

DISCUSSION PAPER

Fighting Discrimination on the Ground of Race and Ethnic Origin

 **Equinet**
European network
of equality bodies

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Equinet brings together 46 organisations from 34 European countries which are empowered to counteract discrimination as national equality bodies across the range of grounds including age, disability, gender, race or ethnic origin, religion or belief, and sexual orientation. Equinet works to enable national equality bodies to achieve and exercise their full potential by sustaining and developing a network and a platform at European level.

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Summary - Fighting Discrimination on the Ground of Race and Ethnic Origin

An insight into the work of Equality Bodies

Why a Discussion Paper on Discrimination on the Ground of Race & Ethnic Origin?

Race and ethnic origin was the first ground on which EU legislation required Member States to set up equality bodies. Many Member States have done so even before this became a legally binding requirement under EU law. Until today, discrimination on the ground of one's race or ethnic origin remains **one of the most often experienced forms of inequality**. In many European countries, racial and ethnic minorities, and in particular Roma people, remain the most disadvantaged and persecuted groups in society.

The Discussion Paper was drafted by Equinet's Working Group on **Equality law** and aims to discuss key legal issues and challenges, available tools and good practices in fighting discrimination on the ground of race and ethnic origin. It is based on a **survey answered by 19 equality bodies**.

Public sentiment is becoming increasingly hostile towards racial and ethnic minorities. Institutional discrimination is common, yet the under-reporting of incidents remains an issue. In this context, the challenges around receiving and successfully integrating refugees and migrants risk rendering the public discourse more hostile and discrimination more widely accepted.

Main Findings - Equality Bodies and Discrimination on the Ground of Race & Ethnic Origin

- Equality bodies are **valuable actors in fighting discrimination on the ground of race and ethnic origin** if they are **independent, adequately resourced** and **empowered** to do so.
- Equality bodies report a **significant rise in discrimination, hate speech** and **hate crime** related to race and ethnic origin.
- 12 out of 19 equality bodies indicated a **more aggressive public discourse** around refugees and migrants, an increase in hate speech and racist behavior more generally and an increase of hostility towards racial and ethnic minorities of all kinds.
- **Negative media coverage** and **political speeches** have exacerbated the situation. Negative public discourse and hostility have thus increased towards migrants and refugees, as well as ethnic minority Europeans.
- 17 out of 19 equality bodies indicated that **Roma tend to find themselves in particularly vulnerable situations** compared to other racial and ethnic minorities.

Challenges & Obstacles in tackling Discrimination on the Ground of Race & Ethnic Origin

Legal Challenges

- The Recitals of the Race Equality Directive foresee the **protection of legal persons** where appropriate and in accordance with national traditions and practices. The survey showed disparity in national legislation on this point (e.g. BE, HR, LT and SL allow for the protection of legal persons; DK and SE do not).
- Some equality bodies raised concerns that **positive action measures** under Article 5 of the Race Equality Directive can be difficult to implement and indeed lead to counter-complaints.
- Article 8 of the Race Equality Directive allows for **shifting the burden of proof**, which equality bodies reported is not always applied correctly by national courts.
- The **protection from victimization** under Article 9 of the Race Equality Directive can have practical limitations.

Practical Obstacles

- Equality bodies reported the **lack of awareness of rights** as a barrier to reporting discrimination for minority groups, especially the Roma.
- The high **expenses of litigation** coupled with uncertain outcomes are a potential deterrent for equality bodies to taking on discrimination cases.
- The **lack of evidence** and **unavailability of comparable data** to prove discrimination cases has been mentioned as another deterrent for equality bodies to take up discrimination cases. In some countries (e.g. AT, FR and HU), data collection based on ethnicity is unlawful.

Fields in which Discrimination on the Ground of Race & Ethnic Origin most often occurs

Discrimination in Employment

Equality bodies report a high number of cases in the field of employment. These include discrimination **during recruitment, advertisement, interviews, unequal pay for equal work, unjustified dismissals and harassment** at the work place.

Discrimination in accessing Goods & Services

Discrimination in accessing goods and services is widespread **in both the public and private sector**. Equality bodies report that **women are often disproportionately** affected due to their dress code (e.g. headscarves for Muslim women or the attire of Roma women).

Discrimination in Healthcare & Social Protection

Equality bodies report that **especially Roma people face barriers in accessing healthcare and social protection services**, often due to living in segregated areas, lacking basic infrastructure and financial means. Other reasons for facing barriers in accessing these services for Roma people are their general mistrust in public authorities and lack of rights awareness.

Discrimination in Education

Equality bodies report that **barriers to accessing (quality) education and high dropout rates** prevail especially in the Roma community, often due to the physical segregation of Roma settlements, lack of infrastructure and difficulty for pupils from highly mobile families to attend school. **High dropout rates especially prevail amongst Roma girls** due to practices of early marriage.

Discrimination in Housing

One chapter of the Discussion Paper focuses specifically on discrimination against Roma and Travellers in the field of housing, including evictions and denied tenancy agreements. Next to a general lack of cases in the field, the **crucial importance of housing as a precondition of human dignity and the realization of other human rights** are the main reasons for this focus chapter.

Intersectional Discrimination

While there is a **general lack of data on intersectional discrimination cases**, equality bodies report that the most commonly observed forms of intersectional discrimination take place at the intersections of **race/ethnicity and gender**, as well as **race/ethnicity and socio-economic status, disability or age**.

Good Practices in combating Discrimination on the Ground of Race & Ethnic Origin

| Aim | Action |
|---|--|
| Increase visibility of equality bodies for victims of discrimination | E.g. organizing open days (AL), setting up regional offices (FR and BG), establishing solidarity funds to cover legal fees for victims (IT) or developing online forms to report complaints more easily (PT) |
| Training on anti-discrimination law | For the public (AL and BE) and private sector (BE and PT) |
| Awareness rising campaigns | E.g. lecturing in universities (AL), creating short movies (BE) and video games (IT) aimed at tackling stereotypes, developing websites to collect incidents of hate crimes (DK and FR) or implementing national action weeks on specific topics (IT and PT) |
| Research | E.g. study on popular attitudes towards Sinti and Roma (DE), reasons for underreporting (CZ) or hate speech against Gypsies, Travellers and Roma (GB) |
| Cooperation with relevant stakeholders | E.g. with other equality bodies or NHRIs, as well as other public and private sector stakeholders |
| Evidence gathering | E.g. through situation testing (FR and IT), inquiry powers (GB), investigative powers (BG) |
| Enforcement powers | E.g. through actio popularis/class action suits and sanctions (BG, HU and PT) |

Introduction

Equality bodies have been set up in all EU Member States and beyond on the basis of EU equal treatment legislation, in particular Directive 2000/43/EC (Race Equality Directive), Directive 2004/113/EC (Gender Goods and Services Directive), and Directive 2006/54/EC (Gender Recast Directive). These Directives cover discrimination on the grounds of gender and race and ethnic origin in matters of employment and beyond. Race and ethnic origin was the first ground on which EU legislation required Member States to set up equality bodies. It is also a ground on which many states have set up an equality body even before this became a legally binding requirement under EU law.

Despite these developments, discrimination on the ground of one's race and ethnic origin remains one of the most often experienced forms of inequality and one that features prominently in the work of equality bodies. In many European countries, racial and ethnic minorities, and in particular Roma¹, remain the most disadvantaged and persecuted group in society.

The Working Group on Equality Law² reported that political and media reaction to the challenges around receiving and integrating refugees have exacerbated the negative public discourse with the consequence that hate speech, hate crime and discrimination are on the rise. The equality bodies also reported widespread hostility towards racial and ethnic minorities in general, institutional discrimination and under-reporting of discrimination.

In recent years Equinet, European Network of Equality Bodies, bringing together 46 equality bodies from 34 jurisdictions, has published a number of reports collecting and analyzing the work of equality bodies and other stakeholders in the field of discrimination on the ground of race and ethnic origin. A report on [Making equality legislation work for Roma and Travellers](#) (2010) was followed by a [Factsheet on Equinet's work for the rights of Roma people](#) (2011), a [Perspective on Equality bodies combating discrimination on the ground of racial or ethnic origin](#) (2012), and a [legal analysis on the implementation of the EU's race and general framework directives](#) (2013). Equinet's Working Group on Equality Law published a [report on positive action measures](#), including on the ground of race and ethnic origin (2014) and a [discussion paper on Equality Bodies and freedom of movement](#) (2015), that also provide important lessons about working on this ground.

In 2016, the Working Group on Equality law has set out to develop this paper discussing some of the key legal issues and challenges, and the available tools and good practices in tackling discrimination on the ground of race and ethnic origin. The paper is based on a survey answered by 19 equality bodies.

While the discussion paper cannot claim and does not aspire to cover all aspects of discrimination and inequalities on the ground of race and ethnic origin, we trust that it will be helpful as an indication of the trends, key challenges and issues observed by equality bodies around Europe, also providing some much needed hope by listing some good practices in tackling racism and discrimination.

¹ The Working Group is aware that there are different definitions of 'Roma' and this Report includes examples of groups that self-define as Roma or Travellers. In certain countries, e.g. in the UK, some groups might self-identify as 'Gypsies' or under other names; this is reflected in some examples of this paper.

² The Working Group on Equality Law brings together legal experts from 32 equality bodies, see: <http://www.equineteurope.org/-Thematic-Working-Groups->.

Chapter 1: Context

In this chapter, the legal framework to eliminate racial and ethnic origin discrimination will be set out. Furthermore, the increase in race discrimination, hate speech/crime and the deteriorating situation across Europe around refugee and migrant related issues, as well as the negative impact on ethnic minorities generally will be addressed. Some legal complexities around the protection of discrimination on the grounds of nationality and race will also be mentioned. Despite the hostile environment for ethnic minorities, third country refugees and migrants, it appears that there is significant under-reporting of complaints.

1.1 Legal Framework for tackling race discrimination and limited protection against nationality discrimination

Selected provisions from the EU Race Equality Directive³

National Equality Bodies (Article 13):

1. Member States shall designate a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin. (..)
2. Member States shall ensure that the competences of these bodies include:
 - (..) providing independent assistance to victims of discrimination in pursuing their complaints about discrimination,
 - conducting independent surveys concerning discrimination,
 - publishing independent reports and making recommendations on any issue relating to such discrimination.

Scope (Article 3):

1. (..) this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:
 - a) conditions for access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;
 - b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;
 - c) employment and working conditions, including dismissals and pay;
 - d) membership of and involvement in an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations;
 - e) social protection, including social security and healthcare;
 - f) social advantages;
 - g) education;
 - h) access to and supply of goods and services which are available to the public, including housing.
2. This Directive does not cover difference of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons on the territory of Member States, and to any treatment which

³ Directive 2000/43/EC, see:

<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32000L0043&from=NL>.

arises from the legal status of the third-country nationals and stateless persons concerned.

Positive action (Article 5):

With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin.

While not legally binding, the recitals of a Directive are of great importance and highlight the values on which the Directive was founded. Recitals 2-4 refer to the principles of liberty, democracy, respect for human rights and fundamental freedoms, the rule of law, the right to equality before the law and the right to freedom of association, which need to be observed at all times.

Furthermore, despite the nationality exemption in Article 3(2), recital 13 states that the prohibition of discrimination should also apply to nationals of third countries, but does not cover differences of treatment based on nationality and is without prejudice to provisions governing the entry and residence of third-country nationals and their access to employment and to occupation. In some Member States, discrimination on the ground of nationality is, nevertheless, explicitly prohibited (subject to specified exceptions) as a matter of domestic law, whilst in other Member States there is no protection against nationality discrimination at all. However, such claims may be able to be taken as discrimination on the ground of race or ethnicity, depending on the facts.

Selected provisions from the International Convention on the Elimination of All forms of Racial Discrimination (CERD)

Under the International Convention on the Elimination of all forms of Racial Discrimination (“CERD”) State Parties commit to the elimination of racial discrimination, segregation and the incitement of racial hatred; the protection of civil, political, economic and social rights for all, without distinction of race, colour, descent or national or ethnic origin; and education to promote understanding.

Article 2:

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

- a) (..) undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;
- b) (..) undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;
- c) (..) shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;
- d) (..) shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;
- e) (..) undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

The Convention entails exemptions of protection and does not apply to distinctions, exclusions, restrictions or preferences made by a State Party between citizens and non-citizens. It does also not affect the legal provisions of States Parties concerning nationality, citizenship or naturalization in any way, provided that such provisions do not discriminate against any particular nationality. However, CERD General Recommendation 30⁴ provides that differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim.

While not legally binding, it is also important to recall the Durban Declaration and Programme of Action⁵, adopted in 2001 at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, organised under the auspices of the UN. The document provides a comprehensive plan, looking at victims of racism; measures of prevention, education and protection; effective remedies; and strategies to achieve full and effective equality.

