

**PREVENTING AND COMBATING
INTERSECTIONAL DISCRIMINATION
IN EUROPE:
A MODEL FOR CHANGE**

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*A comparative study of current practice in and
recommendations for addressing intersectional
discrimination in Council of Europe member states*

THE STEERING COMMITTEE ON
ANTI-DISCRIMINATION, DIVERSITY
AND INCLUSION (CDADI)

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INTRODUCTION

The idea that people suffer discrimination because of their membership in two or more disadvantaged groups is not new. It is often referred to as ‘intersectional discrimination’—derived from the term ‘intersectionality’ which was coined by an American scholar, Kimberlé Williams Crenshaw, in 1989.¹ The idea and the accompanying literatures and practices around intersectionality have since grown and proliferated around the world and in a broad range of disciplines including history, sociology, anthropology, economics, politics, law etc.

Yet, equality for those exposed to intersectional discrimination remains elusive. Groups such as Roma² women, Muslim women, gay Roma people and LGBTI people with disabilities continue to experience disproportionate levels of discrimination and human rights violations. For example, Roma women have lower employment rates than Roma men and non-Roma women.³ Muslim women are targeted for their attire, faith and lifestyle.⁴ Gay Roma people often face exclusion from both communities, the Roma and the gay community. Likewise, LGBTI disabled people suffer from poverty and precarity throughout their lifetimes and exponentially so as older people.⁵

These patterns have sustained despite efforts to address them by recognising intersectionality in law. In Europe, intersectional discrimination is being increasingly recognised across law, policy and practice.⁶ Even where the term is not explicitly

Commented [SD1]: While the study rightly acknowledges sex as one of many grounds of discrimination, the introduction fails to recognise that sex is not simply one axis among others, but the structural basis of a global system of inequality specifically targeting women and girls. “Sex” and “gender” are referenced among protected grounds, but there is no clarification of the distinction between the two. This risks eroding women’s legal protections, especially if identity based-categories begin to replace sex as a legal and analytical category.

Therefore, the study would benefit from explicit recognition of sex as a non-negotiable and analytically distinct ground of discrimination. It is important to resist the trend of depoliticising sex-based oppression under over-fluid and undefined intersectional labels. Intersectionality must build from sex, not displace it.

¹ Kimberlé W Crenshaw, ‘Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics’ (1989) University of Chicago Legal Forum 139.

² The term “Roma and Travellers” is used by the Council of Europe to encompass the wide diversity of groups covered by the work of the Council of Europe in this field: on the one hand a) Roma, Sinti/Manush, Calé, Kaale, Romanichals, Boyash/ Rudari; b) Balkan Egyptians (Egyptians and Ashkali); c) Eastern groups (Dom, Lom and Abdal); and, on the other hand, groups such as Travellers, Yenish, and the populations designated under the administrative term “Gens du voyage”, as well as persons who identify themselves as Gypsies. The present is an explanatory footnote, not a definition of Roma and/or Travellers.

³ European Union Agency for Fundamental Rights, ‘Discrimination against and living conditions of Roma women in 11 EU Member states Roma survey – Data in focus’ (2014).

⁴ Office of the United Nations High Commissioner for Human Rights, ‘Human Rights of Women Wearing the Veil in Western Europe’, Research Paper (2019); European Union Agency for Fundamental Rights, ‘Being Muslim in the EU - Experiences of Muslims’, Report (2024).

⁵ The European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe), Europe and European Disability Forum, ‘Intersections: Diving into the FRA LGBTI II Survey Data’.

⁶ European Commission against Racism and Intolerance (ECRI), General Policy Recommendation No. 14: Combating racism and racial discrimination in employment (2012); Steering Committee on Anti-Discrimination, Diversity and Inclusion (CDADI), ‘COVID-19: An Analysis of the Anti-Discrimination, Diversity and Inclusion Dimensions in Council of Europe Member States’ (2020); EU Directive 2023/970 of the European Parliament and of the Council of 10 May 2023 to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms; Recommendation CM/Rec (2024)1 on Equality for Roma and Traveller women and girls; Recommendation CM/Rec (2024)4 on combating hate crime; Recommendation CM/Rec (2022)16 on combating hate speech; Recommendation CM/Rec (2023)9 on the active political

recognised, there is growing recognition of the fact that people suffer discrimination because of their membership in two or more disadvantaged groups or on the basis of two or more grounds of discrimination such as sex, gender, “race”⁷, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity and expression, sex characteristics, age, state of health, disability, marital status, migrant or refugee status, or other status. Terms like ‘combination discrimination’, ‘combined discrimination’, ‘cumulative discrimination’, ‘cross-sectorial discrimination’, ‘dual discrimination’, ‘multiple discrimination’, ‘multi-ground discrimination’, ‘multidimensionality’ etc are being used to convey a broad understanding that intersectional discrimination exists.

This acknowledgement indicates a common and shared understanding of the reality of intersectional discrimination in Europe. This Study takes this collective understanding as its starting point. It adopts the terms intersectionality and intersectional discrimination to convey the idea underlying the collective understanding, while acknowledging that other terms may be preferred in practice across different contexts to convey the idea all the same.

While there is growing recognition of the need to redress intersectional discrimination in law, policy and practice across the Council of Europe and its member states, there is no clear or unified model for actually doing so. Instead, a diversity of converging and diverging approaches has emerged in the last decade. This Study seeks to consolidate and compare these approaches to identify the most appropriate and effective pathways to redress intersectional discrimination in Europe.

The Study thus presents a comparative analysis of the extent to which Council of Europe member states embrace intersectionality. In particular, it examines the protection from intersectional discrimination within the law, policy and wider discourse in the 46 member states. Its purpose is twofold: first, to map the diversity of approaches in engaging with intersectionality; second, to recommend a path forward for harmonising the diversity into a cohesive and concerted response against intersectional discrimination. The Study’s

participation of national minority youth; CDADI Study on the active political participation of national minority youth in Council of Europe member states (2019); CDADI Guidelines of the Committee of Ministers of the Council of Europe on upholding equality and protecting against discrimination and hate during the Covid-19 pandemic and similar crises in the future (2020); CDADI Study on COVID-19: An analysis of the anti-discrimination, diversity and inclusion dimensions in Council of Europe member states (2020); Committee of Experts on Intercultural Inclusion (ADI-INT) Manual on equality data collection and analysis to prevent and address systemic discrimination (2024); Committee of Experts on Intercultural Inclusion (ADI-INT) Manual for the design of a training course on intercultural competence (2023); Committee of Experts on Intercultural Inclusion (ADI-INT) Model Framework for an intercultural integration strategy at the national level (adopted by the CDADI on 17 June 2021).

⁷ Since all human beings belong to the same species, the Committee of Ministers rejects, as does the European Commission against Racism and Intolerance (ECRI), theories based on the existence of different “races”. However, in this document, the term “race” is used in order to ensure that those persons who are generally and erroneously perceived as “belonging to another race” are included in the protection from non-discrimination on the basis of “race”.

primary focus is on addressing intersectional discrimination, though it makes recommendations which go towards a wider aim of ensuring an intersectional approach generally, and contributing to intersectional (or substantive, or de facto) equality.

The Study confirms that while there is a diversity of approaches to addressing intersectional discrimination, including different preferences for naming the concept itself, there is broad consensus surrounding the aim of combatting such discrimination through law, policy and practice. This Study contributes to developing a model for realising this aim in practice.

A. STRUCTURE

The Study is divided into three parts. Part I lays down a conceptual framework for the Study. It presents accounts of 'intersectionality' and 'intersectional discrimination' in terms of their meaning, origin, challenges and developments that have emerged across time and context. These accounts are critical because the conceptual core of intersectionality and intersectional discrimination is often misunderstood. By clarifying the key elements of intersectionality and intersectional discrimination, the Study contributes to building a necessary conceptual baseline for all interventions on the subject.

