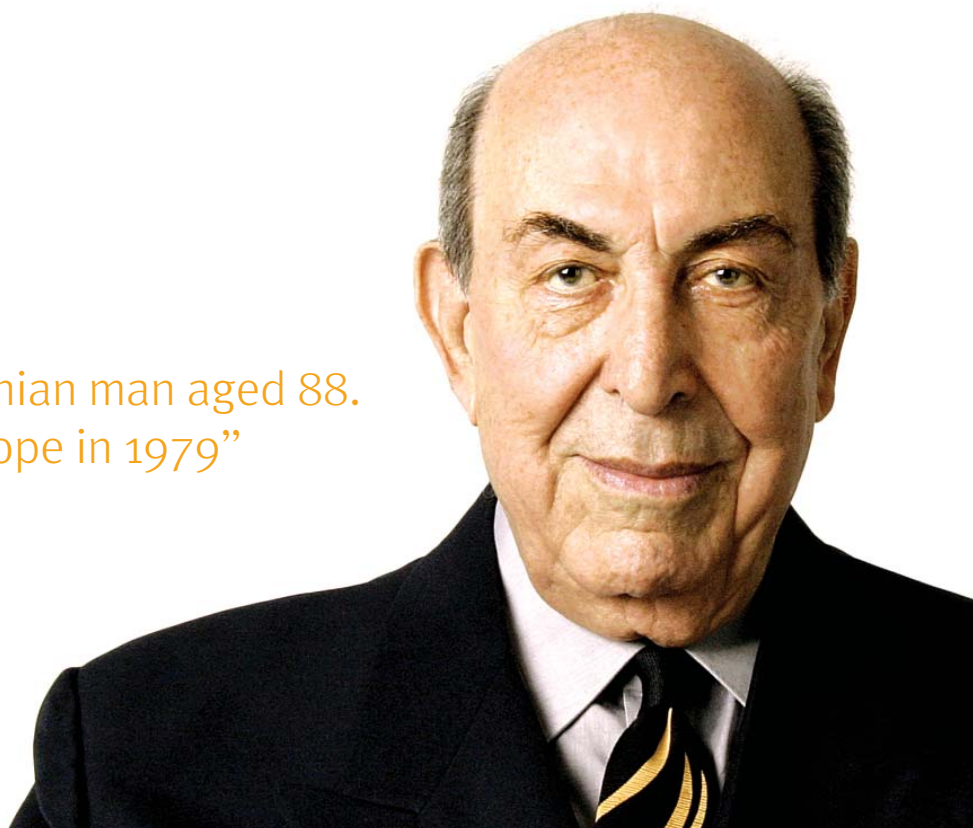
Suggestions to the European Commission and Member States:

EU and national anti-discrimination and equal treatment legislation should cover the grounds of age, disability, religion/belief and sexual orientation also outside employment and occupation, i.e. in the fields of:

(a) social protection, including social security and healthcare; (b) social advantages; (c) education; (d) access to and supply of goods and services which are available to the public, including housing. The new legislation must also provide provisions to address intersectional discrimination.

- Express recognition of the ground of gender identity as part of equality policy and legislation through the addition of gender identity to the ground of gender, thus reading “gender and gender identity”.
- Introduction of specific provisions to combat Multiple Discrimination, including intersectional discrimination.
- National Equality Bodies with a mandate to assist victims of discrimination on all grounds and within and outside employment and occupation and with the appropriate financial and human resources to assist victims of multiple discrimination.
- Promotion and development of positive duties and equality mainstreaming in public and private sectors taking into account multiple grounds.

“I am an Iranian man aged 88.
I fled to Europe in 1979”



Recommendation No 3: Awareness-raising

Legislation on its own cannot achieve the goal of creating a discrimination-free society. More proactive methods are needed to meet the objective of equal opportunities for all. Initiatives and campaigns are necessary to raise awareness among individuals of their right to equal treatment and access to justice. Furthermore it is necessary to launch initiatives and campaigns to raise awareness of the existence of Multiple Discrimination amongst decision-makers and public authorities, including the judiciary.

Suggestions to the European Commission:

- Support a legacy from the ‘European Year for Equal Opportunities for all’ with a focus on Multiple Discrimination.
- Equality mainstreaming and impact assessment tools in EU policies, strategies, action plans and provision of financial support for activities taking Multiple Discrimination into account.

Suggestion to the European Commission and Member States:

- Promote understanding of the link between discrimination, Multiple Discrimination and social exclusion and poverty.

Suggestions to Member States:

- Initiate campaigns and seminars on Multiple Discrimination targeting relevant stakeholders.
- Increase cross-sector, and cross-Ministry co-operation to exchange information and good practice and development of common strategies to promote equal opportunities for all and to combat Multiple Discrimination.
- Equality mainstreaming and impact assessment tools in policies, strategies and action plans taking account of Multiple Discrimination.