The European Convention on Human Rights (ECHR), the Treaty on the Functioning of the European Union (TFEU) and the Charter of Fundamental Rights of the EU

ECHR - Article 14:

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or *other status*.

TFEU:

Article 10:

(..) the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

Article 18:

Within the scope of the application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.

The Charter⁶ - Article 21:

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin,

⁴ CERD General Recommendation 30 on discrimination against non-citizens, Chapter 1 para 4, see: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=6&DocTypeID=11
See also: The European Commission against Racism and Intolerance (Council of Europe) General Policy Recommendation No. 7 urges Member States of the Council of Europe to enact legislation against race discrimination in constitutional, civil and administrative and criminal law. The Recommendation covers 'grounds such as race, colour, language, religion, nationality or national or ethnic origin'. ECRI prepares General Policy Recommendations addressed to the governments of all Member States. They provide detailed guidelines which policy-makers are invited to use when drawing up national strategies and policies in a variety of fields.

⁵ <http://www.un.org/WCAR/durban.pdf>

⁶ The provisions of the Charter are addressed to:

- the institutions and bodies of the EU with due regard for the principle of subsidiarity; and
- the national authorities only when they are implementing EU law.

For example, the Charter applies when EU countries adopt or apply a national law implementing an EU directive or when their authorities apply an EU regulation directly. In cases where the Charter does not apply, the protection of fundamental rights is guaranteed under the constitutions or constitutional traditions of EU countries and international conventions they have ratified. The Charter does not extend the competence of the EU to matters not included by the Treaties under its competence.

genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

2. (...) any discrimination on grounds of nationality shall be prohibited.

The Working Group's observations on the scope of the nationality exception in the Race Directive

Discrimination on the ground of nationality is an important and complex issue that merits careful consideration, going beyond the limits of this discussion paper. Equinet reported in 2013⁷ however, that the blanket exception in the Race Directive for differences relating to nationality is too wide and there is a need for protection against discrimination as a result of nationality, subject to justified exceptions. The report sets out cases where nationality requirements have been imposed, for example in access to housing and employment, but where the justifications for these practices are not made out. This issue resurfaced in Equinet's survey of Working Group Members this year, for example, in Lithuania where only Lithuanian, EU, EEA and Swiss nationals are entitled to qualify as an attorney at law.

The scope of the nationality exception and how it relates to the prohibition of discrimination on ground of race and ethnic origin has also caused difficulties for the equality bodies in interpreting the provisions. A number of equality bodies stated in the 2013 report that this exception hinders their anti-discrimination work⁸.

The fact that both Article 18 of the TFEU and Article 21 of the Charter of Fundamental Rights of the EU prohibit nationality discrimination, subject to certain limitations and exceptions, might potentially cause further confusion even if the field of application of the TFEU, the Charter and the Directive are different. The Fundamental Rights Agency has explained that 'the ECHR guarantees protection to all those within the jurisdiction of a Member State, whether they are citizens or not (...) In contrast, the protection of EU law is more limited in scope. The prohibition on nationality discrimination in EU law applies in the context of free movement of persons and is only accorded to citizens of EU Member States. (...) the non-discrimination directives contain various exclusions of application for third country nationals'⁹.

In its 2013 report, the Working Group recommended that the European Commission may wish to consider if it is appropriate to seek to amend the nationality exception so that not every difference of treatment based on nationality is excluded from the protection provided by the Race Directive. Further, the Working Group argued that it would also be helpful if the European Commission could issue guidance on the scope of this exception and whether a difference of treatment based on nationality can amount to discrimination on the ground of race and ethnic origin. Some members of the group also called for guidance on the meaning of "ethnic origin".

⁷ See:

http://www.equineteurope.org/IMG/pdf/equinet_equality_law_in_practice_2013_report_final_covers.pdf.

⁸ Equality law in practice. Report on the implementation of the Race and General Framework Directives. Equinet, June 2013, see: <http://www.equineteurope.org/Report-on-the-Implementation-of>.

This concern was included in the European Commission's Report to the European Parliament and the Council on the implementation of the Race and General Framework Directives, COM(2014)2 final, see: http://ec.europa.eu/justice/discrimination/files/com_2014_2_en.pdf

⁹ Handbook on European Non-Discrimination Law, FRA-ECHR, July 2010.

Prevalence of race and ethnic origin discrimination

Discrimination on the ground of race is recognised as a persistent societal problem and this is reflected in the fact that in many EU Member States it was the first personal characteristic to be protected from discrimination.

Equality bodies across Europe have recorded a significant rise in race discrimination, hate speech and hate crime related to race, negative media coverage and political speeches which have flowed from refugee and migrant related issues. There is also an increase in State action against refugees/migrants.

It is clear from the reports from the equality bodies set out below that key CERD provisions are engaged in the current situation arising from the migration situation. Political rhetoric, actions of political leaders/authorities and the media have exacerbated the situation so that negative public discourse and hostility not only towards refugees, but also ethnic minority Europeans has dramatically increased.

- In **Austria**, the number of cases concerning racism has reached a new peak.
- In **Albania**, race represents the greatest number of complaints before the Commissioner for the Protection from Discrimination.
- In **Belgium**, incidents of race discrimination are over-represented in the equality body's data and public discourse is hostile to racial and ethnical minorities.
- In **Croatia**, a growth of intolerance towards national minorities, especially Serbs, has been observed. The Council of Europe's Commissioner for Human Rights also highlighted this issue during his visit in April 2016¹⁰.
- In **France**, race discrimination forms the greatest number of complaints received by the equality body in employment in the private sector and the second greatest in public sector employment and in goods and services¹¹. A report released by ECRI on France¹² identified an increase in xenophobia, anti-Semitism and Islamophobia, an increase in discrimination against Roma and inadequate criminal provisions as racism is not an aggravating factor in criminal cases.
- In **Great Britain**, the majority of complaints of race discrimination raised with the Commission were brought by Irish Travellers and English Gypsies.

1.2 Deteriorating situation, hate speech, public discourse and negative public sentiment towards racial and ethnic minorities and refugees

Freedom of Speech legal provisions

ECHR – Article 10:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public

¹⁰ See: <http://www.coe.int/en/web/commissioner/-/croatia-should-eliminate-shortcomings-in-transitional-justice-immigration-and-media-freedom>.

¹¹ See Defender of Rights, Annual Report, February 2016. See also: <http://www.equineteurope.org/France-Study-shows-extent-of-ethnic-discrimination-in-access-to-employment>.

¹² ECRI (European Commission against Racism and intolerance – Council of Europe) report on France, published on March 1st 2016, see: <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/France/FRA-CbC-V-2016-001-ENG.pdf>.

authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

While the right to freedom of expression is one of the cornerstones of a democratic society, it can be restricted under certain circumstances. The European Court of Human Rights case law developed a three stage analysis for such cases:

1. Check whether restrictions on freedom of expression are prescribed by law.
2. Verify whether the restriction pursues one of the legitimate aims set out in Article 10(2) of the Convention.
3. Look at whether the restrictions are necessary in a democratic society¹³.

Selected hate speech legal provisions

International Convention on Civil and Political Rights:

Article 20:

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 26:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

International Convention on the Elimination of all forms of Racial Discrimination:

Article 4:

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

- a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing

¹³ In cases where the content of the speech is fundamentally against the values of the European Convention on Human Rights, the European Court of Human Rights does not apply the three-stage test, but instead invokes Article 17 on abuse of rights. The Court has rarely invoked Article 17 in the past. Examples of application relate to holocaust denial or totalitarian doctrines. See:

http://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf.

thereof;

- b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;
- c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

Article 5:

State parties undertake to prohibit and eliminate racial discrimination and guarantee civil, political, economic and social rights without distinction as to race, colour, national or ethnic origin (..).

In some countries, such as the Czech Republic, France, Hungary and Great Britain certain forms of hate and racist speeches are criminal offences. In general, hate crimes can be specific offences or qualify as aggravated forms of offences, which would impact on sentencing¹⁴.

Hate speech and hate crime in the light of refugee and migrant related issues

12 out of the 19 equality bodies¹⁵ indicated that there had been a more aggressive public discourse around refugees and migrants, an increase in hate speech and racist behaviour more generally and an increase of hostility to racial and ethnic minorities of all kinds. Concern about the tone of political speeches, the language of the mass media and hate speech on social networks was also highlighted by equality bodies. It is reported that many mass media outlets make links between refugees, Muslims and terrorists and that Islamophobia is prevalent.

- In **Austria** and **Denmark**, equality bodies warn about an increasingly hostile public discourse in connection with refugees and migrants.
- In **Belgium**, the equality body reports that it has received so many complaints of hate speech related to refugees and migrants that it has developed a standard reply to encourage the complainants to respond themselves to the messages of hatred as most of the messages could not meet the definition of incitement to hatred, discrimination, violence or segregation.
- In **France**, a report released by the ECRI¹⁶ stated that there has been a trivialization of hate and racist speech. In fact, racist remarks are becoming ‘common place’ within spaces of public expression as a whole. The equality body published a report¹⁷ on the fundamental rights of foreigners living in France (mostly third-country citizens) and found that domestic law was inadequate and lead to discrimination in accessing education, healthcare, housing; that conditions of entry, residence and conditions of removal are often too restrictive and lead to a lack of respect of fundamental rights; and that in practice there is also an important lack of protection of foreign minors, whether they come to France alone or accompanied.
- In summer 2016, more than 30 French mayors issued a burkini ban. The highest

¹⁴ For instance, in Portugal it is an offence to develop or take part or support activities or organise propaganda inciting or encouraging discrimination, hate or violence against a person or a group of persons on the ground of their race. This carries a sentence of one to eight years as well as deprivation of electoral capacity.

¹⁵ Albania, Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, France, Italy, Lithuania, Serbia, UK.

¹⁶ ECRI (European Commission against Racism and Intolerance – Council of Europe) report on France, published on March 1st 2016, see: <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/France/FRA-CbC-V-2016-001-ENG.pdf>.

¹⁷ ‘Les droits fondamentaux des étrangers en France’, published on 9 May 2016, see : <http://www.defenseurdesdroits.fr/fr/publications/rapports/rapports-thematiques/les-droits-fondamentaux-des-etrangers-en-france>

administrative court decided that this constituted ‘a serious and clearly illegal blow to fundamental liberties such as the freedom of movement, freedom of conscience and personal liberty.’ Some mayors defied the court’s decision and continued to impose the ban, which was also supported by Prime Minister Valls and Former President Sarkozy¹⁸.

- In **Great Britain** the equality body reported that public perceptions about asylum tend to be negative and misinformed¹⁹. The report also revealed long standing concerns about negative media portrayal of asylum seekers and the influence this has on public perceptions. There is doubt as to whether the Press Complaints Committee guidance is effective enough in this respect.

In 2013 the government introduced a pilot scheme of two immigration control vans to drive around parts of London with a bill board telling illegal immigrants to ‘go home or face arrest’. The scheme’s purported aim was to provide a helpline to illegal immigrants who wanted to return home. The scheme received widespread criticism as it was perceived to be reminiscent of racist graffiti of 1970s and that it was aimed at winning over voters as it created the impression that the government was tackling illegal immigration. In a survey²⁰ it was reported that over half of those polled supported the vans. The scheme was discontinued.

The equality body has included rates of hate crime, media reporting, stereotyping and rise of hate crime following EU referendum of June 2016 in its Shadow Report to the CERD Committee²¹.

In its Concluding Observations²², the CERD Committee stated that it ‘remains concerned at the negative portrayal of ethnic or ethno-religious minority communities, immigrants, asylum-seekers and refugees by the media in the State party, particularly in the aftermath of terrorist attacks, as well as the rise of racist hate speech on the Internet.’

The Committee was also ‘deeply concerned that the referendum campaign was marked by divisive, anti-immigrant and xenophobic rhetoric, and that many politicians and political figures not only failed to condemn it, but also created and entrenched prejudices, thereby emboldening individuals to carry out acts of intimidation and hate toward ethnic or ethno-religious minority communities’.

The CERD Committee also expressed its concerns at the high level of underreporting and that, as a result, a large number of racist hate crimes seem to go unpunished. The Committee gave detailed recommendations to the British authorities²³.

¹⁸ See: <http://edition.cnn.com/2016/08/30/europe/french-mayor-cogolin-burkini-ban/> and <http://www.independent.co.uk/news/world/europe/burkini-ban-french-france-court-suspends-rule-law-forbidding-swimwear-worn-muslim-women-seriously-a7211396.html>.

¹⁹ See: <https://www.equalityhumanrights.com/en/publication-download/research-report-52-refugees-and-asylum-seekers-review-equality-and-human-rights>.

²⁰ “The Home Office immigration vans – successful and popular with the nation?” The Spectator, 13 August 2016.

²¹ See: <https://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/international-convention-elimination-all>.

²² CERD Committee (United Nations Committee on the Elimination of Racial Discrimination), Concluding Observations re. Great Britain, Aug-Sept 2016.