Part I posits that intersectionality refers to the idea that disadvantage and discrimination can be co-constituted by grounds such as sex, gender, "race", colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity and expression, sex characteristics, age, state of health, disability, marital status, migrant or refugee status, or other status. Intersectional discrimination refers to discrimination based on a combination of grounds which is qualitatively distinct and reflects both similar and unique patterns of group disadvantage associated with sex, gender, "race", ; colour, language, religion, political or other opinion, national or social origin, nationality association with a national minority, property, birth, sexual orientation, gender identity and expression, sex characteristics, age, state of health, disability, marital status, migrant or refugee status, or other status.

Part II of the Study maps the comparative law, policy and practice concerning the protection from intersectional discrimination in the Council of Europe member states. It shows that far from being neglected, intersectional discrimination is addressed in a vast diversity of ways both within and across national contexts. This diversity shows varying degrees of understanding of and commitment to intersectionality. The Study evaluates this variance against the conceptual framework set out in Part I.

Part II shows that while there is a diversity of ways in responding to intersectional discrimination, the clearest way is by appreciating that the combination of two or more grounds produces a qualitatively distinct form of discrimination which reflects both similar and unique patterns of group disadvantage.

Part III suggests an eight-tier model for addressing intersectional discrimination.

Part III recommends reform aimed at: (i) streamlining the terminology to ‘intersectionality’ and ‘intersectional discrimination’; (ii) adopting a clear conceptual meaning of intersectionality and intersectional discrimination; (iii) developing proactive measures for addressing intersectional discrimination including positive duties such as a duty of intersectional impact assessment and a duty to promote intersectional equality; (iv) consolidating equality legislation and enhancing powers of equality bodies; (v) creating procedural rules and guidelines for adjudicating on claims of intersectional discrimination; (vi) encouraging collection of disaggregated data by equality bodies, public authorities and other public institutions based on information from surveys, interviews, reported incidents, investigations etc; (vii) developing a wide knowledge base of intersectionality through education, research, training, art, and culture for raising awareness of and building capacity for addressing intersectional discrimination; and (viii) enabling the voice and participation of intersectionally disadvantaged individuals and groups and centring the experience, needs and demands of intersectionally disadvantaged individuals and groups across all sectors in law, policy and practice.

B. METHODOLOGY

This Study relies on mixed methods as each part pursues a distinct but related aim. Part I relies primarily on literature review of ‘the field of intersectionality studies’⁸ which cuts across disciplines and geographical contexts. This field survey allows us to grasp the conceptual framework of intersectionality and the legal category of intersectional discrimination broadly rather than selectively. Part II of the Study relies on comparative methodology and applies it in three instances: (a) law, in order to compare constitutions, statutes and case law; (b) policy, especially in the areas related to particular grounds such as gender, “race”, disability, age and sexual orientation, gender identity, expression and sex characteristics (SOGIESC); and (c) practice, especially of governmental actors, public bodies, non-governmental organisations, civil society organisations, relevant stakeholders etc.

The comparison is in no way meant to be exhaustive. Examples are brought up mainly because they are representative of a particular kind of approach to intersectionality. They however are not representative of the approach to intersectionality in any comprehensive way in any given context. Instead, what the Study shows is that each context shows a diversity of ways of engaging with intersectionality—from rejection and avoidance to tolerance and adoption—often all at the same time.

Importantly, the Study does not investigate the absences of intersectionality in particular contexts, say, in criminal law or in sentencing guidelines for judges or in prison rules and

⁸ Sumi Cho, Kimberlé Williams Crenshaw and Leslie McCall, ‘Toward a Field of Intersectionality Studies: Theory, Applications, and Praxis’ (2013) 38 *Signs* 785.

regulations. The research is mainly related to the field of equality policies and discrimination law and is meant to be generalist rather than particularly geared towards specific thematic areas. It should thus serve as a useful starting point for interventions across all areas, including law and policy.

In the spirit of how intersectionality theory and practice was first developed by Black feminists, the account presented here should be considered ‘provisional’⁹ and not ‘totalising’;¹⁰ in that it should be considered open to revision and contextualisation based on the particular jurisdiction, history, member state and social groups under consideration.¹¹ This is extremely important as intersectionality is after all a framework which needs to be carefully modulated against the particular context and social groups to which it is being applied. The Study should be seen as enabling this contextualisation with the help of the conceptual, legal and operational framework presented here.

Finally, much of the analysis in Parts I, II and III of the Study is inspired by the inputs obtained from Council of Europe member states, participants and observers in response to a survey that was circulated in June 2024 by the Steering Committee on Anti-discrimination, Diversity and Inclusion (CDADI). The survey is reproduced in the Annexure.

C. TERMINOLOGY

In this Study, key terms are used in the following sense:

- ‘Disadvantage’ is understood broadly to include social, cultural, economic, material, psychological, legal, political and other forms of disadvantages.
- ‘Discrimination’ is understood as any differential treatment based on any personal characteristic or ground, which has no objective and reasonable justification. Differential treatment has no objective and reasonable justification if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised.¹²
- ‘Discrimination law’ is used to represent the broad field of equality/non-discrimination/anti-discrimination law which protects people from discrimination on the basis of their personal characteristics or grounds.
- ‘Group disadvantage’ refers to disadvantage suffered due to membership in social groups.

⁹ Kimberlé Williams Crenshaw, ‘Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color’ (1991) 43 Stanford Law Review 1241, 1244.

¹⁰ Ibid.

¹¹ ‘Black’ is capitalised as it refers not just to a colour but a shared sense of identity and community for racialised and minoritised people. This is also the convention used by Black feminists themselves.

¹² This usage of the term ‘discrimination’ comports with the understanding of the term developed within the Council of Europe where direct and indirect forms of discrimination can both be justified. This is not the case in EU law (except in case of clearly defined exceptions which allow direct discrimination to be justified) and may not be the case in the laws of individual member states.

- ‘Grounds’ are personal characteristics and statuses that are defined non-exhaustively and as including not only grounds which have traditionally been listed in the often open-ended text of international treaties and constitutional or statutory law but also those recognised by courts. The list of grounds wherever it appears in the Study refers to grounds commonly referred to within the Council of Europe and its member states. This list ends with ‘or other status’ to leave open the possibility of iteration of new analogous grounds of discrimination, in line with the language of the European Convention on Human Rights (the Convention) and the case law of the European Court of Human Rights.
- ‘Intersectionality’ is used to refer to literatures and practices surrounding the idea that disadvantage and discrimination can be co-constituted.
- ‘Intersectional discrimination’ is used particularly in the context of discrimination law and policy, to refer to the specific category which represents a unique combination of discrimination based on several grounds at once.
- ‘Intersectionally disadvantaged individuals and groups’ is used to denote people who are at risk of discrimination based on more than one ground.
- ‘Intersectional equality’ is understood as substantive equality across all parts of society especially intersectionally disadvantaged individuals and groups.
- ‘Multiple discrimination’ refers to discrimination that is based on multiple grounds. It is a broad term and can be used to signify discrimination based on multiple grounds in a quantitative sense (where only the number of grounds is relevant) or in a qualitative sense (where grounds are considered separately, sequentially or in combination). Depending on context and how the term is defined therein, it could include intersectional discrimination in a qualitative sense.
- ‘Single-axis discrimination’ refers to discrimination based on a single ground.

**PART I:
INTERSECTIONALITY AND
INTERSECTIONAL DISCRIMINATION**

I. CONCEPTUAL FRAMEWORK

The necessary starting point for this Study is a clear and cohesive framework of the concept of intersectional discrimination. In order to build this framework, the Study presents a prior framework of intersectionality, from which the concept of intersectional discrimination arises. Thus, sections A and B below draw together a conceptual framework of intersectionality and intersectional discrimination. Each of the sections is further divided into four subsections— Origin, Meaning, Challenges and Developments— answering the following questions in turn: what do we mean by intersectionality/intersectional discrimination; where does intersectionality/intersectional discrimination come from; what have been the main challenges in addressing intersectionality/intersectional discrimination; and what have been the main responses to the challenges in addressing intersectionality/intersectional discrimination.