Suggestions to NGOs:

- Establish forums and networks to promote understanding, dialogue and cooperation across the grounds.

Recommendation No 4: Training and education

Effective protection against Multiple Discrimination entails knowledge and understanding of the phenomenon.

Suggestions to Member States and National Equality Bodies

- To encourage and support National Equality Bodies to develop integrated approaches to their efforts that encompass work on single grounds, work that links all six grounds simultaneously and work that addresses intersectional groups.

Suggestions to National Equality Bodies:

- Training judges and lawyers in recognising, preventing and responding to Multiple Discrimination.
- Training journalists in recognising, preventing and responding to Multiple Discrimination.
- Training employers, trade unions and service providers.
- Integration of the equal treatment principle in education and training manuals.
- Training the staff of National Equality Bodies to recognise and handle cases of Multiple Discrimination.

Suggestions to NGOs:

- Training members in recognising, preventing and responding to Multiple Discrimination.

Recommendation No 5: Data collection

Collecting data enables decision-makers and other stakeholders in the field of anti-discrimination and equal treatment to target their efforts at effectively protecting vulnerable groups of individuals from becoming subject to discrimination. The absence of data for particularly vulnerable groups renders invisible the situation of people with intersectional identities thus encouraging the assumption that discrimination does not occur. Furthermore this creates an obstacle to developing adequate responses to Multiple Discrimination.

Suggestions to the European Commission and Member States:

- Develop strategies to collect equality data taking into account – as a minimum – all protected grounds in the fields of life where discrimination is prohibited.
- Adoption of an EU and a national plan of action that spells out the measures that will be taken for the development of an EU and a national knowledge base on Multiple Discrimination, including monitoring systems.

Suggestion to National Equality Bodies:

- Cross-ground referenced data to make the intersection of different grounds visible in the number of lodged complaints and cases handled.

Recommendation No 6: Promoting good practice

Promoting good practice among public authorities, employers and service providers in preventing and responding to Multiple Discrimination.

Suggestions to Social Partners and National Equality Bodies:

- Promote innovation among service providers and employers in responding to the specific identities, experiences and situation of intersectional groups through funding pilot and innovative projects in this field and mainstreaming what is learned from these projects.
- Develop and promote case studies of good practice in employment and service provision for intersectional groups.
- Stimulate a dialogue among employers, trade unions and sectoral networks of service providers on issues of Multiple Discrimination and intersectional groups.

Recommendation No 7: Promoting multiple-ground NGOs

In order to build the voice of intersectional groups, the establishment of multiple-ground NGOs should be encouraged and supported.

Suggestions to the European Commission:

- Develop funding sources also for NGOs that represent and articulate the interests of intersectional groups.
- Provide policy for a dialogue between policy-makers and organisations representing intersectional groups.
- Support a network for peer learning among organisations representing intersectional groups and single ground NGOs.

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European Disability Forum
European Umbrella Organisation for disabled people.
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ENAR
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www.enar-eu.org/en/

Social Platform
The platform of European Social NGOs.
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Other stakeholder	LSE Centre for the Study of Human Rights	Helen Wildbore
Other stakeholder	British Psychological Society, University of Liverpool	Peter Kinderman
Other stakeholder	Kings College, London	Aileen McColgan
Other stakeholder	Discrimination Law Association	Barbara Cohen
Other stakeholder	Seven Bedford Row Chambers	Elaine Banton
Other stakeholder	Central London Law Centre	Tamara Lewis

Endnotes

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- ³⁹ Great Britain has the Equal Opportunities Commission for gender, the Commission for Racial Equality for race and ethnic origin and the Disability Rights Commission for disability.
- ⁴⁰ The Italian National Office Against Racial Discrimination.
- ⁴¹ The Finnish Ombudsman for Minorities deals with issues of racial and ethnic origin.
- ⁴² The Portuguese Commission for Immigration and Ethnic Minorities.
- ⁴³ Denmark has a Danish Complaints Committee established within the Danish Institute for Human Rights to deal with issues of racial and ethnic origin and the Gender Equality Board to deal with issues of gender.
- ⁴⁴ The new body, Commission for Equality and Human Rights starts its work on 1 October 2007.
- ⁴⁵ Based on search in the search engines listed at: www.hreoc.gov.au/legal/decisions/hreoc/index.html and AustLII Databases specifically referring to “Intersectional discrimination” or “Multiple Discrimination.”
- ⁴⁶ The cases has been described in “An Intersectional Approach to Discrimination: Addressing Multiple Grounds In Human Rights Claims” by Ontario Human Rights Commission ibid. Other cases of interest are described in the paper: In *Irshad (Litigation guardian of) v. Ontario (Minister of Health)*, Case of Catarina Luis;