²³ The Committee recommended that Great Britain should: Investigate all reported acts of racist hate crimes, prosecute and punish the perpetrators with sanctions commensurate with the gravity of the offence, and provide effective remedies to victims; Systematically collect disaggregated data on hate crimes, ensure that measures to combat racist hate crimes are developed with the meaningful participation of affected groups, and undertake a thorough impact assessment of the measures adopted to ensure their continued effectiveness; Adopt concrete measures, in consultation with affected groups, to increase the reporting of racist hate crimes by ensuring that the reporting mechanism is transparent and accessible, and that victims have trust in the police and the justice system; Taking into account the Committee’s general recommendation No. 35 (2013) on combating racist hate speech, adopt comprehensive measures to combat racist hate speech and xenophobic

- In **Italy**, negative perceptions of refugees and racial and ethnic minorities have increased because of mass media and politicians' speeches.

There was one exception to this trend:

- In **Portugal**, no similar rise of racism, racial discrimination, xenophobia and related intolerance has been experienced. In 2015, a study found that only 3% of the surveyed Portuguese citizens considered that immigration is a problem (compared to 23% for EU28) and 2% considered immigration a personal question (compared to 6% for EU 28).

1.3 Complaints related to challenges of receiving and integrating refugees and migrants

There has been some increase in the number of complaints from refugees.

- In **France** there was an increase of complaints before the courts due to migration mainly from people originating from the Middle East and Africa. Administrative courts were mostly dealing with cases related to asylum, refoulement procedures, police abuses and denial of access to basic services. The equality body also faced an increase in claims from third-country nationals relating to unaccompanied foreign minors, police abuse, discriminatory access to healthcare and other public services.

Many equality bodies, however, face the challenging issue of under-reporting of cases by refugees, while at the same time an increase of complaints of discrimination from non-refugees against positive action/targeted support for refugees has been reported.

- In **Lithuania**, a recent survey²⁴ showed a severe increase of negativity towards refugees. However, the number of complaints due to race or ethnicity in relation to refugees and migrants is significantly low. Another research report²⁵ revealed that 95% of respondents who claimed their rights were breached, did not make a complaint to any institution because they feared reprisals, including loss of employment; do not trust state institutions and feel that their rights will not be restored; and/or do not know where to lodge complaints.
- In **Serbia**, no significant increase in the number of complaints as a result of the arrival of refugees and migrants has been recorded, but a few complaints were filed against printed media regarding their reporting on migrant issues.
- In **Norway** and **Germany** no increase in the number of complaints due to the arrival of refugees and migrants has been observed but an upsurge was observed from Norwegians and Germans who complained about benefits given to refugees.
- Similarly, **Slovakia, Croatia, Denmark, GB, Hungary and Bulgaria** report that there has been no significant increase in the number of complaints of race discrimination from refugees.

political discourse, including on the Internet, particularly with regard to the application of appropriate sanctions, and ensure that public officials not only refrain from such speech but also formally reject hate speech and condemn the hateful ideas expressed so as to promote a culture of tolerance and respect; Take effective measures to combat racist media coverage, taking into account the Committee's general recommendation No. 35 (2013) on combating racist hate speech, and ensure that such cases are thoroughly investigated and, where appropriate, sanctions are imposed.

²⁴ Institute for Ethnic Studies Public Opinion Survey of 2015, see: <http://ces.lt/en/2016/01/ethnicity-studies-20152-now-published/>.

²⁵ <https://www.hrmi.lt/uploaded/Vilmorus%20apklausa%202014%20-%20SANTRAUKA.pdf>

Conclusion

In this chapter the legal framework surrounding race and ethnic origin discrimination has been set out, problems identified by equality bodies related to tackling race and ethnic origin discrimination have been introduced and the impact of the challenges in receiving and integrating refugees and migrants on racial and ethnic minorities have been highlighted.

The pan European nature of these challenges indicates that a pan European response is required. The legal framework sets out very clear expectations and requirements on Member States to eliminate discrimination, not to promote or incite racial discrimination and to ensure that all public authorities act in conformity with these obligations. Evidence suggests²⁶ that there is an urgent need for politicians and European institutions to address these problems in accordance with the equality and human rights standards which have been set and are applicable for all European countries.

There appears to be a lack of understanding/acceptance of positive action measures, significant under-reporting of complaints from migrants and refugees, and deep divisions between settled and migrant populations.

Equality bodies are urged to consider the implications of the findings contained in this report for their own work and perhaps for a greater co-ordination of work between national equality bodies.

Where this is an issue domestically, equality bodies or others may wish to consider pursuing strategic litigation to clarify if protection is provided in a particular case under ethnic origin or race.

This chapter sets the context for the following chapters which will look at areas where discrimination is most widespread; particular issues faced by Roma, including a focus on housing; legal obstacles, practical challenges, tools and good practices.

²⁶ See also FRA's report: <http://fra.europa.eu/en/news/2016/4-persistent-migration-challenges-needing-urgent-action>, identifying four key areas requiring urgent action: Protecting unaccompanied children, tackling violence and hate crime, improving safety in reception centres and more support for local communities.

Chapter 2: Fields in which Discrimination most often occurs

This chapter outlines the fields in which discrimination on the ground of race and ethnic origin is most widespread and provides concrete case examples. Furthermore, the chapter identifies specific challenges Roma face compared to other racial and ethnic minorities.

Equality bodies reported that discrimination on the ground of race and ethnic origin is most widespread in the fields of employment and the access to goods and services. In addition to that, discrimination cases are frequently filed in other fields, such as healthcare and social protection, access to education and access to housing.

17 out of 19 equality bodies stated that Roma tend to find themselves in particularly vulnerable situations and face specific challenges in exercising their rights compared to other racial and ethnic minorities. Equality bodies explained this by the fact that Roma are subject to a high level of stigma and prejudice, with widespread negative stereotypes being deeply rooted against them not only in the eyes of the public, but also local and national authorities and the police. This leads to a situation where under-reporting of cases of discrimination against Roma are especially high. Moreover, some equality bodies reported a lack of reliable data on the number or proportion of Roma living in their country, thus they do not have exact knowledge about the extent of discrimination against Roma. Other equality bodies were concerned about the collection of such data and regard it as controversial²⁷.

2.1 Discrimination in employment

Equality bodies report that a high number of cases related to discrimination on the ground of race and ethnic origin are reported in the field of employment. These include discrimination during recruitment, advertisements, interviews, unequal pay for equal work, unjustified dismissals and harassment in the work place.

- In **France** the Council of State dealt with a case where a candidate for the role of police officer was asked about his and his wife's origin and religious practices during a job interview.²⁸ The enquiry conducted in the case revealed that the questions were not related to the future functions of the police officer. The Council of State held that these practices were discriminatory and that questions unrelated to the exercise of proposed functions are contrary to national law.
The equality body handled another case where six Gendarmerie officers of North-African origin were victims of humiliating and racist jokes and unjustified and disproportionate disciplinary sanctions from their captain over a period of six years.²⁹ After inquiries from the equality body and separate investigations conducted by the General Directorate of the Gendarmerie, the equality body concluded that the claimants had been victims of

²⁷ The Working Group has analysed and written about the importance of and methods for collecting data in its report on positive action measures, see:

http://www.equineteurope.org/IMG/pdf/positive_action_measures_final_with_cover.pdf. The European Commission is also supporting projects analyzing practices of equality data collection in the EU, see e.g.: <http://www.humanconsultancy.com/projects/equality-data-collection-in-the-eu>.

²⁸ Decision of the former Halde, n° 2008-163 of July 7th 2008.

²⁹ Decision n° MLD-2012-53, of March 26th 2012.

discriminatory harassment based on their origin and religion and that the captain breached his obligations as military command holder.

- In **Norway** a doctor of Serbian origin filed a case arguing that she had been discriminated against due to her ethnicity after receiving a wage equivalent to a nurse salary. The Norwegian Ombudsman decided in favour of the applicant and concluded that there had been a violation of the Norwegian Anti-Discrimination Act.

Roma in particular face significant disadvantages in the field of employment. The lack of (quality) education (in itself, often a result of discrimination) can make it especially difficult for Roma to secure well-paid jobs. Another crucial contributing factor is the direct and indirect discrimination that Roma experience in recruitment.

- In **Bulgaria**, a train driver of Roma origin alleged that he had been unfairly dismissed, solely on the ground of his ethnicity. Despite his qualifications he was replaced by someone older with less work experience. The equality body found that the Bulgarian Railway Company had directly discriminated against the applicant on the basis of his ethnicity and age. In another case in **Bulgaria** a court held that an employee of Roma origin was discriminated against based on his ethnicity when his employer failed to ensure equal working conditions, altered his working schedule in a way that puts him in a less favourable position compared to others and failed to prevent insults by colleagues.

2.2 Discrimination in the access to goods and services

Discrimination on the ground of race and ethnicity is widespread in access to goods and services in both the public and private sectors. This has the potential of seriously limiting a person's enjoyment of their rights and quality of life. It can take various forms, such as not being allowed to use public transport, or to enter swimming pools, clubs, bars and restaurants. Persons belonging to racial and ethnic minorities often also experience discrimination when renting apartments, concluding contracts or applying for bank loans.

Furthermore, equality bodies report that it is particularly women who are disproportionately affected in the access to goods and services. It is especially their appearance, such as headscarves for Muslim women or Roma female dress, which put women in vulnerable positions. In 2011 in **Sweden**, the Equality Ombudsman published a report³⁰ showing that 70 per cent of complaints of discrimination against Roma came from Roma women. The majority of these complaints concerned Roma women reportedly being discriminated against and harassed in shops when buying food or clothing. Roma women also reported discrimination in connection with visits to hotels or restaurants.

- In **Austria** and **Belgium**, migrants have on several occasions been denied entry to public swimming pools. While these cases did not result in any legal dispute, they stimulated strong public debate. In **Austria**, young people on social media took the side of migrants and declared their non-Austrian roots in support of them. In **Belgium** the equality body took action regarding the refusal by some swimming pool operators to let migrants use their pools. It pointed out that this practice is in violation of anti-discrimination laws. Due to that, the entry

³⁰ 'Roma Rights – Discrimination, paths of redress and how the law can improve the situation of Roma', see: <http://www.do.se/contentassets/b7f4b55bcf8e4a40b5db846f7f45a2a3/report-roma-rights.pdf>.

ban was eventually lifted and rules of the swimming pools were instead translated into Arabic.

- In **France**, a client living in the French overseas department of Guyana was refused a bank loan due to alleged difficulties with recovering payments overseas.³¹ The equality body concluded that this difference of treatment did not only constitute discrimination on the grounds of place of residence, but also ethnic origin, which is why the bank decided to extend its credit services to French overseas territories.
- In **Germany**, a club was ordered to pay a fine after refusing entrance to a man with dark skin. The man, who was a German national, wearing a German national soccer team outfit, tried to enter the club after Germany became World champion in 2014. The court, which found that the victim had not consumed alcohol and was dressed appropriately in light of the soccer game, decided in favour of the victim holding that he had been discriminated against on the ground of his ethnic origin.
- In **Latvia**, the equality body found that a group of young people of different ethnic origins were subjected to discrimination when they were refused access to a club arguing there was a private party. Video footage showed however that local residents were admitted to the club immediately afterwards. The video footage was shot by a news service as part of a situation testing exercise.
The equality body also found discrimination in relation to another situation testing exercise in which a group of people of different ethnic origins were refused access to a club unless they paid 240 euros in order to be admitted and allocated a table, while local residents were not charged.

Some equality bodies reported that Roma face obstacles when accessing goods and services, such as renting an apartment or opening a bank account as a result of direct and indirect discrimination, including institutional discrimination and discriminatory eligibility criteria.

- In **France**, Roma face challenges in accessing services because the Communal Social Action Centres refuse to provide them with official addresses, even though French law guarantees everyone a right to domicile in the commune of residence. As a result, various cases of discrimination were presented to the equality body relating, for example, to the refusal of medical treatment,³² the refusal of a commune to bury a child of Roma origin on its territory³³ and the inability of declaring one's occupation.³⁴
- In 2015 in **Hungary**, several Hungarian citizens of Roma ethnic origin were prevented from boarding planes bound for Canada although they had valid travel documents and air tickets. The Deputy Commissioner responsible for rights of National Minorities issued a general comment stating that pre-boarding screening of passengers should be carried out in accordance with a written protocol, passengers should be provided with advance information on the fact as well as the purpose of such screening and information on possible legal remedies. Furthermore, screening should not discriminate, degrade or violate human dignity.

2.3 Discrimination in healthcare and social protection

Roma face barriers in accessing healthcare and social protection services. In relation to accessing health care services, this is due to the fact that Roma often live in segregated areas and lack basic infrastructure and money for accessing these services. In **Albania** for example a study has shown that

³¹ Decision n° MLD-2011-59, of October 31st 2011 and n° MLD-2014-101 of September 2nd 2014.

³² Decision n° 15-000957, of February 27th 2015.