A. INTERSECTIONALITY

Intersectionality is variously referred to as an idea,¹³ a concept,¹⁴ a theory and praxis,¹⁵ a research paradigm,¹⁶ a heuristic and analytic tool,¹⁷ a methodological approach and epistemological stance,¹⁸ a metaphor,¹⁹ an analytical and political orientation,²⁰ and as a field of studies.²¹ It exists across disciplines—in history, anthropology, sociology, political theory, political science, economics etc, and fields—such as critical race theory, indigenous studies, feminist studies, queer studies, disability studies etc. It also exists both as theory—in ideal form, and as praxis—in practice of law, healthcare, social services etc. Unravelling intersectionality can thus be an extensive project in any of these registers. This section traverses through the scholarly debates which are critical to understanding the context within which the legal category of ‘intersectional discrimination’ is nested—of intersectionality theory and praxis—for two reasons. First, as a matter of good form, it recognises the intellectual and strategic labour of Black feminists, racialised groups, LGBTI, disabled and other marginalised and minoritised people. Second, it helps clarify the legal category of intersectional discrimination as

Commented [SD2]: The study rightly recognises that intersectionality originated as a critique of law’s inability to capture compound discrimination. It is important, however, to ensure the approach does not obscure the structural and universal nature of sex-based oppression that uniquely affects women and girls. For instance, sex and gender are listed with a multitude of other grounds as co-equal vectors of discrimination, and failing to distinguish sex from socially constructed categories collapses important legal distinctions and undermines protections for women as a sex class. The study would be beneficial if we avoid the complete deconstruction of categories which serve as the basis for legal protections.

Therefore, instead of collapsing sex into just another axis, intersectional approaches should be anchored in sex as a structural system of power, with gender understood as a set of social meanings attached to sex. This is consistent with Istanbul Convention, CEDAW General Recommendation 35 and the Beijing Platform for Action.

¹³ Shreya Atrey, *Intersectional Discrimination* (Oxford University Press 2019) ch 2.

¹⁴ Anna Carastathis, ‘The Concept of Intersectionality in Feminist Theory’ (2014) 9 *Philosophy Compass* 304.

¹⁵ Patricia Hill Collins and Sirma Bilge, *Intersectionality* (Polity Press 2016).

¹⁶ Leslie McCall, ‘The Complexity of Intersectionality’ (2005) 30 *Signs* 1771.

¹⁷ Devon W Carbado, Kimberlé Williams Crenshaw, Vickie M Mays and Barbara Tomilson, ‘Intersectionality: Mapping the Movements of a Theory’ (2013) 10 *Du Bois Review* 303.

¹⁸ Sumi Cho, ‘Post-Intersectionality: The Curious Reception of Intersectionality in Legal Scholarship’ (2013) 10 *Du Bois Review* 385.

¹⁹ Ann Garry, ‘Intersectionality, Metaphors, and the Multiplicity of Gender’ (2011) 25 *Hypathia* 826.

²⁰ Vivian M May, *Pursuing Intersectionality: Unsettling Dominant Imaginaries* (Routledge 2015) 3.

²¹ Sumi Cho, Kimberlé Williams Crenshaw and Leslie McCall, ‘Toward a Field of Intersectionality Studies: Theory, Applications, and Praxis’ (2013) 38 *Signs* 785.

many of the debates that arise in law and policy mirror those which have arisen in the broader conceptualisation and operationalisation of intersectionality around the world. These debates thus provide rich fodder for legal analysis.

A.1 Meaning

Intersectionality is a theory and praxis of comprehending and addressing dynamics of oppression in a society. It represents the idea that disadvantage and discrimination can be co-constituted and inextricably associated with various grounds such as sex, gender, “race”, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity and expression, sex characteristics, age, state of health, disability, marital status, migrant or refugee status, or other status.²² Thus, for example, intersectionality sees “race” and gender as fundamentally co-defined by one another and by all other categories at the same time such that there are no ‘pure’ categories of “race” and gender or racism and sexism. Identities, categories and forms of oppression are thus ‘intersecting’ and do not exist as silos. As Richard Delgado and Jean Stefancic put it:

“Intersectionality” means the examination of race, sex, class, national origin, and sexual orientation and how their combination plays out in various settings. These categories—and still others—can be separate disadvantaging factors. What happens when an individual occupies more than one of these categories, for example, is both gay and Native American or both female and black? Individuals like these operate at an intersection of recognized sites of oppression. Do such cases require that each disadvantaging factor be considered separately, additively, or in yet some other fashion? Should persons who experience multiple forms of oppression have their own categories and representation, apart from those that correspond to the separate varieties of discrimination they experience? And what about the role of these “intersectional” persons in social movements such as feminism or gay liberation? Where do they belong? These are all questions that intersectional analysis attempts to address.²³

A.2 Origin

Though the term ‘intersectionality’ was coined in 1989, the idea it represents has a much longer history. In *Intersectionality: An Intellectual History*, Ange-Marie Hancock demonstrates intersectionality’s shared roots in Crenshaw’s as well as Patricia Hill Collins’ work both of which developed alongside in 1980s and 1990s. Hancock then traces over two hundred years of intellectual thought which resembles ‘intersectionality-like’ thinking, even when the term ‘intersectionality’ was absent. She thus argues that intersectionality as an idea and as a form of practice existed in Black feminist thought much earlier than the term was coined. Importantly, Hancock shows that intersectionality has not been confined to Black feminist thought in the U.S. alone. Its longer history is also ethnically and spatially diverse, representing ‘the vast racial and

²² Patricia Hill Collins, *On Intellectual Activism* (Temple University Press 2012) (‘Intersectional thinking suggests that race, class, gender, nation, sexuality, ethnicity, age, and other forms of social hierarchy structure one another.’).

²³ Richard Delgado and Jean Stefancic, *Critical Race Theory: An Introduction* (NYU Press 2017) 58–59.

ethnic diversity of intersectionality's foremothers²⁴ as including Dalit²⁵ women, Asian women, Latinas, African-Caribbean women, Native American women, indigenous women in Canada, Australia etc.²⁶

In the European context, interest in intersectionality has grown since the turn of the millennium. Intersectionality has been brought up in reference to intersectionally disadvantaged groups such as disabled women, Roma women, and LGBTI groups, and in the context of both the European Union and the Council of Europe law and policy.²⁷ More recently, intersectionality has been engaged to examine the differential impact of COVID-19.²⁸ As interest and need for intersectional analysis continue to grow, so does the need for clearer pathways to addressing intersectional discrimination in practice.

A.3 Challenges

As Vivian May aptly says, intersectionality's critiques have become their 'own genre—a form so flourishing, at times it seems critique has become a primary means of taking up the concept and its literatures.'²⁹ It is thus important to capture some of the main lines of critique.

First, the most oft-repeated challenge is to intersectionality's purchase beyond the specific case of Black women in the US. As Peter Kwan put it: 'by focusing, for example, on the particularities of black women's experience, intersectionality stands in danger of pushing to its margins issues of class, religion, and able-bodiedness, as well as issues of sexual orientation.'³⁰ Intersectionality is thus considered unable to 'reach discrimination occurring along intersections of non-traditionally recognized categories'.³¹

²⁴ Ange-Marie Hancock, *An Intellectual History of Intersectionality* (Oxford University Press 2016) 26.

²⁵ The term 'Dalit' means broken in Marathi language and is used as a term of assertive pride by those who belong to the lowest strata of the Hindu caste system and those who lie outside the Hindu caste system.

²⁶ See for a review of the literatures and debates which have framed the field of intersectionality studies: Shreya Atrey, *Intersectionality and Comparative Antidiscrimination Law: The Tale of Two Citadels* (Brill 2020).

²⁷ European Commission against Racism and Intolerance (ECRI), General Policy Recommendation No. 14: Combating racism and racial discrimination in employment (2012); Sandra Fredman, *Intersectional Discrimination in EU Gender Equality and Non-discrimination Law*, European Commission, Directorate-General for Justice and Consumers (2016); 'Intersectional Discrimination in Europe: Relevance, Challenges and Ways Forward' in collaboration with the Center for Intersectional Justice, the Council of Europe's Gender Equality Strategy for 2018-2023 and for 2024-2029 (March 2024).