- Vander Schaaf; *Falkiner v. Ontario* (Ministry of Community and Social Services, Income Maintenance Branch), the Ontario Divisional Court and the Egan Case.
- ⁴⁷ Document on Comparative Information; The document provides comparative information on the grounds of discrimination covered by federal, provincial and territorial human rights legislation in Canada. www.chrc-ccdp.ca/publications/prohibitedgrounds-en.asp
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- ⁵⁰ Ontario Human Rights Commission (2001) “Discussion Paper on an Intersectional Approach to Discrimination: Addressing Multiple Grounds in Human Rights Claims”, *ibid*.
- ⁵¹ www.las-elc.org/SexualHarassment.pdf
In the EEOC Compliance Manual, see below, reference is made to two leading cases, where the court recognised that the appropriate way to investigate things is to look at the combination of the two and not to separate out.
- ⁵² More information available at: www.eeoc.gov/
- ⁵³ Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits employment discrimination based on race, color, religion, sex, or national origin; the Equal Pay Act of 1963 (EPA), which protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination; the Age Discrimination in Employment Act of 1967 (ADEA), which protects individuals who are 40 years of age or older; Title I and Title V of the Americans with Disabilities Act of 1990 (ADA), which prohibit employment discrimination against qualified individuals with disabilities in the private sector, and in state and local governments; Sections 501 and 505 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified individuals with disabilities who work in the federal government; and the Civil Rights Act of 1991, which, among other things, provides monetary damages in cases of intentional employment discrimination.
- ⁵⁴ Cf. *Phillips v. Martin Marietta Corp.*, 400 U.S. 542, 544 (1971) (holding that an employer’s refusal to hire a subgroup of women – those with preschool-age children – was sex-based).
- ⁵⁵ EEOC Compliance Manual: Race Discrimination, Volume II, § 15-IV, C, “Intersectional Discrimination” (April 19, 2006) www.eeoc.gov/policy/docs/race-color.html#IVC
- ⁵⁶ See *Jeffries v. Harris County Comty. Action Comm’n*, 615 F.2d 1025, 1032-34 (5th Cir. 1980) (“we hold that when a Title VII plaintiff alleges that an employer discriminates against black females, the fact that black males and white females are not subject to discrimination is irrelevant”). For a discussion of the progress that women of color have made, as well as stubborn patterns of stagnation, see EEOC’s study titled *Women of Color: Their Employment in the Private Sector* (2003), available at: www.eeoc.gov/stats/reports/womenofcolor/index.html
- ⁵⁷ “*Lam v. University of Hawaii*, 40 F.3d 1551, 1561-62 (9th Cir. 1994) (holding lower court erred when it treated the claim of an Asian woman in terms of race or sex separately; lower court should have considered whether discrimination occurred because of the plaintiff’s combined race and sex).”
- ⁵⁸ See Peter Blanck et al., *The Emerging Workforce of Entrepreneurs with Disabilities: Preliminary Study of Entrepreneurship in Iowa*, 85 Iowa L. Rev. 1583 n.157 (2000) (African American women with disabilities disproportionately disadvantaged in employment opportunities). The Americans with Disabilities Act of 1990 (ADA) forbids employers with 15 or more employees from discriminating against qualified individuals with disabilities. See 42 U.S.C. §§ 12101 et seq. Numerous EEOC resources explaining the ADA can be found on the Commission’s web site at: www.eeoc.gov
- ⁵⁹ The Age Discrimination in Employment Act of 1967 (ADEA) forbids employers with 20 or more employees from discriminating against applicants or employees age 40 and over because of their age. See 29 U.S.C. §§ 621 et seq.35.
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- ⁶¹ Commissioner Griffin at the U.S. Equal Employment Opportunity Commission Meeting of February 28, 2007, available at: www.eeoc.gov/abouteeoc/meetings/2-28-07/transcript.html
- ⁶² EEOC Commission Meeting on Race and Color Discrimination of April 19, 2006, Statement of Barbara R. Arnwine Executive Director Lawyers' Committee for Civil Rights Under Law available at: www.eeoc.gov/abouteeoc/meetings/4-19-06/foreman.html
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See annual report 2006. The gap between complaints received by specialised bodies and those received by NGOs suggests that the complaints recorded by these bodies do not yet reflect the actual number, "Trends and Developments 1997-2005- Combating Ethnic and Racial Discrimination and Promoting Equality in the European Union" (2007) European Union Agency for Fundamental Rights (FRA) p. 27.
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