³³ Decision n° MLD-2015-002, of January 6th 2015.

³⁴ Decision n° 15-010237, of September 11th 2015.

only 58% of Roma possess health care cards. Also in other countries, the proportion of Roma with valid health insurance cards is significantly lower compared to the rest of society, potentially contributing to their relatively lower life expectancy. In relation to accessing social protection services, Roma may face challenges due to institutional discrimination, a degree of mistrust in public authorities (sometimes well justified by previous bad experiences and instances of discrimination) and general lack of awareness of rights as well as the failure of the authorities to adequately explain procedures. Cases concern, for example, applications for housing assistance or maintenance support or situations where children are taken into foster care.

2.4 Discrimination in housing

The work of equality bodies shows that discrimination against racial and ethnic minorities often occurs in the field of housing. The vulnerable position of Roma in the field of housing is a focus of this paper and will be discussed in the next chapter.

- In **France**, the equality body found racial discrimination when a landlord refused to rent an apartment to people with a foreign sounding surname. In a situation testing activity via telephone the landlord stated that he only wanted 'European people, like the Swedish or Germans but not people from North-Africa and Africa in general' to live in his apartment. He has made similar statements relating to Muslims. The case was settled and the apartment owner fined.
- Similarly, in **Germany** a court found that only demanding Turkish tenants of an apartment building to pay a higher rent amounted to racial discrimination.³⁵
- In **Great Britain**, the Equality body reported that someone born in an ethnic minority household in Scotland is nearly four times more likely to be in a household that is overcrowded and up to twice as likely to be living in poverty and experiencing unemployment.³⁶

2.5 Discrimination in education

Most equality bodies receive a high number of complaints regarding discrimination based on racial or ethnic origin in the field of education. Some equality bodies noted that barriers to accessing (quality) education, as well as high dropout rates prevail especially in the Roma community. This is despite the fact that international and European laws, as well as the national laws of all European countries guarantee the right to education for all children.³⁷

- In **France**, for example, a study by the European Roma Rights Centre from 2014 showed that less than half of all children interviewed in six Roma settlements across the country were attending school. For about 60%, this was based solely on the fact that local authorities refused to allow them to register in schools.³⁸
- Even though in **Albania** the number of Roma children going to school is increasing due to special scholarships or the covering of basic costs, such as clothing, school materials and meals,

³⁵ Local court Tempelhof-Kreuzberg, Urteil vom 19.12.2014 – 25 C 357/14.

³⁶ See: <https://www.equalityhumanrights.com/en/our-work/news/scotland%E2%80%99s-ethnic-minorities-face-overcrowding-poverty-and-unemployment-says-equality>.

³⁷ See for example: Article 26 of the Universal Declaration of Human Rights, Articles 28 and 29 of the Convention on the Rights of the Child, Article 13 of the International Covenant on Economic, Social and Cultural Rights, Article 14 of the EU Charter for Fundamental Rights or General Comment 13 on the right to education of the Committee on Economic, Social and Cultural Rights.

³⁸ See: <http://www.errc.org/article/romani-children-talk-about-access-to-education-in-france/4310>.

another problem has emerged. Despite efforts in the form of open days, certain schools fail to attract pupils from non-Roma communities, which leads to clear separation and isolation of Roma children in certain schools. Similar difficulties with Roma only schools exist in **Serbia**.

Experiences of many European countries and well-established case law from the European Court of Human Rights show that Roma pupils are often taught outside mainstream schools and in schools for children with special needs, sometimes without a relevant diagnosis. The physical segregation of Roma settlements, lack of infrastructure and public transportation are other explanations for the lack of (quality) education for Roma children. Furthermore, statistics show that dropout rates are especially high for girls, due to practices of early marriage that continue to be a reality for many Roma children. A different type of challenge is the difficulty in keeping track of pupils from highly mobile families, reported by **Belgium, France and Great Britain**. In some cases Roma parents are also reluctant to state their children's ethnicity for fear of discrimination. This leads to under-reporting of Roma pupil numbers that, in turn, makes it difficult to target resources effectively.

The Working Group notes that its own findings relating to the experiences of Roma as described in the above fields are echoed in the Fundamental Rights Agency (FRA) major survey on discrimination against immigrants and ethnic minorities³⁹. That report shows that only 30% of Roma are in paid work, compared to the average EU employment rate of 70%. Further, of the 8000 Roma interviewed, 41% believed that they had been discriminated against in the last five years in everyday situations, such as looking for work, at work, housing, health and education. FRA concludes that the survey underlines the need for:

- Early childhood learning support and integrated schooling
- Better employment opportunities and greater social protection to eradicate poverty
- Targeted education and training to specifically help Roma youths and Roma women in their transition from primary to secondary education and thereafter to find work.

Conclusion

This chapter aimed at introducing the fields in which discrimination on the ground of race and ethnicity is most widespread. It showed that discrimination on the ground of race and ethnic origin takes place in all fields, such as employment, access to goods and services, health care and social protection, education and housing. Furthermore, the chapter has shown that the Roma are in a particularly vulnerable position and often subject to discrimination in all of these fields.

³⁹ See: <http://fra.europa.eu/en/publication/2016/eumidis-ii-roma-selected-findings>.

Chapter 3: Discrimination against Roma and Travellers in the field of housing

Discrimination against Roma in Europe in the field of housing is a specific focus of this discussion paper. The Working Group decided to dedicate particular attention to this field given the crucial importance of housing as a precondition of human dignity and facilitating access to quality employment and education. The Working Group also noted that there was a relative lack of published case law in this area. The examples collected shed light on the enormous challenge of discriminatory evictions as well as refusal of tenancy agreements and social housing on ground of race and ethnic origin. At the end of the chapter good practice examples are shown as possible ways forward.

3.1 Cases of evictions

In June 2016 the partners of the **Operational Platform for Roma Equality (OPRE)**⁴⁰ issued a joint statement seeking the attention of national, regional and local authorities to reinforce the need to find sustainable solutions to the housing and accommodation problems faced by the Roma and Traveller community in many European countries. The statement⁴¹ points out that:

‘A constant threat of eviction can result in physical and psychological health problems, such as emotional trauma, as well as lasting social isolation affecting particularly those with vulnerabilities, such as older people, women or those with disabilities. Families and communities are torn apart by eviction, which may jeopardize the right to family life. Evictions without rehousing opportunities multiply homelessness and perpetuate illegal settlements and slums. Evictions often stop access to health care and vaccination programmes, increasing the health risks for the entire society.’

- In **Albania** the development of a new road in Tirana forced Roma to resettle. Some families were offered a two year rent free plan by the Council of Ministers in Albania. Not having taken into account the specific social situation of the Roma community affected by the resettlement and failing to ensure accommodation after the expiry of the two-year period, the equality body argued Roma families have faced indirect discrimination compared to others and recommended the Council of Ministers to take measures to ensure sustainable and long term housing for Roma families.
- In 2008 in **Belgium**, two Traveller families purchased a plot of land in Erpe-Mere. The plot had been used for the previous 30 years as a Traveller site. In April 2013 the family was informed through a written announcement, that the site had to be vacated within 31 days. If the deadline was not observed the families would have to pay a fine of 5,000 EUR per day. After mediation between the families and the mayor failed, the families left the site in June 2013. Thereafter, the families travelled around Belgium with nowhere lawful to stay, which made school attendance for their children practically impossible. In 2015, the family returned without authorisation to the site. The case is ongoing.

⁴⁰ The Operational Platform for Roma Equality (OPRE) consists of the European Network of Equality Bodies (Equinet), the European Network of National Human Rights Institutions (ENNHRI), the European Union Agency for Fundamental Rights (FRA) and the Council of Europe (CoE), as well as associate partners, including the OSCE's Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the UN's Office of the High Commissioner for Human Rights (OHCHR).

⁴¹ See:

http://www.equineteurope.org/IMG/pdf/opre_joint_statement_on_evictions_of_roma_and_travellers_in_europe_29_06_2016.pdf

In another case, the city of Mons has been trying to clear a large Traveller site since 2004 in order to develop the area. The Travellers have lived there since 1998. Frequent police raids, the cessation of waste management services and the permanent feeling of insecurity made the better-off Travellers move from the site. The situation remains unsolved and only a few Travellers remain on the site.

- In **Bulgaria**, the First Specialized Permanent Panel of the Commission for Protection against Discrimination (CPD) reviewed a notice stating that 600 people of Roma origin would be evicted from their homes following a decision by the mayor. The Panel held that the mayor's decision did not amount to discrimination on the ground of ethnicity as it was aimed at protecting the life, health and safety of the residents of the building given the risks resulting from its extremely poor and dangerous condition. However, the CPD's decision recommended that within one year the mayor, the City Council, the governor and the Minister of Regional Development and Public Works, the Minister of Labour and Social Policy, the National Council for Cooperation on Ethnic and Integration Affairs and the Council of Ministers should ensure the adoption of strategic plans for the integration of minorities (especially Roma) and to report to the CPD on the results of the evaluation of their impact.
- In 2014 and 2015 the Equal Treatment Authority in **Hungary** investigated a complaint brought by an NGO against a municipality's decision to evict about 900 Roma residents from a segregated slum area. The equality body found multiple discrimination based on ethnic and social origin combined with financial status. It also held that the residents had been subject to indirect discrimination because the evictions took place without proper preparation, analysis or assessment of the outcome and effects. It obliged the municipality to terminate the infringement and to develop an action plan concerning the measures to be taken in order to guarantee adequate living conditions of the residents concerned. Furthermore, the equality body ordered the publication of its decision for 90 days on the website of the municipality as well as on its own website. Finally, it imposed a fine of 500,000 HUF (circa 1,600 EUR) against the municipality. The municipality lodged a request for review with the competent court that finally upheld the Authority's decision. The OSCE also published a report on this incident⁴²
The Commissioner for Fundamental Rights and the Deputy Commissioner responsible for the rights of National Minorities have concluded in their joint report in 2015⁴³ that the authorities of one of the largest cities have developed a practice of intimidation, with raid-like joint official control activities targeting mostly segregated living areas inhabited by people belonging to the Roma minority. This infringes on their right to fair procedures, the right to privacy, the right to legal remedy, the principle of equal treatment and the rights of the child.
- In **Lithuania** around 400 Roma live in a settlement called Kirtimai, which is located in an isolated area of Vilnius. The equality body reports that due to historical reasons⁴⁴ and the lack of the municipality's political will, the majority of houses in Kirtimai are deemed to be illegal. Some of the houses were demolished following court decisions, without providing alternative housing for their inhabitants. The community lacks information and knowledge about the court process and their rights. In addition, there is widespread overall negative prejudice against the community. Mainstream society tends to approve the court orders and the municipality's policy and only a few NGOs work on advocacy strategies to help the Kirtimai community to resettle in social houses.
- In **Serbia** the inhabitants of the Roma settlement Grmeč in Zemun received a formal notice

⁴² Report in English and Hungarian: <http://www.osce.org/odihr/262026>, Video: <http://www.osce.org/odihr/262066> Photo gallery: <http://www.osce.org/odihr/262021/> Press releases: <http://www.osce.org/odihr/262051> (2016), <http://www.osce.org/odihr/167966> (2015).

⁴³ AJB-1474/2014, see: <https://www.ajbh.hu/ko/web/ajbh-en/-/report-of-the-commissioner-for-fundamental-rights-and-the-deputy-commissioner-responsible-for-the-protection-of-the-rights-of-nationalities-concerning>.

⁴⁴ During the Soviet era Roma were relocated to Kirtimai with no ownership rights as every building back then was owned by the State.

from the municipality requiring everyone to vacate the facilities within 24 hours. Afterwards, the Commissioner expressed concern about the rise in the number of demolitions of unlawfully erected Roma residential facilities in comparison to the demolition of such facilities inhabited by the majority population, arguing that such a selective approach gives cause for concern of systemic discrimination. A recommendation was issued to Zemun City Municipality to refrain from evicting Grmeč community residents until alternative accommodation has been provided.

3.2 Denied tenancy agreements and social housing

- In the **Czech Republic**, a social worker from a non-governmental organization reported to the equality body that, when looking for housing for her clients, she encountered a refusal by estate agents to arrange leased housing for Roma. The NGO carried out three test telephone interviews in which they acted as if they were interested in finding housing. The test results showed evidence of direct discrimination against Roma, after which court proceedings were initiated. The Court agreed and found that the estate agents directly discriminated against Roma searching for housing.
- In 2014 in **Latvia**, the Ombudsman investigated a case where a Roma woman experienced long-term problems with access to social housing. During the investigation it was found that the local municipality had offered the complainant several places to live, however she refused all of them as the social apartments offered were not in good condition. Following the outcome of the investigation, it took the local municipality only two weeks to offer the Roma woman an acceptable social apartment.
In 2012, the Ombudsman investigated a similar case where a local municipality did not want to place a Roma woman with children on a waiting list for social housing, pointing out that her current two-room apartment (housing nine people) was clean. The local municipality argued that she did not therefore need a new apartment. The Ombudsman pointed out that the local municipality should evaluate the number of people in one apartment, rather than their attitude towards cleanliness. The Ombudsman requested the municipality to re-assess her eligibility to be accepted on the waiting list for a social apartment.
- In recent years the **Swedish** Equality Ombudsman has taken three cases to court concerning Roma who were denied tenancy agreements due to their ethnicity. Two of these cases were settled and claimants received financial compensation of 50,000 SEK (circa 5,275 EUR) and 37,500 SEK (circa 3,950 EUR) respectively. In the third case, the Court of Appeal awarded the claimants 40,000 SEK (circa 4,220 EUR) in compensation.