²⁸ Steering Committee on Anti-Discrimination, Diversity and Inclusion (CDADI), 'COVID-19: An Analysis of the Anti-Discrimination, Diversity and Inclusion Dimensions in Council of Europe Member States' (2020).

²⁹ Vivian M May, *Pursuing Intersectionality: Unsettling Dominant Imaginaries* (Routledge 2015) 98.

³⁰ Peter Kwan, 'Jeffrey Dahmer and the Cosynthesis of Categories' (1997) 48 *Hastings Law Journal* 1257, 1276.

³¹ Elvia R Arriola, 'Gendered Inequality: Lesbians, Gays and Feminist Legal Theory' (1994) 9 *Berkeley Women's Law Journal* 103, 129. See also Francisco Valdes, 'Queer Margins, Queer Ethics: A Call to Account for Race and Ethnicity in the Law, Theory, and Politics of "Sexual Orientation"' (1997) 48 *Hastings Law Journal* 1293, 1333-1335; Baukje Prins, 'Narrative Accounts of Origins: A Blind Spot in the Intersectional Approach?' (2006) 13 *European Journal of Women's Studies* 277; Wendy Hulko, 'The Time- and Context-Contingent Nature of Intersectionality and Interlocking Oppressions' (2009) 24 *Affilia* 44; Lena Gunnarsson, 'A Defence of the Category "Women"' (2011) 12 *Feminist Theory* 23.

Some scholars have suggested modifications or alterations to intersectionality such as ‘holistic/irrelevancy theory’,³² ‘cosynthesis’,³³ and ‘multidimensionality’³⁴ to expand the “race”-sex / Black women stricture to include all forms of analyses of power.

Second, intersectionality is challenged for its ‘theoretical, political, and methodological murkiness’, including the lack of a clear methodology and a settled definition.³⁵ In particular, it is seen as lacking in its ability to provide ‘more effective analytical and strategic tools’³⁶ especially in application and beyond the realm of ideas. How intersectionality is meant to be operationalised continues to be a thorny issue. Political opposition to the concept of intersectionality, often linked to these concerns, can also present a significant challenge.

Third, intersectionality is critiqued for its reliance on identities and especially the metaphor of ‘intersection’ which gives the impression that there are indeed pure or isolated identities to begin with that then come to intersect and produce unique forms of oppression.³⁷ In any case, the possibility of infinite intersections is considered too fragmenting and as lacking in potential for coalition politics as it is feared to splinter individuals into ever smaller groups which have little in common.³⁸ In this light, intersectionality is considered as reifying rather than challenging identities and is thus seen as ultimately too liberal or individualistic in nature.

A.4 Developments

Given the vociferous critiques, one strain of intellectual thought has urged moving ‘post-intersectionality’,³⁹ ‘beyond intersectionality’⁴⁰ or ‘after intersectionality’.⁴¹ Another strain

³² Elvia R Arriola, ‘Gendered Inequality: Lesbians, Gays and Feminist Legal Theory’ (1994) 9 Berkeley Women’s Law Journal 103, 108.

³³ Peter Kwan, ‘Jeffrey Dahmer and the Cosynthesis of Categories’ (1997) 48 Hastings Law Journal 1257, 1280.

³⁴ Darren Lenard Hutchinson, ‘Ignoring the Sexualization of Race: Heteronormativity, Critical Race Theory, and Anti-Racist Politics’ (1999) 47 Buffalo Law Review 1, 11.

³⁵ Jennifer C Nash, ‘Re-thinking Intersectionality’ (2008) 89 Feminist Review 1.

³⁶ Joanne Conaghan, ‘Intersectionality and the Feminist Project in Law’ in Emily Grabham, Davina Cooper, Jane Krishnadas and Didi Herman (eds), *Intersectionality and Beyond: Law, Power and the Politics of Location* (Routledge Cavendish 2009).

³⁷ Jasbir K Puar, ‘Queer Times, Queer Assemblages’ (2005) 23 Social Text 121; Emily Grabham, ‘Taxonomies of Inequality: Lawyers, Maps and the Challenges of Hybridity Social and Legal Studies’ (2006) 15 Social and Legal Studies 5. See also Davina Cooper, *Challenging Diversity: Rethinking Equality and the Value of Difference* (Cambridge University Press 2004).

³⁸ Lakshmi Arya, ‘Imagining Alternative Universalisms: Intersectionality and the Limits of Liberal Discourse’ in Emily Grabham, Davina Cooper, Jane Krishnadas and Didi Herman (eds), *Intersectionality and Beyond: Law, Power and the Politics of Location* (Routledge Cavendish 2009); Naomi Zack, *Inclusive Feminism: A Third Wave Theory of Women’s Commonality* (Rowman and Littlefield 2005).

³⁹ Peter Kwan, ‘Jeffrey Dahmer and the Cosynthesis of Categories’ (1997) 48 Hastings Law Journal 1257, 1264.

⁴⁰ Francisco Valdes, ‘Queer Margins, Queer Ethics: A Call to Account for Race and Ethnicity in the Law, Theory, and Politics of “Sexual Orientation”’ (1997) 48 Hastings Law Journal 1293, 1338.

⁴¹ Robert S Chang and Jerome Culp Jr, ‘After Intersectionality’ (2002) 71 UMKC Law Review 486, 490-491.

of intellectual thought has resisted these suggestions with vigorous defences which have emerged especially in the last decade.

The first line of development has been the expansion of intersectionality's subjects—going beyond Black women and towards other, more diverse, subjects defined not only by the intersection of “race” and gender but also sex, gender identity, age, disability, class etc.⁴² But more importantly, Black feminists themselves decried the reductive readings of intersectionality as confined to the ‘categorical hegemony’ of Black women.⁴³ Such readings have thus been seen as attempts to undermine and ‘whiten’ what is meant to be a subversive and radical concept.⁴⁴

The second development has been of intersectionality's definitions and methodologies which have sought to not only bring greater clarity to how intersectionality is to be conceived and deployed, but also to refute that a single definitional or methodological approach could define intersectionality. Davina Cooper has thus explained intersectionality not as a monolithic theory and methodology but as ‘a series of different lenses’ or ‘a series of conceptual travels.’⁴⁵ Leslie McCall has proposed three approaches to working with intersectionality—anti-categorical, intercategorical and intracategorical, each relying on methods of deconstruction, systems or relational analysis, and strategic and identity-based interventions, respectively.⁴⁶ Choo and Ferree have provided three routes to understanding intersectionality theory and methodology—group-centered, process-centered, and system-centered⁴⁷—which can be employed depending on context as ‘all three tools can complement and enhance the specific purposes of the researcher by making analysis more effective.’⁴⁸ S. Laurel Weldon has also drawn

⁴² See for e.g., Kalpana Kannabiran, *Tools of Justice: Non-Discrimination and the Indian Constitution* (Routledge 2012); R Aída Hernández Castillo, ‘The Emergence of Indigenous Feminism in Latin America’ (2010) 35 *Signs* 539; Patricia Monture-Angus, *Thunder in My Soul: A Mohawk Woman Speaks* (Fernwood 1995).

⁴³ Sumi Cho, ‘Post-Intersectionality: The Curious Reception of Intersectionality in Legal Scholarship’ (2013) 10 *Du Bois Review* 385.

⁴⁴ Sirma Bilge, ‘Intersectionality Undone’ (2013) 10 *Du Bois Review* 405; Trina Grillo, ‘Anti-Essentialism and Intersectionality: Tools to Dismantle the Master's House’ (2013) 10 *Berkley Women's Law Journal* 16; Kelly Coogan-Gehr, ‘The Politics of Race in US Feminist Scholarship: An Archaeology’ (2011) 37 *Signs* 83; Nikol G Alexander-Floyd, ‘Disappearing Acts: Reclaiming Intersectionality in the Social Sciences in a Post-Black Feminist Era’ (2012) 24 *Feminist Formations* 1; Barbara Tomlinson, *Undermining Intersectionality: The Perils of Powerblind Feminism* (Temple University Press 2018) ch 2. See also Barbara Tomlinson, ‘To Tell the Truth and Not Get Trapped: Desire, Distance, and Intersectionality at the Scene of Argument’ (2013) 38 *Signs* 993; Kimberlé Williams Crenshaw, ‘Postscript’ in Helma Lutz, Maria Teresa Herrera Vivar and Linda Supik (eds), *Framing Intersectionality: Debates on a Multi-Faceted Concept in Gender Studies* (Ashgate 2011) 223.