3.3 Good practices shared by Working Group members

- A good practice example for local authorities to consider comes from **Great Britain** and concerns the Negotiated Stopping Policy developed by Leeds City Council and the charity LeedsGATE. Leeds Council and Leeds Gypsy and Traveller Exchange created a new approach to managing temporary roadside encampments by Gypsy and Traveller people. They now use dialogue and negotiation to enable travelling families to stay for limited periods of time, on ground where it is not causing great inconvenience to anyone. The families make an agreement with the authority about acceptable behaviour, waste disposal, and when the camp will leave and the Authority does not take action to evict them. Leeds Council calculates it makes a saving of 2,000 GBP (circa 2,350 EUR) a week on enforcement costs compared to expenditure before the policy was introduced. This project was the recipient of a Lloyd's Bank Charity Achievement Award in 2015.
The equality body also published research on the situation in Scotland which demonstrated

that with planning and care, it is possible to develop new Gypsy and Traveller sites. For example, Falkirk Council's approach to private sites and South Ayrshire's refurbishment of existing sites show that it is possible to balance the needs of the Gypsy and Traveller community with concerns of the settled community⁴⁵.

- In **Portugal** the National Roma Communities Integration Strategy 2013-2020⁴⁶ has four priority areas relating to housing. In the implementation of the strategy, a study of the housing conditions of Roma communities was carried out by the Housing and Urban Rehabilitation Institute in partnership with the High Commission for Migration. In 2014 interventions took place in four municipalities, covering approximately 89 Roma households⁴⁷.
- In **Slovakia**, the city of Žilina demolished an apartment block in line with the recommendation of state engineers. The deadline for the demolition was postponed due to the need to reach an agreement with the residents. The city established a community centre with three social field workers for children and families. The Community plan of social services of the city of Žilina for the years 2014-2018 introduced several measures for Roma, for example, the provision of assisted transit housing.
In Prešov, residents of a building had to be evicted due to the state of the apartments. Approximately 29 Roma families were relocated, some of them to flats of a higher standard in other locations, while others moved to their relatives in other towns or cities. Importantly, no one became homeless. Everyone was offered some form of alternative housing as the city adopted measures to help the social situation of people threatened by social exclusion.

Based on discrimination Roma face in relation to housing, especially illegal evictions, the Operational Platform for Roma Equality has issued recommendations for governments and competent regional and local authorities to ensure evictions only take place with due regard to human rights, including:

- To ensure that everyone subject to eviction is adequately informed of their rights and proposed adequate alternative accommodation, if necessary with the help of interpreters;
- To make effective legal remedies and free or low-cost legal assistance available to those concerned;
- To ensure that evictions are carried out in a reasonable manner, without discrimination, harassment or violence, and in a way that does not threaten the evictees' health, life or wellbeing, in particular during winter or in cold weather, at night or very early in the morning, or when families are unlikely to be together;
- To ensure that nobody is evicted without reasonable notice;
- To ensure that evictions are well planned and carried out only as a last resort after consultation and negotiation efforts have failed; these efforts must include consideration of the impact of evictions on children's schooling and proposals for rehousing in decent, adequate, alternative, and sustainable accommodation or fully functional and equipped halting sites, in accordance with international human rights standards, in particular the right to adequate housing;
- To ensure that evictions respect the principles of the best interests of the child and are thus always accompanied by a guarantee of continued equal access to education and health care;
- To ensure that proposals for alternative housing or accommodation do not perpetuate residential segregation.

⁴⁵ 'Developing Successful Site Provision for Scotland's Gypsy and Traveller Communities', January 2015, see: https://www.equalityhumanrights.com/sites/default/files/successful_site_provision_scotland.pdf.

⁴⁶ See: <http://www.acm.gov.pt/-/estrategia-nacional-para-as-comunidades-ciganas-enicc-concig>.

⁴⁷ Contumil (Porto), Cabomor (Vila Nova de Gaia), Bagaúste (Peso da Régua) and Mártir Santo (Campo Maior).

- To ensure that evictions are not triggered or justified by anti-Gypsyism and hate speech;
- To address the systemic factors that prevent Roma and Travellers from legalising their housing status and put them at risk of eviction.
- To ensure that relevant international standards on evictions are reflected in national legislative frameworks, in particular as regards adequate procedural safeguards against illegal evictions;
- To ensure that national legislation recognises and protects the right to adequate housing and, where applicable, the right to live in mobile housing. Such legislation should be rigorously enforced;
- To ensure that evictions are not carried out until adequate alternative sites, accommodation or halting sites have been identified;
- To design and enforce legislative or other measures to prevent and sanction evictions conducted by individual owners or public authorities without the safeguards provided by law;
- To find sustainable solutions to the occupation of Roma and Traveller sites or dwellings built in breach of planning regulations, as guided by ECRI General Policy Recommendation no. 13;
- To ensure that comprehensive anti-discrimination legislation is in place and that acts of discrimination against Roma and Travellers in respect of housing and accommodation are effectively sanctioned;
- To work with and consult local communities, involving civil society representatives and other relevant stakeholders, to improve mutual understanding and trust.

Equinet is a member of the Operational Platform for Roma Equality and endorses its recommendations.

Chapter 4: Multiple Discrimination / Intersectionality

This chapter reflects on some of the challenges of defining, evaluating and tackling multiple and intersectional discrimination and goes on to explore the most commonly reported forms of multiple and intersectional discrimination. Finally it lays out specific issues affecting Roma women and children before concluding that there is an incomplete picture of multiple and intersectional discrimination and that further dialogue between equality bodies and at a national and EU level may be required. The European Network of Legal Experts on Gender Equality and Non-discrimination as well as Equinet both produced reports on Intersectional Discrimination⁴⁸ in 2016. These reports go some way to addressing the gaps identified in this chapter by working towards clearer definitions, identifying challenges to tackling multiple discrimination as well as suggesting possible strategies for enforcement and promotion.

4.1 Definition of multiple discrimination

Multiple discrimination is sometimes known as ‘intersectional discrimination’ or ‘combined discrimination’, which have subtly different meanings. The concept began as a way of better understanding the lived experience of ethnic minority women. It reflects the reality that a person’s identity may include numerous protected characteristics and that inequality can often be complex and multi-faceted. We all have a sex, an age, beliefs, an ethnicity, sexual orientation etc., but the unique combination of some of those characteristics can put a person at a higher risk of the most acute forms of discrimination.

The term ‘multiple discrimination’ has gradually emerged in the language of the UN treaty monitoring system through General Comments, Recommendations and Concluding Observations. Of particular relevance are CERD General Recommendation 25 and CEDAW General Recommendation 28, which acknowledge the intertwining of discrimination based on sex and gender with other factors such as race and ethnicity, religion or belief and caste.

Article 3 of the Treaty on the European Union emphasises that two of the fundamental aims of the Union are combating discrimination and promoting equality between women and men. The recital to the Race Directive refers to the EU’s aim of eliminating inequalities, and promoting equality between men and women, ‘especially since women are often the victims of multiple discrimination.’ However, as will be seen from the examples given by equality bodies, there are emerging examples of multiple discrimination involving a range of characteristics.

These instruments do not distinguish multiple and intersectional discrimination. There is no universal legal definition of these terms. However, drawing on the definition set out by Muriel Robinson,⁴⁹ for the purposes of this paper multiple discrimination is understood as:

⁴⁸ See: <http://ec.europa.eu/justice/gender-equality/document/files/intersectionality.pdf> and <http://www.equineteurope.org/Equinet-Perspective-Innovating-at-the-Intersections-Equality-Bodies-tackling>.

⁴⁹ Institute of Employment Rights Conference Series: Equality and Discrimination, see: <http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0ahUKEwiah7Db69zQAhXMJcAKHeQ2DzcQFggoMAI&url=http%3A%2F%2Fwww.ier.org.uk%2Fsites%2Fier.org.uk%2Ffiles%2FMurial%2520Robinson%2520-%2520Dual%2520Discrimination%2520-%2520the%2520significance%2520of%2520delaying%2520Section%252014.doc&usg=AFQjCNGxS2cXIm->

1. **Standard (or consecutive) multiple discrimination**, where an individual is discriminated on a number of different occasions, but because of different protected characteristics. The case of *Al Jumard v Clywd Leisure Ltd 2008 IRLR 345* for example concerned Mr Al Jumard, who was duty manager at a leisure centre. He was a British national who was Iraqi by birth. He was disabled as a result of a hip operation. The tribunal found that he had been discriminated against because of his race, and in relation to separate incidents, discriminated against because of his disability. In that case, the Tribunal said that losses flowing from the two forms of discrimination, where they did not arise out of the same facts, should have been separately considered, and injury to feelings awarded for the separate claim.
2. **Additive (or cumulative) discrimination**, where a person is discriminated against in relation to one particular event because of both their sex and race, that is for example where two forms of discrimination happen at the same time but are not related to each other, such as a lesbian who experiences both homophobic and sexist harassment.
3. **Intersectional (or combined, or compound) discrimination**, where a person is discriminated against because of different characteristics in combination. An example could be a black woman passed over for promotion to work on reception because her employer thinks black women do not perform well in customer service roles. Because the employer can point to a white woman of equivalent qualifications and experience who has been appointed to the role in question, as well as a black man of equivalent qualifications and experience in a similar role, the woman may need to be able to compare her treatment because of race and sex combined to demonstrate that she has been subjected to less favourable treatment because of her employer's prejudice against black women.

4.2 Challenges in evaluating and tackling intersectional and multiple discrimination

There is a generally reported lack of information about the prevalence of multiple discrimination. The information which has been provided by Working Group members does not consistently distinguish between multiple and intersectional discrimination. For the purposes of this report we have not, therefore, differentiated between the two when citing examples. Under-reporting may also be an issue. As a result, numbers of recorded instances of multiple discrimination may appear to be relatively low. Only some equality bodies who responded were able to provide a breakdown of the specific numbers.

- In **Sweden** in 2014⁵⁰, women filed 50 percent of the complaints to the equality body, but only 14 percent of these complaints involved sex discrimination. Intersections that could be observed are ethnic origin and gender.
- In 2015 in **Italy**, five out of fourteen multiple discrimination cases involved race as one of the grounds.
- Between 2009 and 2014 in **Denmark**, seven cases of multiple discrimination where one of the grounds was race have been recorded.

Multiple discrimination and/or intersectional discrimination do not have a universal definition and are not expressly acknowledged in all legal systems: the law in **Croatia**, **Bulgaria** and **Austria** does

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⁵⁰ Women file complaints on multiple discrimination, an intersectional analysis of the Annual Report 2014.

protect against multiple discrimination. In **Great Britain** the legislation covering ‘combined discrimination’, which would specifically address intersectional discrimination, has not been brought into force. There is however domestic case law confirming that discrimination on two grounds combined can found a successful claim.⁵¹

Another important reason for the low levels of reported cases is the uneven protection from discrimination in different contexts at EU level, which leads to uneven protection within and between Member States.

A significant step forward could be taken if the proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (so-call Horizontal Directive) is enacted. This proposed Directive sets out a framework for the prohibition of discrimination on these grounds and establishes a uniform minimum level of protection within the European Union for people who have suffered such discrimination. This proposal would go some way to harmonizing protection outside employment in the spheres of social protection, social advantages, education and goods and services including housing.

Recital 13 of the current consolidated text of the proposed Directive mirrors the commitment (also found in the recital to the Race Directive) to eliminating inequalities and promoting equality between men and women, and acknowledges that women are often the victims of multiple discrimination. It is clear from the preparatory materials for the Race Directive that the aim of this commitment was not only the recognition of the ‘double burden’ suffered by women, but also to lay the basis for gender mainstreaming across the activities of the European Commission, including the Race Directive.⁵² In a 2006 report from the Commission to the European Parliament and the Council on the application of the Directive,⁵³ as required by Article 17, it was noted that despite specific requests for information on implementation of gender mainstreaming under Article 17 (2), not many Member States responded and the report drew attention to the risk of multiple discrimination faced by older women from ethnic minorities and the complex overlap between religious identity and sexual orientation.

The Commission’s latest report on the Race and General Framework Directives (from 2014) states that ‘the Directives already allow a combination of two or more grounds of discrimination to be tackled in the same situation although problems may arise from differences in the level of protection

⁵¹ *Mod v De Bique*, Employment Appeal Tribunal held that: The Employment Tribunal’s approach of conflating the two separate PCPs when concluding that the Claimant had been subjected to discrimination was not an error of law. The Claimant’s case was that the disadvantage she was subjected to arose both because she was a female single parent soldier required to be available for deployment 24/7 and because she was a Vincentian woman who was prevented from having a live in Vincentian relative provide child care. The Tribunal’s recognition of this double disadvantage reflected the reality of the situation.

⁵² Report of the European Parliament 16th May 2000 on the proposal for the Race Directive, see; <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2F%2FEP%2F%2FTEXT%2FBREPORT%2BA8-2016-0228%2B0%2BDOC%2BXML%2BV0%2F%2FEN&language=EN>.

⁵³ Report from the Commission to the Council and the European Parliament, 15.12.2006, para 3.5, see: [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52006DC0643R\(01\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52006DC0643R(01)).

provided for different grounds under the two Directives because the scope of Directive 2000/78/EC is limited to employment matters only'.⁵⁴

Recital 13 to the proposed Directive, whilst reiterating this message, states a firmer message; that 'in preparation or review of the laws, regulations and administrative provisions necessary to comply with this Directive, Member States should take account of the differential impact on men and women.'

Further, Recital 13 of the current consolidated text of the proposed Directive⁵⁵ states that 'in implementing the principle of equal treatment irrespective of religion or belief, disability, age or sexual orientation, the Union should, in accordance with Article 8 of the TFEU, aim to eliminate inequalities, and to promote equality between men and women, especially since women are often the victims of multiple discrimination.'

- In **Austria** sexual orientation, age and religion or belief are not protected in the area of goods and services. Gender is protected with regard to goods and services, including housing, but not with regard to general education (kindergarten, primary and secondary schools etc.). However, gender is a protected ground in the area of vocational education.
- In **Bulgaria** the ground of race and ethnicity intersects with all other grounds. Personal status is protected.
- In **Hungary** national legislation provides for twenty grounds of discrimination, which are all protected uniformly in five spheres.

There may also be a lack of research and evidence. Research conducted by the equality body for **Great Britain**⁵⁶ found that 'little focus has been given to intersectionality across the equality areas, or to multiple-disadvantage.' The report highlights a number of barriers that, for example, disabled and women refugees and asylum seekers face. It concluded that when these multiple factors are combined with immigration status, it becomes clear that these groups experience a range of intersectional issues yet evidence to document this is limited.

4.3 Commonly observed forms of multiple discrimination

The factors identified may contribute to an incomplete picture of the scale of multiple and intersectional discrimination. However, in general terms, equality bodies reported that the most commonly observed forms included race/ethnicity and sex (both male and female), often further mixed with religion or belief. These intersections, as well as concerns about Roma women and children will be discussed below.

Other characteristics which intersected with race/ethnicity included socio-economic status, personal status, disability, and age.

A trend appeared in terms of the contexts in which multiple discrimination took place. Incidents often arose when members of the public were accessing swimming pools, clubs and discos

⁵⁴ See: http://ec.europa.eu/justice/discrimination/files/com_2014_2_en.pdf.

⁵⁵ Council of Europe Inter-institutional File 2008/0140 (CNS) 9730/16, see: <http://data.consilium.europa.eu/doc/document/ST-9730-2016-INIT/en/pdf>.

⁵⁶ Research report 52 - Refugees and asylum seekers: a review from an equality and human rights perspective, see: <https://www.equalityhumanrights.com/en/publication-download/research-report-52-refugees-and-asylum-seekers-review-equality-and-human-rights>.

(Germany, Austria, Belgium, and Lithuania). Multiple discrimination in the education or employment context was also commonly observed (Bulgaria, Norway).

Race/ethnicity and gender (women)

Several equality bodies reported either anecdotal concerns or legal disputes concerning dress issues for women and girls, e.g. being prohibited from wearing headscarves or made to wear short sleeves, in educational, employment and other public life settings (Bulgaria, Denmark, Germany and Norway).

The issue of prohibiting headscarves is due for determination by the Court of Justice of the European Union later in 2016 when it will hear two cases in which the respective Advocates General have taken a different approach so far.⁵⁷ The European Court of Human Rights has held that any interference with Article 8, 9 or 14 by banning the veil in public can be justified as a proportionate response to the legitimate aim of protection of the rights and freedoms of others.⁵⁸

- In **Sweden** a successful case established that an Iranian woman had been discriminated against on the basis of her ethnicity and age in recruitment. There was evidence that younger applicants with Swedish names had been selected for interview.

There were several reported cases concerning stereotypes/assumptions made about women of some nationalities.

- In **Lithuania**, the sexual objectification of a woman of African descent in an advert for a men's suit store resolved with a change to the advert.
- In **Norway**, women from an Asian background were removed from hotels on the assumption they were prostitutes. In another case a teacher sent a report to child services on the assumption that the daughter of a Somali family risked female genital mutilation.

Race/ethnicity and gender (men)

Several equality bodies reported a rise in cases of multiple discrimination involving men.

The equality body for **France** reported discriminatory identity checks due to ethnic origin, gender (male) and physical appearance. The equality body questioned the objectivity of the checks, which were largely based upon subjective criteria such as feeling or instinct. In its judgments of June 24th 2015, the Court of Appeal of Paris allowed five out of eight of the appeals. The Court noted that studies show that certain groups from deprived neighbourhoods in particular are 'over-checked' and that the use of racial profiling is known and appears to be a widespread practice. The Court of Cassation shared the same view and decided on 9 November 2016 that the identity checks were discriminatory.

There were similar cases reported concerning assumptions being made about men of some nationalities (and religions).

- In **Austria** a rise in cases concerning men denied entry to discos and bars because of

⁵⁷ Achbita and Centrum voor gelijkheid van kansen en voor racismebestrijding v G4S Secure Solutions NV (C-157/15) and Bougnaoui and another v Micropole SA (C-188/15).

⁵⁸ SAS v France [2014].

assumptions about their 'foreign' background has been observed. In one such case the equality body pursued a case arguing intersectional discrimination however it was unsuccessful due to lack of evidence.

- In **Belgium**, male security agents wearing a beard have reported being transferred without reason, in the wake of recent terrorist attacks.

Roma women and children

Several equality bodies reported examples of multiple discrimination against Roma women and children in the spheres of education, employment and access to services.

- The equality body for **Great Britain** intervened in a case involving 'J', a four year old boy who has Down's syndrome. The case highlights the difficulties J experienced as part of the travelling community seeking to access medical care and speech therapy services. Whilst there was no specific discrimination finding, the Court found that a local authority did have the power to provide services for a child in need it had assessed, regardless of the circumstances which had led to that child no longer physically being present in the local authority's area. Following the judgment, the Council have now put in place agency carers to assist the family with J's care.
- In **Hungary** in 2014/15, a successful class action pursued an indirect discrimination claim involving the threatened eviction of 900 residents from an area on the grounds of their Roma origins. The decision explored the concept of multiple discrimination on the ground of race/ethnicity and social origin and financial status, which are inseparable protected grounds for the residents.

The Deputy Commissioner responsible for rights of National Minorities in Hungary has expressed her concerns to CEDAW regarding sexual and reproductive rights of Roma women: she highlighted that they are subject to multiple discrimination on the basis of gender/ethnicity, especially in relation to access to healthcare and quality education. As a result of this discrimination, there is a lack of awareness around reproductive health and rights, which is exacerbated by their disadvantaged social status and geographical obstacles. CEDAW called on the Hungarian State to implement their previous recommendation in concerning the reproductive rights of Roma women.⁵⁹

Conclusion

This chapter highlighted some of the most commonly observed forms of multiple or intersectional discrimination; race/ethnic origin and sex (both male and female). This was often further combined with other protected characteristics such as religion or belief or other factors such as poverty or socio-economic status. This chapter also brought together some examples of these forms of discrimination in action, suggesting that where racial or ethnic origin intersect with another protected characteristic, the person is more vulnerable to the most acute discrimination.

However there is clearly an incomplete picture of the scale of multiple and intersectional discrimination. Multiple and intersectional discrimination are perhaps not widely recognised or enforced and there is limited emerging case law. This may be due in part to a lack of uniformity of definition and of protection across protected strands at a national and EU level. There could also be improvements in awareness raising and recording of these forms of discrimination. Ongoing research and dialogue between equality bodies and at a national and EU level is needed to consider how we can best analyse and address these issues and what legislative changes might be required. Recent

⁵⁹ Issued 22 September 2015.

research and discussion papers by Equinet and the European Network of Legal Experts will hopefully further this conversation.

Chapter 5: Legal challenges, practical obstacles and tools for equality body

This chapter will begin by considering some of the useful tools provided by the Council Directive 2000/43/EC ('the Directive'), such as protection of the legal person, discrimination by association, positive action, burden of proof and victimisation, but will highlight some examples of difficulties in implementing these principles in national legal systems.

Thereafter, practical aspects of taking and proving racial and ethnic origin discrimination cases, and focusing on awareness of rights and evidence gathering, will be discussed. Finally, examples of the tools most commonly used by equality bodies to combat race/ethnic origin discrimination in relation to evidence gathering and enforcement will be provided. The chapter concludes by suggesting that there is a need to strengthen that toolbox in order to achieve greater progress.

5.1 Legal challenges: Tools within the Race Directive

Legal persons

The Recital states⁶⁰ that it is important to protect all natural persons against discrimination on the ground of racial or ethnic origin. Member States should also provide, where appropriate and in accordance with their national traditions and practice, protection for legal persons where they suffer discrimination on the ground of the racial or ethnic origin of their members. Protection against discrimination of the legal person could be a useful tool for NGOs. In circumstances where a group/NGO has been discriminated against, e.g. refusal of a service, an individual member may not wish to or have the means to pursue an action. In addition, discrimination against one of the individuals is only part of the picture and it may be more appropriate for the NGO to take an own name challenge.

Some disparity between members was reported on this point. In **Belgium, Croatia, Lithuania and Slovenia** the legal person is expressly protected in Equality law. However this is not the case in **Denmark or Sweden**. There remains some ambiguity on this point in **Great Britain and Portugal**. This issue was discussed in the recent English case of *The Traveller Movement and Others - v - J D Wetherspoon Plc*. Delegates of an annual Traveller movement conference who attempted to enter the Coronet Pub were excluded from entry. One of the claimants was the Traveller Movement itself. The Court accepted that the group could make a claim for discrimination but that a legal personality cannot suffer injury to feelings as it does not have the sensibility of an actual person and it had not suffered any loss calling for compensation. This case is only persuasive rather than binding as it is at a lower court level.

Discrimination by association

The Directive protects against direct discrimination 'on the ground of' racial or ethnic origin and this broad formulation allows for claims of associative discrimination, which could also be a useful tool for NGOs. The concept of discrimination by association was first introduced by the Court of Justice of

⁶⁰ Recital 16 of the Race Directive.

the EU in the *Coleman* case⁶¹ relating to Directive 2000/78/EC and the ground of disability. It ensures protection for persons who do not belong to the protected group themselves, but are suffering discrimination due to their close link with members of the protected group. Examples could include ethnic majority members of a group of friends who are not allowed to use certain services or enter certain places together with their ethnic minority friends.

The recent CJEU case of *CHEZ Razpredelenie Bulgaria AD v Kamisia za zashita ot diskriminatsia*⁶² established that implementation of the Directive also requires protection against associative indirect discrimination. The case concerned the practice of the local electricity supplier in an area mainly inhabited by Roma to place electricity meters at a height where it was impossible for consumers to read them without assistance. The complainant was not part of the Roma minority but lived in the area affected and she successfully claimed indirect discrimination.

Positive action

Article 5 of the Race Directive allows for positive action, defined as ‘specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin.’ More information can be found in the Equinet report on the complex legal issues relating to the application of positive action measures.⁶³

Some equality bodies raised concerns that positive action can be difficult to implement and can lead to complaints.

- In **Great Britain**, the equality body received complaints about the use of positive action in the context of recruitment for an internship where information for prospective applicants included express ‘diversity preferences’ and a ‘target of recruiting three people who are either disabled or from black and ethnic minority backgrounds.’ On enquiry, the organisation was able to demonstrate that they had considered research and evidence which highlighted disproportionately low representation from disabled people and people from black and ethnic minority backgrounds within their sector. Therefore, the aim they sought to achieve was to increase participation from these protected groups. They were clear that whilst information about disability and race was collected for monitoring purposes, it had been separated and had not been taken into account in the short-listing process and that only in the event of a tie-break (which had not been necessary), would the disability or race component alone be taken into account.

Burden of proof

Article 8 of the Directive provides that when a person establishes facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.⁶⁴ This reversal of the burden of proof can be a useful tool for claimants, if properly understood and applied by courts.