⁴⁵ Davina Cooper, ‘Intersectional Travel Through Everyday Utopias: The Difference Sexual and Economic Dynamics Make’ in Emily Grabham, Davina Cooper, Jane Krishnadas and Didi Herman (eds), *Intersectionality and Beyond: Law, Power and the Politics of Location* (Routledge Cavendish 2009) 308.

⁴⁶ Leslie McCall, ‘The Complexity of Intersectionality’ (2005) 30 *Signs* 1771.

⁴⁷ Hae Yeon Choo and Myra Marx Ferree, ‘Practicing Intersectionality in Sociological Research: A Critical Analysis of Inclusions, Interactions, and Institutions in the Study of Inequality’ (2010) 28 *Sociological Theory* 129.

⁴⁸ *Ibid* 130.

together multiple possible approaches to intersectionality.⁴⁹ Intersectionality's 'alleged weaknesses – its ambiguity and open-endedness' have thus been recast into what makes it 'a good feminist theory'.⁵⁰

Finally, the challenges to intersectionality's reliance on identities has been addressed, such as, by Nira Yuval-Davis,⁵¹ who has clarified that identities in intersectionality theory and praxis are not self-standing or isolated but forever enmeshed and constituted by one another. Importantly, Yuval-Davis has considered the proliferation of identities or intersectional groups to be relatively unproblematic. Intersectionality is, according to Yuval-Davis, not a matter of simple signification or staking a claim to an identity, but rather a matter of understanding social power to be able to mobilise social struggles from a particular position. Ultimately though, the strongest response has been to recentre intersectionality as a critique of power and forms of oppression rather than identity formations.⁵²

In the final analysis, it must be underscored that intersectionality is not considered 'beyond debate'.⁵³ But there is reasonable agreement as to its wide resonance and applicability, not *despite* but *alongside* its challenges which have only helped in refining the theory and praxis.

B. INTERSECTIONAL DISCRIMINATION

Much like the developments in the broader field of intersectionality studies, the developments in the category of intersectional discrimination in law have been wide-ranging and contested. This section captures the conceptual and analytical thinking that has informed the category of intersectional discrimination in law.

B.1 Meaning

Intersectional discrimination refers to a category of discrimination which is based on a combination of two or more grounds which is both similar to but also different from individual forms of discrimination.⁵⁴ This qualitative understanding of intersectional discrimination was first explained by Crenshaw through the example of Black women, as:

Black women can experience discrimination in ways that are both similar to and different from those experienced by white women and Black men. Black women sometimes experience discrimination in ways similar to white women's experiences; sometimes they share very similar experiences with Black men. Yet, often they experience double-discrimination - the combined effects of practices

⁴⁹ S Laurel Weldon, 'Intersectionality' in Gary Goertz and Amy G Mazur (ed), *Politics, Gender, and Concepts Theory and Methodology* (CUP 2008).

⁵⁰ Kathy Davis, 'Intersectionality as Buzzword' (2008) 9 *Feminist Theory* 67.

⁵¹ Nira Yuval-Davis, 'Intersectionality and Feminist Politics' (2006) 13 *European Journal of Women's Studies* 193.

⁵² Rita Kaur Dhamoon, 'Considerations on Mainstreaming Intersectionality' (2011) 64 *Political Research Quarterly* 230.

⁵³ Vivian M May, *Pursuing Intersectionality: Unsettling Dominant Imaginaries* (Routledge 2015) 100.

⁵⁴ Shreya Atreya, *Intersectional Discrimination* (Oxford University Press 2019) 37.

Commented [SD3]: The study defines intersectional discrimination as a qualitatively distinct form of discrimination arising from two or more grounds. While it lists sex among these grounds, it treats sex as interchangeable with others (e.g. religion, sexual orientation, gender identity, etc), effectively flattening the structural nature of sex-based oppression. The list approach erases the reality that sex is not just another identity category.

To further corroborate the point made above, in the section dedicated to "origin", it is worth noting that Crenshaw's foundational work is sex-based, as her framework reveals how racism and sexism intersect, not how identities replace or compete with one another.

With these premises, within the five key barriers listed in challenges, it is important to mention the erasure of sex-specific protections when gender identity is treated as co-equal or substitutive of sex. It is important, therefore, to list in the challenges that policies which conflate sex with gender identity have weakened protections for women (e.g. sex-specific services, data, and statistics).

With reference to the comment above, the study would benefit with a critical sex-based re-framing, including: Affirming sex as a distinct and foundational axis of inequality; Warning against conceptual vagueness that endangers legal clarity and enforceability of women's rights.

Commented [SD4]: Intersectional discrimination must account for sex as a structurally dominant axis of power, not merely one of many.

which discriminate on the basis of race, and on the basis of sex. And sometimes, they experience discrimination as Black women - not the sum of race and sex discrimination, but as Black women.⁵⁵

Crenshaw argued that the ‘failure to embrace the complexities’ of intersectional discrimination was ‘not simply a matter of political will, but [sic] also due to the influence of a way of thinking about discrimination’.⁵⁶ The problem, at least in discrimination law, was thus conceptual in nature—of having conceived of discrimination as ‘single-axis’ rather than intersectional. Crenshaw offered a competing vision of discrimination as intersectional discrimination to subverting the traditional ways of conceiving discrimination as single-axis at all.

The imagery of the Venn diagram captures the qualitative nature of intersectional discrimination as simultaneously similar but also different from single-axis discrimination.⁵⁷ Imagine intersectional discrimination against Roma women located at the intersection of the spheres of gender and ethnicity. The intersecting portion in the middle (gender \cap ethnicity) shows properties of its own and hence the unique combination of gender and ethnic discrimination which is not represented by the non-intersecting portions (ethnicity – gender and gender – ethnicity). It also shows properties of the whole spheres of both gender and ethnic discrimination since it is, after all, part of those two spheres. The intersecting portion in the middle —and thus intersectional discrimination based on the combination of the two forms of discrimination—is simultaneously characterised both by the unique form of discrimination resulting from the intersection of different forms of discrimination *and* its sharedness with other forms of discrimination. This is the kernel of intersectional discrimination which makes it qualitatively distinct.⁵⁸

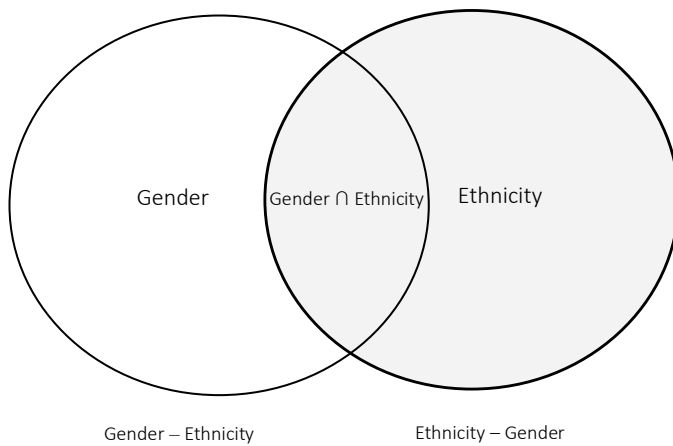
⁵⁵ Kimberlé W Crenshaw, ‘Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics’ (1989) University of Chicago Legal Forum 139, 149.

⁵⁶ Kimberlé W Crenshaw, ‘Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics’ (1989) University of Chicago Legal Forum 139, 166.

⁵⁷ This imagery though has limitations. This is because in imagining different forms of discrimination as discrete spheres it assumes that there *is* something like a pure category of, say, gender discrimination which exists independently, say, of “race” discrimination. Despite the limitation, the Venn diagram provides a helpful heuristic for appreciating that intersecting patterns of discrimination always have something both similar to but also different from other forms of discrimination. It should not be understood as indicating any ‘hierarchy’ of grounds of discrimination; rather, it is a simplified visual tool for understanding the intersection of different grounds.