- The **Swedish** equality body has concerns about the way the burden of proof is implemented and interpreted in their national courts in three cases. In two of the three cases, the equality

⁶¹ C-303/06 CJEU.

⁶² C-83/14 CJEU.

⁶³ See: <http://www.equineteurope.org/Positive-Action-Measures>.

⁶⁴ The recital and Article 8 clarify that Member States need not apply this rule to proceedings in which it is for the court or other competent body to investigate the facts of the case e.g. where the plaintiff is not required to prove the facts, which it is for the court or competent body to investigate.

body is pressing for a reference for a preliminary ruling on this matter.

- In **Serbia**, there is a useful example of the reversal of the burden of proof in action when a social worker was found to have harassed and discriminated against five Roma women. There were sufficient separate accounts of sexual harassment, threats and physical attacks against the same perpetrator to transfer the burden of proof and the social worker was unable to refute the allegations.

Victimisation

The Race Directive provides some protection against victimisation. Article 9 provides that Member States shall introduce into their national legal systems such measures as are necessary to protect individuals from any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings. However, the protection from victimisation can have practical limitations.

- The equality body for **Croatia** reported a case in which a direct, first hand witness to Roma education discrimination changed their statement at the Court hearing. The equality body suspects this was due to pressure from the small town community not to testify and therefore the victimisation provisions do not appear to have been effective in that case.

5.2 Practical obstacles

Awareness of rights/ expense

Equality bodies reported that awareness of rights and access to advice and funding for cases is fundamental to enforcement. The **Slovakian** equality body reported that for Roma in particular, awareness of rights can be a barrier to reporting discrimination. The **Italian** and **British** equality bodies commented on the expense of litigation as a potential deterrent.

Gathering evidence

The equality bodies for **Croatia, Denmark, Great Britain, Italy, Latvia, Serbia** and **Sweden** all reported difficulties related to evidence gathering and proving discrimination. **Austria, France** and **Hungary** reported that data collection based on ethnicity is unlawful, which can pose difficulties in finding a comparator.

There may be problems finding witnesses who are willing to give evidence. For example, the equality body for **Serbia** pointed out that it is especially difficult to secure proof in the area of employment and healthcare service provision as victims of discrimination are usually alone with the discriminator.

- The impact of pursuing one strong case can be seen in the case from **Great Britain** (England) of *The Traveller Movement and Others - v - J D Wetherspoon Plc*. In this case, discussed above, the claimants included a policeman, a priest and a lawyer who were not Gypsies or Travellers and who could provide strong testimony of what had happened. After reviewing all the evidence and the CCTV footage that was available, the Judge found that 9 out of the 19 Claimants had been discriminated against on racial grounds. As a result of the publicity this case received, Gypsies and Travellers are now more likely to take their case forward and understand the requirement to have strong evidence to bring a case. The equality body is aware of (and has supported) a number of refusal of service cases where the offending service providers have settled the case without the need to litigate because of the mobile phone footage produced.

5.3 Equality Body Toolbox

Article 13 of the Directive requires Member States to designate a body or bodies for the promotion of equal treatment without racial discrimination. Member States are free to determine what powers the equality body holds, but the competences must include providing independent assistance to victims of discrimination in pursuing their complaints, conducting independent surveys, publishing independent reports and making recommendations on any issue relating to such discrimination.

The powers of equality bodies to enforce laws which combat racial discrimination therefore vary between Member States. More detailed information can be found in the Equinet Report on the Competencies and Powers available to Equality Bodies⁶⁵ and in Equinet's European Directory of Equality Bodies.⁶⁶ Equality bodies have reported both useful tools as well as limitations in their enforcement powers, and this disparity was reported to present one of the greatest challenges.

Tools for evidence gathering

Situation testing has proven to be a powerful tool available to some equality bodies (e.g. **Italy, France**) but is not within the powers of all equality bodies (e.g. **Austria**). The **French** equality body has been asked to provide methodological support on situation testing to the State Prosecutor's Offices. An **Austrian** university study on the influence of different names on the job application process concluded that applicants with a foreign name are at a disadvantage and this study has been used in cases and for awareness raising purposes.

Examples of successful use of situation testing:

- In **France**, situation testing has been successfully used to tackle the discriminatory refusal to access to housing and Parisian taxis by people with guide dogs.
- In **Austria**, individuals have carried out situation testing by using fake email accounts to enquire about jobs. This has reportedly been very effective in creating doubts about the reasons for a rejection.

The **Bulgarian** equality body can appoint a rapporteur with full investigative powers including gathering written evidence, using officers and external experts, obtaining classified information, questioning witnesses and demanding explanations about matters under investigation. Those refusing to comply face a fine. The equality body for **Great Britain** has powers to conduct inquiries, investigations and assessments. In the course of these, the equality body can require any person to provide information, produce documents and give oral evidence.

In contrast, in **Denmark**, the Board of Equal Treatment is a quasi-judicial complaints board which cannot take up cases of its' own initiative. It has no authority to make independent investigations or to summon witnesses, evidence. The quality of the evidence presented to the Board therefore plays an essential role and this could be a factor in the relatively small number of established cases of discrimination.

⁶⁵ See: <http://www.equineteurope.org/Strategic-Enforcement-Powers-and>.

⁶⁶ See: <http://www.equineteurope.org/-Members-Directory->.

Tools for enforcement

Equality bodies also have a wide range of enforcement powers. Some equality bodies are able to file *actio popularis* / class actions, and others are not. The equality body for the **Czech Republic** highlights this as an example of an obstacle to tackling systemic discrimination. In **France**, class actions were not possible in discrimination cases until the law adopted on 18 November 2016 related to the modernization of justice in the 21st century. The equality body for **Great Britain** has legal powers which enable the equality body to support cases (by bringing cases in-house or providing financial support), intervene in cases and raise own name judicial reviews. The equality body undertakes strategic litigation to clarify the law and establish clear precedents for future cases.

Examples of different sanctions:

- In **Hungary**, the Equal Treatment Authority ordered the municipality to develop an action plan, required the publication of a discrimination decision on the website of the municipality for 90 days and imposed a fine (details of the case are described on page 19).
- In **Serbia** a social worker had to write an apology and the social work department had to publish the decision and the apology.
- The equality bodies for **Bulgaria, Portugal** and **Hungary** can impose fines.
- In **Great Britain**, the equality body can enter into binding agreements, issue compliance notices and apply for injunctions/ interdicts.
- The equality body for **Sweden** remarked that the compensation levels that are being awarded by Swedish courts are insufficient to deter discrimination, or might only deter small actors. Individuals must then balance the risk of an award of expenses against the prospects of a low award of damages. In addition, whilst the equality body can take action where there is no victim, there is no pecuniary sanction available.

Conclusion

This chapter has posed the question of what legal obstacles and practical challenges exist when tackling racial/ethnic origin discrimination. Analysis of the responses suggests that the most commonly encountered practical challenges are a lack of awareness of rights, difficulties gathering evidence where the victim is the only witness or other witnesses are reluctant to come forward. We have identified five important tools in the Race Directive itself: protection for the legal person, protection for discrimination by association, positive action, reversal of the burden of proof and protection against victimisation. These may assist in facing the identified challenges. Some equality bodies reported on the important role of their robust powers, such as including calling witnesses, situation testing and imposing fines for non-compliance. However other equality body powers are more limited and there was acknowledgement of the need to strengthen the toolbox of the equality bodies in order to achieve greater progress.

Chapter 6: Good Practices

Equality bodies identified several good practices in combating discrimination on the ground of race and ethnicity. This chapter lists the good practices reported by the equality bodies and describes some of them in detail. There are examples of complaint handling, training, awareness raising, research and cooperation with stakeholders. Some equality bodies have also worked in coalition, together with NHRIs, to protect migrants' human rights.

6.1 Increasing visibility for victims of discrimination

Some equality bodies reported practices that enable victims of discrimination to obtain help more easily.

- The **Albanian** equality body has received more complaints from Roma in the course of open days that targeted prospective Roma clients. Based on the issues raised by the Roma community (mainly related to social rights and assistance, employment, housing, use of offensive language), the equality body has sent recommendations to the relevant institutions.
- The **Bulgarian** equality body set up 24 regional offices. They cover the country, so that everyone who feels discriminated against can receive advice and assistance near to his/her place of residence. Regional offices also exist in **France**.
- The **French** equality body created a specific service named 'Basic rights of foreigners' (Droits fondamentaux des étrangers). The service can deal with cases of entry and residence of foreigners and equal treatment in access to social rights, housing, healthcare and other rights that are usually granted by public services.⁶⁷
- The **Croatian** equality body has considerably increased its level of activities related to the arrival of refugees, including on-site monitoring, recommendations, close cooperation with relevant authorities, strengthening protection of refugees' human rights.
- The **Italian** equality body established a Solidarity Fund for the legal protection of the victims of discrimination, which enables complainants to access legal fees for judicial proceedings which in turn will be reimbursed in the event of a positive outcome.
- The **Portuguese** equality body made the lodging of complaints more accessible using an online form and participated in the mediation between local associations and public authorities to tackle and prevent racial discrimination

6.2 Training

Equality bodies target different institutions and groups of people for training in anti-discrimination law. This training may be general or aimed at a particular protected ground or field. The survey conducted among equality bodies revealed that some provide training to stakeholders in the public sector – judges (**Albania**), staff of local governments (**Albania**), police (**Belgium**). Some provide training to stakeholders in the private sector:

- The **Belgian** equality body developed an online tool called 'eDiv' (www.ediv.be). It provides a

⁶⁷ See: http://www.defenseurdesdroits.fr/sites/default/files/atoms/files/dp-droits_des_etrangers_-_03052016_en_verifie_apr.pdf.

free online training program for managers and HR officers (from both private and public sector) that allows visitors to explore anti-discrimination legislation in an accessible way. It covers all the protected grounds and contains two parts – an interactive online module on antidiscrimination legislation and a database of 120 practical cases. The program is available in Dutch and French.

- The **Portuguese** High Commission for Migration conducted training sessions for media professionals. It focused on ways to address migration and ethnic minority issues. The workshops were attended by journalists from TV, radio and press.

6.3 Awareness raising

The examples of awareness raising practices were the most numerous and also the most creative. Equality bodies reported open lectures in universities (**Albania**), short movies starring Roma aiming to improve their stereotypical image⁶⁸ (**Belgium**), special website ‘Say Stop Now’ collecting incidents of hate crime⁶⁹ (**Denmark**), support to art projects targeting Roma (**Germany**), social network campaign ‘I am not a racist, but...’ (**Italy**), running a national action week against racism (**Italy**), promotion of anonymised employment applications (**Norway**), distribution of colouring books and pencils in skin tones to pre-school children (**Portugal**) and education activities on anti-discrimination, labour law and human trafficking in Roma communities (**Slovakia**) for example. In **Portugal**, the High Commission for Migration has developed diverse activities and initiatives for students, professors, public and private authorities, migrant associations, local mediators, municipalities and police to tackle the problem of under-reporting. The equality body also works with the Immigration and Borders Service, and many Ministries to raise awareness.

More details on other good practices:

- The **French** equality body has launched a website ‘*Egalité contre le racisme*’ (www.egalitecontreracisme.fr). Its purpose is to make the law and means of action accessible to all. Its target group is the general public as well as professionals. The website provides three sections – act, alert, defend – depending on the situation of the user (interested party, witness or victim). There are links to 42 other public or private partners that help combat racism as well.
- The **Italian** equality body introduced a videogame called ‘In my shoes’. There are 4 stories based on fictional characters using real statistical data – Benjamin, a Nigerian boy whose residence permit has expired; Fatima, a Muslim woman, mother of two school-aged children; Irina, a Romanian girl with a dream to come true in Italy; and Zhang, a young second-generation Chinese boy. The videogame invites players to be in migrant’s shoes and try to face ten everyday situations ranging from house hunting to job searching.
- The **Portuguese** High Commission for Migration in collaboration with the Ministry of Education created the Intercultural School Award. The Award aims to recognize schools that develop projects regarding the promotion of diversity as an opportunity for learning. The High Commission for Migration has also consolidated an Intercultural School Kit, which provides educational materials that can be accessible online. Those materials are mainly about intercultural aspects and can be used by all education professionals.⁷⁰
- The **Serbian** equality body has been organizing a moot court competition among law students.

⁶⁸See: <http://unia.be/fr/articles/journee-internationale-des-roms-la-parole-est-donnee-a-4-personnes-dorigine-rom>.

⁶⁹See: <http://sigfranu.dk/index.php/english>.

⁷⁰See: <http://www.acm.gov.pt/-/kit-intercultural>.

Each year the topic concerns protection against discrimination. In 2015 it focused on national minority rights. The competition consists of writing submissions and presenting them in a simulated hearing.