⁵⁸ Catharine A MacKinnon, ‘Intersectionality as Method: A Note’ (2013) 38 Signs 1019, 1024.

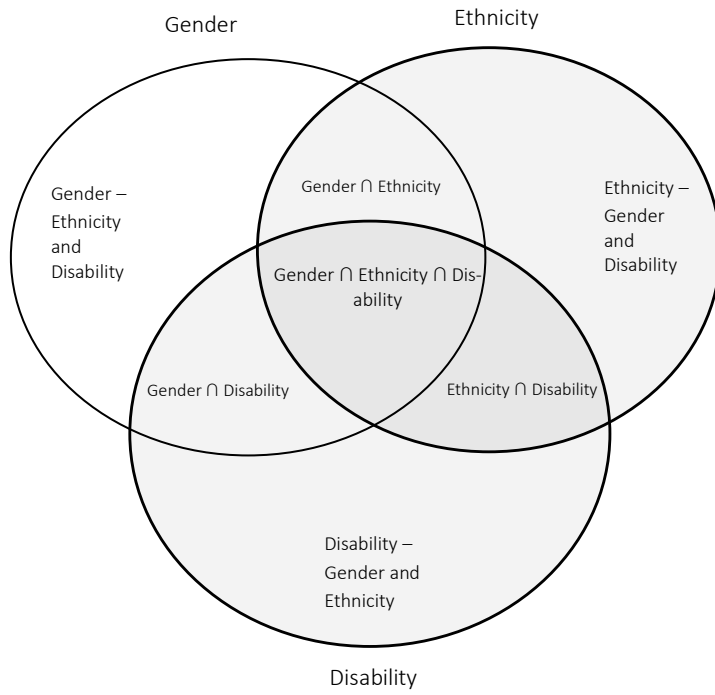
Figure 1: A Venn Diagram Depicting the Intersection of Gender and Ethnicity



This heuristic can be applied to any number of relevant intersections of grounds.

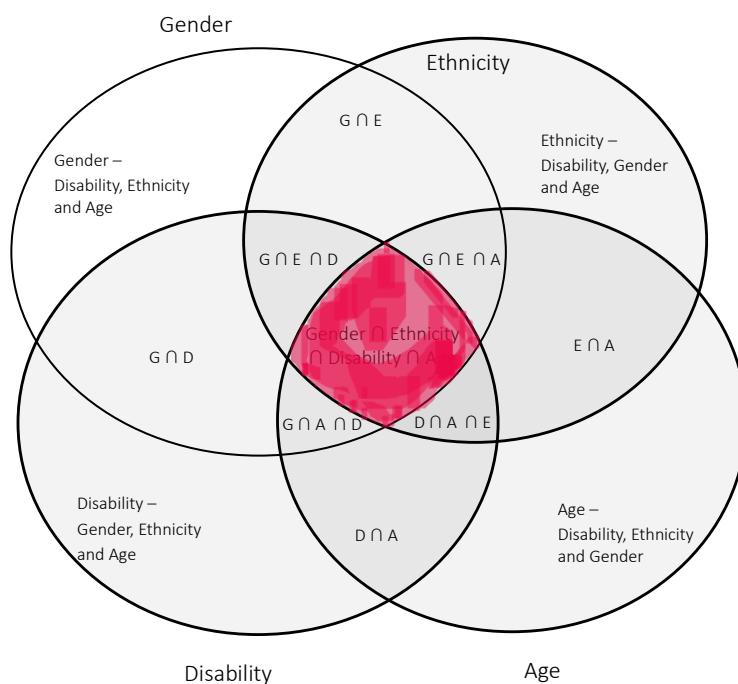
For example, intersectional discrimination against disabled Roma women can be depicted by the intersection of three spheres of gender, ethnicity and disability discrimination. The portion where all three types of spheres/discrimination meet is the one in the middle (gender \cap ethnicity \cap disability). The intersecting portions of only two types of discrimination rather than the combination of all three are depicted by gender \cap ethnicity, gender \cap disability, and ethnicity \cap disability. The complements of intersecting portions, i.e. the non-intersecting portions of the three spheres, do not share any properties of the intersections. On the other hand, the intersecting portions all depict both unique properties of their own and the shared properties as they are part of the spheres after all. Each intersection in the Venn diagram is thus qualitatively distinct and merits a discrete examination of its combination to understand the specific character of discrimination resulting from the combination.

Figure 2: A Venn Diagram Depicting the Intersection of Gender, Ethnicity and Disability



Likewise, intersectional discrimination against older disabled Roma women can be depicted by the intersection of four spheres of gender, ethnicity, disability and age discrimination. The portion in the middle depicted in red is where all four forms of discrimination intersect and represents the similar and different patterns of group disadvantages that define the position of older disabled Roma women. Every intersecting portion of the Venn diagram shows the relationship between the different sets of intersecting portions of the sphere and hence represents with clarity the whole range of patterns that are created by different combinations of groups suffering intersectional discrimination. A Venn diagram captures this range comprehensively. It allows us to map the complexity of the nature of discrimination in a society as suffered by various intersectionally disadvantaged groups with utmost precision while at the same time mapping the relationships between the different groups and their discrimination as well.

Figure 3: A Venn Diagram Depicting the Intersection of Gender, Ethnicity, Disability and Age



B.2 Origin

Although intersectionality is now popular across a range of disciplines, its syntactic origins lie in discrimination law. This is because the term ‘intersectionality’ was coined by Crenshaw in her seminal piece ‘Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics’,⁵⁹ which was centrally a critique of U.S. discrimination law, and its ignorance of claims of intersectional discrimination brought by Black women before U.S. courts. The origins of intersectionality as a term are thus located specifically in the field of discrimination law and in the category of intersectional discrimination that Crenshaw so carefully drew out from her critique of three U.S. court cases in the late 1970s and early 80s—*DeGraffenreid v General Motors*,⁶⁰ *Payne v Trevanol*⁶¹ and *Moore v Hughes*.⁶² It is important to appreciate this critique to understand the kernel of intersectional discrimination identified above.

DeGraffenreid concerned General Motors’ ‘last hired-first fired’ policy under which Black women employees were disproportionately laid off.⁶³ They thus challenged the policy as discrimination on the basis of both their “race” and sex. The U.S. District Court of Missouri summarily dismissed the possibility that claims could be based on a combination of grounds and hence denied that the plaintiffs had a right to claim as *Black women* who had suffered *both* “race” and sex discrimination. The Court interpreted the intersectional nature of the claim as a demand for recognising a ‘new special sub-category’⁶⁴ or ‘special class’⁶⁵ for the grant of a ‘new “super-remedy”’.⁶⁶ According to the Court, the ‘lawsuit must be examined to see if it states a cause of action for “race” discrimination, sex discrimination, or alternatively either, but not a combination of both.’⁶⁷ Thus, Black women could be protected only to the extent that their experience coincided either with that of Black men or white women. However, both Black men and white women had a longer history of hiring and retention by General Motors. They were thus *not* fired under this policy. It was only Black women who were fired under the policy. But the unique discrimination suffered by them fell through the cracks of both “race” and sex discrimination, defined by the experiences of Black men and white women, respectively.

⁵⁹ Kimberlé W Crenshaw, ‘Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics’ (1989) University of Chicago Legal Forum 139.

⁶⁰ 413 F Supp 142 (ED Mo 1976).

⁶¹ 673 F 2d 798 (5th Cir 1982).

⁶² 708 F 2d 475 (9th Cir 1983).

⁶³ *DeGraffenreid v General Motors* 413 F Supp 142 (ED Mo 1976) 143.

⁶⁴ *Ibid* 143.

⁶⁵ *Ibid*.

⁶⁶ *Ibid*.

⁶⁷ *Ibid*.