6.4 Research

Research conducted by equality bodies can be divided into two types – research on discrimination of Roma and research on general aspects of discrimination. There was for example a study on popular attitudes towards Sinti and Roma (**Germany**) or research mapping discrimination against Roma (**Hungary**).⁷¹ There are two examples of research on anti-discrimination issues in general:

- The **Czech** equality body carried out research on the reasons for under-reporting. A sample of 2,079 respondents confirmed that under-reporting of discrimination is widespread. The barrier to reporting the cases of discrimination is the lack of trust in the capacities of the relevant institutions to resolve the case. The respondents were also dissuaded by the lack of proof, or they did not know to whom to turn, or they were anxious about the negative consequences of such action. A significant part of the courts consider the phenomenon of under-reporting of discrimination to be an individual problem, or even individual weakness of the victims of discrimination, and are not able to reflect its social dimension accurately.⁷²
- The **British** equality body is currently undertaking a research project on attitudes and behaviours. It aims to inform and influence the approach to changing prejudiced attitudes that influence unlawful behaviour. The research will include hate speech against Gypsies, Travellers and Roma.

6.5 Cooperation with stakeholders

Equality bodies reported cooperation with the stakeholders from both public and private sector. In the public sector, equality bodies participate for example in the Ministerial Working Group regarding Roma (**Albania**) or cooperate with the police (**Belgium**⁷³, **Denmark**). In the private sector, equality bodies cooperate with employer organisations (**Austria**) or NGOs (**Bulgaria**, **Czech Republic**). More details are provided below, with one example of cooperation with the public sector and one of cooperation with private sectors:

- The **Swedish** equality body is engaged in questions relating to discrimination of the Sami, (indigenous people in Sweden) since it is necessary to address discrimination from a historical perspective. Therefore, the Swedish equality body is currently working together with the Sami Parliament towards the establishment of an independent Commission of Truth.
- The **Portuguese** High Commission for Migration established a partnership with the Benfica Foundation, Benfica being a major Portuguese football club. The Foundation promotes sport and respect for fundamental rights in schools all over the country and distributes a special leaflet on combating racism.

⁷¹ Part on Roma, see: http://www.egyenlobanasmod.hu/tamop/data/MTA_1hullam_english_summary-2.pdf
rest of research see: http://www.egyenlobanasmod.hu/tamop/data/EBH_english_ipsos_1.pdf,
http://www.egyenlobanasmod.hu/tamop/data/EBH_english_localgovernment.pdf and
http://www.egyenlobanasmod.hu/tamop/data/angol_nyelvu_osszefoglalo.pdf.

⁷² See: http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/diskriminace_EN_fin.pdf.

⁷³ See: http://unia.be/files/Documenten/2014_Rapport_annuel_convention-FR_FINAL.pdf.

6.6 Co-operation of equality bodies/NHRIs protecting migrants' rights

The **Croatian, Serbian and Slovenian** equality bodies are co-operating with NHRIs/other equality bodies to generate a common response to the situation of migrants and protection of their human rights. The coalition aims to 'turn law and policy makers' attention towards protection measures for the most vulnerable among migrants, refugees and asylum seekers. In addition, it is necessary to encourage governments, parliaments and every public servant to view and treat every migrant, refugee and asylum-seeker as an individual, having the right to have his or her case examined and reviewed individually.'

In 2015, NHRIs from **Croatia, Austria, Germany, Turkey, Greece, FYROM, Netherlands, Albania and Serbia** made a declaration on the protection and promotion of human rights of refugees and migrants.⁷⁴

Staff from the **Croatian** and **Serbian** equality bodies have monitored the conditions and respect for human rights of migrants while they were on the so called Balkan migration route in **Serbia**.⁷⁵

Conclusion

The good practices among equality bodies vary a lot. They can be divided typically into five areas of equality bodies' work – complaint handling, training, awareness raising, research and cooperation with stakeholders. Running open days, training professionals, establishing intercultural schools, researching the reasons for under-reporting, or promoting fundamental rights in cooperation with football clubs are only a few examples of good practices of combating discrimination on the ground of race and ethnic origin.

⁷⁴ See:

<http://nhri.ohchr.org/EN/News/Lists/News/DispForm.aspx?ID=207&ContentTypeld=0x0104006A3D2D731523E24B9C932DE5D6E5EDFE>.

⁷⁵ See: <http://ombudsman.hr/en/all-news/news-article/926-challenges-for-ombudsman-institutions-with-respect-to-mixed-migratory-flows>.

Conclusion

The reports from equality bodies indicate an increase in cases of race discrimination and a deteriorating situation in particular for migrants and refugees. The way some governments and the media have responded to the current migrant influx has at times exacerbated racial tensions resulting in a significant increase in hate speech, hate crimes and divisions in society, as well as an acceptance of racism, which not only deeply impacts on migrants but also EU ethnic minorities.

The legal framework has been agreed by Member States and is available to be used as a tool to guide political leaders, public authorities, equality bodies and others to tackle the challenges they are trying to resolve. Providing appropriate support to the most vulnerable in society to ensure that their basic human rights are guaranteed is imperative as is the need to address divisions in society.

Equality bodies report that discrimination on the ground of race and ethnic origin is prevalent in employment, access to goods and services, health care and social protection, education and housing and that the Roma are particularly vulnerable to discrimination in all areas. The Operational Platform for Roma Equality have produced comprehensive recommendations to enable national, regional and local authorities to find sustainable solutions to the housing problems faced by the Roma and these recommendations are endorsed by Equinet.

Equality bodies have reported some of the most commonly observed forms of multiple or intersectional discrimination which indicate that where race or ethnic origin intersect with another protected characteristic the person is vulnerable to the most acute discrimination. There is patchy protection across Europe against intersectional discrimination which could be partly due to the lack of a provision at European level.

The Race Directive acknowledges in its' Recitals that 'the Community should, in accordance with Article 3(2) of the EC Treaty, aim to eliminate inequalities, and to promote equality between men and women, especially since women are often the victims of multiple discrimination', but places no specific requirements on Member States.

The proposed Horizontal Directive does go a step further in that it advises, in its' Recitals, that Member States should take account of the differential impact on men and women 'in [the] preparation or review of the laws, regulations and administrative provisions necessary to comply with this Directive'. The Recitals are only advisory and while the Commission expressed its view that current EU legislation already provides protection against discrimination on more grounds in the same situation, it still falls short of an outright prohibition on intersectional discrimination. Such explicit provisions would be useful to advance the introduction of targeted policy and positive action measures on intersectional grounds, which would be necessary to reach the most vulnerable in society.

Ongoing research and dialogue between equality bodies and at a national and EU level is needed to consider how to best analyse and address these issues and what legislative changes might be required. Recent research and discussion papers by Equinet and the European Network of Legal Experts will hopefully help move this conversation forward.

The most commonly encountered practical challenges identified by equality bodies are a lack of awareness of rights, difficulties gathering data as well as evidence where the victim is the only witness or other witnesses are reluctant to come forward. There are five important tools in the Race Directive itself: protection for the legal person, protection for discrimination by association, positive action, the reversal of the burden of proof and victimisation measures. Some equality bodies reported on the important role of their robust powers, such as calling witnesses, situation testing and imposing fines for non-compliance. However other equality body powers are more limited and there was acknowledgement of the need to strengthen the toolbox of the equality bodies in order to achieve greater progress. Equality bodies have given examples of good practices which can be divided into five areas – complaint handling, training, awareness raising, research and cooperation.

Equality bodies have initiated major programmes to tackle issues arising from the migrant influx, such as the **French** equality body website providing information on the Basic Rights of Foreigners (encompassing entry and residence of foreigners, equal treatment in access to social rights, housing, healthcare and public services) as well as launching a website, ‘Egalité contre le racisme’, to make the law and means of action accessible to all and the **Italian** Solidarity Fund to enable complainants to take cases. Other equality bodies, such as **Croatia**, have also increased their level of activities related to refugees and **Portugal** has initiated diverse activities for students, professors, public and private authorities, migrant associations, local mediators, municipalities and police to tackle the problem of under-reporting. The Portuguese equality body also works with the Immigration and Borders Service and many Ministries to raise awareness.

Given the pan European nature of the refugee “crisis”, and the subsequent increase in hate speech and hate crime, it is noteworthy that some equality bodies (**Croatia**, **Slovenia** and **Slovakia**) have worked in unison with NHRIs/other equality bodies to protect the human rights of migrants. This may be a model equality bodies wish to adopt in response to this, and other, issues, where a united response has the potential to have a much bigger impact. Equinet has a role in supporting such pan European initiatives.

Equality bodies have an important role to play in tackling the issues identified in this report and this is acknowledged by the European Institutions.⁷⁶ However, they need to be independent, adequately resourced and empowered to do so.⁷⁷

⁷⁶ Joint report from the European Commission to the European Parliament and the Council on the application of the Race Directive and the Employment Framework Directive, see http://ec.europa.eu/justice/discrimination/files/com_2014_2_en.pdf.

⁷⁷ Developing Standards for Equality Bodies, Equinet Working Paper, 2016. See <http://www.equineteurope.org/Equinet-Working-Paper-on-Developing-Standards-for-Equality-Bodies>.

Equinet Member Equality Bodies

ALBANIA

Commissioner for the Protection from Discrimination
www.kmd.al

AUSTRIA

Austrian Disability Ombudsman
www.behindertenanwalt.gv.at

AUSTRIA

Ombud for Equal Treatment
www.gleichbehandlungsanwaltschaft.at

BELGIUM

Institute for the Equality of Women and Men
www.igvm-iefh.belgium.be

BELGIUM

Unia (Interfederal Centre for Equal Opportunities)
www.unia.be

BOSNIA AND HERZEGOVINA

Institution of Human Rights Ombudsman of Bosnia and Herzegovina
www.ombudsmen.gov.ba

BULGARIA

Commission for Protection against Discrimination
www.kzd-nondiscrimination.com

CROATIA

Office of the Ombudsman
www.ombudsman.hr

CROATIA

Ombudsperson for Gender Equality
www.prs.hr

CROATIA

Ombudswoman for Persons with Disabilities
www.posi.hr

CYPRUS

Commissioner for Administration and Human Rights (Ombudsman)
www.ombudsman.gov.cy

CZECH REPUBLIC

Public Defender of Rights
www.ochrance.cz

DENMARK

Board of Equal Treatment
www.ast.dk

DENMARK

Danish Institute for Human Rights
www.humanrights.dk

ESTONIA

Gender Equality and Equal Treatment Commissioner
www.svv.ee

FINLAND

Non-Discrimination Ombudsman
www.syrjinta.fi

FINLAND

Ombudsman for Equality
www.tasa-arvo.fi

FRANCE

Defender of Rights
www.defenseurdesdroits.fr

GERMANY

Federal Anti-Discrimination Agency
www.antidiskriminierungsstelle.de

GREECE

Greek Ombudsman
www.synigoros.gr

HUNGARY

Equal Treatment Authority
www.egyenlobanasmod.hu

HUNGARY

Office of the Commissioner for Fundamental Rights
www.ajbh.hu

IRELAND

Irish Human Rights and Equality Commission
www.ihrec.ie

ITALY

National Equality Councillor
www.lavoro.gov.it/ConsiglieraNazionale

ITALY

National Office against Racial Discrimination - UNAR
www.unar.it

LATVIA

Office of the Ombudsman
www.tiesibsargs.lv

LITHUANIA

Office of the Equal Opportunities Ombudsperson
www.lygybe.lt

LUXEMBURG

Centre for Equal Treatment
www.cet.lu

(FYRO) MACEDONIA

Commission for the Protection against Discrimination
www.kzd.mk

MALTA

National Commission for Persons with Disability
www.knpd.org

MALTA

National Commission for the Promotion of Equality
www.equality.gov.mt

MONTENEGRO

Protector of Human Rights and Freedoms (Ombudsman)
www.ombudsman.co.me

NETHERLANDS

Netherlands Institute for Human Rights
www.mensenrechten.nl

NORWAY

Equality and Anti-Discrimination Ombud
www.ldo.no

POLAND

Commissioner for Human Rights
www.rpo.gov.pl

PORTUGAL

Commission for Citizenship and Gender Equality
www.cig.gov.pt

PORTUGAL

Commission for Equality in Labour and Employment
www.cite.gov.pt

PORTUGAL

High Commission for Migration
www.acm.gov.pt

ROMANIA

National Council for Combating Discrimination
www.cncd.org.ro

SERBIA

Commissioner for Protection of Equality
www.ravnopravnost.gov.rs

SLOVAKIA

National Centre for Human Rights
www.snslp.sk

SLOVENIA

Advocate of the Principle of Equality
www.zagovornik.net

SPAIN

Council for the Elimination of Ethnic or Racial Discrimination
www.igualdadynodiscriminacion.msssi.es

SWEDEN

Equality Ombudsman
www.do.se

UNITED KINGDOM - GREAT BRITAIN

Equality and Human Rights Commission
www.equalityhumanrights.com

UNITED KINGDOM - NORTHERN IRELAND

Equality Commission for Northern Ireland
www.equalityni.org

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