Travenol concerned the case of Payne, a Black woman, who was certified to claim on behalf of the class of Black women but not Black men. Payne challenged that decision. The relevant Rule 23(a) of the Federal Rules of Civil Procedure provided that: ‘the representative parties will fairly and adequately protect the interests of the class.’ To the Court, this meant that ‘a class representative may not head a class including persons whose interests substantially conflict with his or her own.’⁶⁸ It thus dismissed Payne’s challenge and curtailed the possibility of Black women representing all Black people including Black men, just as Black men could represent all Black people, including Black women. As *Travenol* allowed Black women to claim *only as Black women*, it isolated Black women’s experiences into a non-interactive category of discrimination that had nothing in common with Black men’s experiences of racial discrimination.

Hughes concerned the case of Moore, a Black woman employee at Hughes Helicopters Inc, who was certified to claim on behalf of the class of Black women but not white women. Moore challenged that decision. The Court disagreed that Black women could represent all women since *only* Black women were potentially discriminated against. Thus, while *Travenol* forbade Black women to claim on behalf of all Black people, *Hughes* forbade Black women claiming for all women.

The collective uptake from these examples is the judicial treatment of intersectional claims based on both “race” and sex as *too* unique, which could either (i) not be protected as both “race” and sex discrimination, or (ii) protected as either “race” *or* sex discrimination that exists entirely independently of one another. The fact that intersectional discrimination is simultaneously *both* similar *and* different is what is often ignored in discrimination law.

B.3 Challenges

Even if one acknowledges the qualitative nature of intersectional discrimination, there may be hurdles to how intersectional discrimination may be actually addressed in law. Intersectional discrimination is thus not simply a conceptual issue which can be resolved at the level of theory. It is both a conceptual and a practical issue and even where the former may be resolved one may need to grapple with the latter.

In discrimination law, practical issues related to addressing intersectional discrimination juridically, at courts, include:⁶⁹

(i) Absence of recognition of intersectional discrimination

Constitutions, statutes and case law do not often embrace intersectional discrimination either as a term or as a concept signifying a particular form of discrimination.

⁶⁸ *Payne v Travenol* 673 F 2d 798 (5th Cir 1982) 810.

⁶⁹ See for an extended discussion of these hurdles, Shreya Atrey, *Intersectional Discrimination* (Oxford University Press 2019) ch 1.

The next Part of this Study explores where and how intersectional discrimination may be located in the text of the law across the 46 Council of Europe member states. Suffice it to say, that textual recognition of intersectional discrimination in law is rare and proves to be the first major hurdle in its recognition and redressal.

(ii) Confusion in naming and labelling intersectional discrimination

Sometimes terms such as ‘combination discrimination’, ‘combined discrimination’, ‘cumulative discrimination’, ‘cross-sectoral discrimination’, ‘dual discrimination’, ‘multiple discrimination’, ‘multi-ground discrimination’, ‘multidimensionality’ etc are used to denote discrimination based on more than one ground of discrimination including intersectional discrimination. This has led to significant conceptual confusion and in turn proves to be another hurdle in the recognition and redressal of intersectional discrimination.

(iii) Limitation on the number of grounds on which discrimination claims may be based

Law can limit the number of grounds on which claims of discrimination can be brought—to one or two or another specific number. This quantitative limitation which confines discrimination to, say, single-axis or dual discrimination may exclude intersectional discrimination fully; or may exclude intersectional discrimination which is based on grounds other than those specified.

(iv) Limitation on the list of grounds on which discrimination claims may be based

Article 14 of the European Convention on Human Rights (the Convention) is open-ended and prohibits discrimination on enumerated grounds as well as ‘other status’. The European Court of Human Rights (the Court) has thus recognised grounds like disability,⁷⁰ sexual orientation,⁷¹ age,⁷² immigration status,⁷³ place of residence,⁷⁴ and prisoner status.⁷⁵ Yet, arguing on the basis of newly recognised grounds or unrecognised grounds under the Convention or under national law may be difficult. First, intersectional claims may require an additional case or argument to be made for the recognition of one or more unrecognised grounds. Second, national laws where the list of protected grounds is limited and does not permit additional grounds, may stymie this possibility entirely. In either scenario, it may be difficult to claim intersectional discrimination based on one or more unenumerated grounds of discrimination.

⁷⁰ *Glor v Switzerland* (2009) Application No 13444/04 (ECtHR).

⁷¹ *Kiyutin v Russia* [2011] ECHR 439; *Alajos Kiss v Hungary* (2010) Application No 38832/06 (ECtHR); *Salgueiro Da Silva Mouta v Portugal* (2010) Application No 33290/96 (ECtHR).

⁷² *Schwizgebel v Switzerland* (2010) Application No 25762/07 (ECtHR).

⁷³ *Bah v United Kingdom* (2011) Application No 56328/07 (ECtHR).

⁷⁴ *Carson v United Kingdom* [2010] ECHR 338.

⁷⁵ *Laduna v Slovakia* (2011) Application No 31827/02 (ECtHR).

(v) Limitation on forms of evidence required to prove intersectional discrimination

Intersectional discrimination may be difficult to prove where evidence, especially evidence in the form of relevant comparators, is strictly required by courts. Actual or real comparators may be difficult to find in intersectional claims, say of Black women, where groups such as white men, Black men and white women may not either be relevant or available in revealing the discriminatory treatment or effect on Black women.⁷⁶ Comparators, even if they can be helpful, can thus prove to be a hurdle where strictly required.⁷⁷ Likewise, any requirement for particular forms of evidence, especially statistical or quantitative, may also prove to be a hurdle where statistics are either not collected, not disaggregated by grounds or are not easily accessible.

(vi) Inequitable burden of proof and indeterminate standard of scrutiny in proving intersectional discrimination

Intersectional discrimination may be difficult to prove if the claimant bears an inordinate burden of proof or if the burden of proof does not transfer to the respondent if a prima facie claim of intersectional discrimination is made out by the claimant. In cases where each ground of discrimination may be considered to attract a different level of scrutiny (ranging from high to low), claimants may also find it difficult to establish discrimination if the level of scrutiny automatically drops and is determined by the ground which attracts lower scrutiny (say, disability or age) than the one which attracts a higher scrutiny (say, gender or “race”).⁷⁸ Furthermore, it would put a very high burden on claimants if they are required to separately prove discrimination on each ground and also the combination of those grounds.

(vii) Lack of appropriate remedies for intersectional discrimination

Where remedies for intersectional discrimination do not exist or where remedies are not responsive to the nature of intersectional discrimination, there may be few incentives for claimants to bring claims of intersectional discrimination. Likewise, where intersectional discrimination is only accounted for quantitatively, rather than qualitatively, it may lead to it being addressed, for example, by modulating, the amount of damages. This itself may become a limitation in crafting other kinds of structural remedies.

Intersectional discrimination may also be considered difficult to address in policy and wider practice, because of:

⁷⁶ See for e.g., *Bahl v Law Society* [2004] EWCA Civ 1070 (UK Court of Appeal).

⁷⁷ Shreya Atrey, ‘Comparison in Intersectional Discrimination’ [2018] *Legal Studies* 379–395; Shreya Atrey, *Intersectional Discrimination* (Oxford University Press 2019) 173–179

⁷⁸ See for a discussion on variable standard of scrutiny under article 14 of the ECHR: Janneke Gerards, ‘The Discrimination Grounds of Article 14 of the European Convention on Human Rights’ (2013) 12 *Human Rights Law Review* 99; Rory O’Connell, ‘Cinderella Comes to the Ball: Article 14 of the Right to Non-discrimination in the ECHR’ (2018) 29 *Legal Studies* 211.

(i) Lack of identification and recognition of intersectionally disadvantaged groups

Where individuals and groups who are intersectionally disadvantaged are not recognised at the local or national levels, their interests may go unaddressed in governmental policy.

(ii) Lack of data on experiences of intersectional discrimination

Even if there is broad recognition of existence of intersectional discrimination and individuals and groups affected by it, the lack of reliable and scalable data at the local and national level may deter policy action to address intersectional discrimination.

(iii) Absence of intersectional impact assessment in policies and decision-making

The absence of an obligation to conduct an intersectional impact assessment to gauge and test the impact of general policies on intersectionally disadvantaged individuals and groups may exacerbate the intersectional discrimination suffered by them.

(iv) Lack of awareness across public and private sector of intersectionality

Even if intersectionality is factored in formal policy, the lack of awareness, knowledge or expertise in mobilising against intersectional discrimination may stymie the effectiveness of formal recognition.

(v) Lack of resources earmarked for addressing intersectional discrimination

Where there is a will to address intersectional discrimination but no actual resources dedicated to attending to the specific needs of those who suffer intersectional discrimination, intersectional discrimination would still continue to persist and thrive.

B.4 Developments

The challenges recounted above are gradually being overcome across Europe.

A first definition can be found in the Explanatory Memorandum to the General Policy Recommendation (GPR) No. 14 of the European Commission against Racism and Intolerance (ECRI) from 2012, which describes intersectional discrimination as—'a situation where several grounds interact with each other at the same time in such a way that they become inseparable'. In its revised GPR No. 2 on equality bodies from 2017, ECRI recommends that the mandates of equality bodies should cover intersectional discrimination.⁷⁹ Successive Council of Ministers' Recommendations at the Council of Europe have also engaged with intersectionality extensively.⁸⁰ Studies and Guidelines have aided developments across a broad array of themes including political participation

⁷⁹ See also ECRI General Policy Recommendation No. 5 (revised) on preventing and combating anti-Muslim racism and discrimination (8 December 2021).

⁸⁰ Recommendation CM/Rec (2024)1 on Equality for Roma and Traveller women and girls; Recommendation CM/Rec (2024)4 on combating hate crime; Recommendation CM/Rec (2022) 16 on combating hate speech; Recommendation CM/Rec (2023)9 on the active political participation of national minority youth.

of national minority youth,⁸¹ upholding equality during the Covid-19 pandemic,⁸² data collection,⁸³ course design,⁸⁴ and intercultural integration.⁸⁵

The Council of Europe Gender Equality Strategy 2024-2029 stresses on the need for an intersectional approach in all policies and measures,⁸⁶ and regarding terminology, notes that: “an intersectional approach can allow for insight into the more complex forms of discrimination, exclusion and violence to which individuals may be exposed. Various grounds on which such discrimination is based may intersect, leading to unique lived experiences and vulnerabilities. In the context of gender equality policies, an intersectional approach can be used to understand, take into account and address the interactions between gender and sex and other personal characteristics/statuses [...] and the resulting compounded forms of discrimination. Anyone can be vulnerable to these forms of discrimination, but certain groups of women and girls are particularly exposed to them and thus stand to benefit in particular from an intersectional approach to gender equality policies.” The EU Gender Equality Strategy 2020-2025 has also recognised the intersectionality of gender with other grounds of discrimination. The European Parliament resolution of 6 July 2022 on intersectional discrimination in the European Union: the socio-economic situation of women of African, Middle-Eastern, Latin-American and Asian descent makes intersectionality the central framework for understanding and addressing the nature of discrimination against minoritised racialised women in Europe.

The Committee on Equality and Non-Discrimination of the Parliamentary Assembly of the Council of Europe set up a Sub-Committee on Disability and Multiple and Intersectional Discrimination in 2017. The Assembly also adopted several resolutions calling on member States to address intersectional discrimination.⁸⁷

⁸¹ CDADI Study on the active political participation of national minority youth in Council of Europe member states (2019).

⁸² CDADI Guidelines of the Committee of Ministers of the Council of Europe on upholding equality and protecting against discrimination and hate during the Covid-19 pandemic and similar crises in the future (2020); CDADI Study on COVID-19: An analysis of the anti-discrimination, diversity and inclusion dimensions in Council of Europe member states (2020).

⁸³ Committee of Experts on Intercultural Inclusion (ADI-INT) Manual on equality data collection and analysis to prevent and address systemic discrimination (2024).

⁸⁴ Committee of Experts on Intercultural Inclusion (ADI-INT) Manual for the design of a training course on intercultural competence (2023).

⁸⁵ Committee of Experts on Intercultural Inclusion (ADI-INT) Model Framework for an intercultural integration strategy at the national level (adopted by the CDADI on 17 June 2021).

⁸⁶ See also, Recommendation CM/Rec(2019)1 of the Committee of Ministers to member States on preventing and combating sexism, page 5.

⁸⁷ [Resolution 2576 \(2024\) Preventing and combating violence and discrimination against lesbian, bisexual and women in Europe](#), [Resolution 2554 \(2024\) Protecting women human rights defenders in Europe](#), [Resolution 2543 \(2024\), Freedom of expression and assembly of LGBTI people in Europe](#), [Resolution 2514 \(2023\), Preventing and combating violence against women with disabilities](#), [Resolution 2480 \(2023\) The role and responsibility of men and boys in stopping gender-based violence against women and girls](#),

At the European Union, there has been an acute awareness of intersectionality especially in legislation. Most recently, the 2024/1385 Directive (on combating violence against women and domestic violence) recognises that those who experience intersectional discrimination are at a heightened risk of violence, and obliges member states to meet the specific needs of intersectionally disadvantaged individuals and groups. The 2024/1500 Directive (on the standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation) obliges equality bodies to ‘pay particular attention to intersectional discrimination, which is understood as discrimination based on a combination of sex and any other ground or grounds of discrimination’. Similarly, 2024/1499 Directive (on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in matters of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services) obliges equality bodies to ‘pay particular attention to intersectional discrimination, which is understood as discrimination based on a combination of grounds of discrimination protected under Directives 79/7/EEC, 2000/43/EC, 2000/78/EC or 2004/113/EC.’ The 2023/970 Directive (on the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms) explicitly recognises that discrimination may involve ‘an intersection of various axes of discrimination or inequality where the worker is a member of one or several groups protected against discrimination on the basis of sex, on the one hand, and racial or ethnic origin, religion or belief, disability, age or sexual orientation.’ It continues:

Women with disabilities, women of diverse racial and ethnic origin including Roma women, and young or elderly women are among groups which may face intersectional discrimination. This Directive should therefore clarify that, in the context of gender-based pay discrimination, it should be possible to take such a combination into account, thus removing any doubt that may exist in this regard under the existing legal framework and enabling national courts, equality bodies and other competent authorities to take due account of any situation of disadvantage arising from intersectional discrimination, in particular for substantive and procedural purposes, including to recognise the existence of discrimination, to decide on the appropriate comparator, to assess the proportionality, and to determine, where relevant, the level of compensation awarded or penalties imposed.⁸⁸

This is the most distinct and detailed recognition of intersectionality in an EU legislation.

[Resolution 2432 \(2022\) Tackling discrimination based on social origin](#), [Resolution 2339 \(2020\) Upholding human rights in times of crisis and pandemics: gender, equality and non-discrimination](#), [Resolution 2389 \(2021\) Combating Afrophobia, or anti-Black racism, in Europe](#).

⁸⁸ EU Directive 2023/970 of the European Parliament and of the Council of 10 May 2023 to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms, para 25.

Across Europe, there is thus a clear movement towards adoption of intersectionality and intersectional discrimination—both as locutions and as concepts—across legislation, policy documents and practical guidelines, studies, reports, manuals etc.

Courts too are beginning to respond to intersectional discrimination.

In a first, on 10 December 2024, the European Court of Human Rights in *FM v Russia*⁸⁹ found that the exploitation of irregular female migrant workers constituted discrimination under Article 14 read with Article 4 of the Convention. The Court cited from a range of UN documents on intersectional discrimination and approved the claimants' case which had argued that 'they were victims of intersectional discrimination on the grounds of their gender, ethnicity and social position, which stemmed from the authorities' gender, ethnic and anti-immigrant biases.'⁹⁰

This was the first time that the Court has explicitly acknowledged, named and analysed intersectional discrimination in its jurisprudence. This is despite the presence of intersectional claims such as claims of forced sterilisation of Roma women that have been before the Court previously.⁹¹ Claims of intersectional discrimination until now, had either not been adjudicated under Article 14,⁹² adjudicated on each ground independently,⁹³ or on a single ground only.⁹⁴ However, the decision in *BS v Spain*⁹⁵ had previously given a nod towards intersectional discrimination when the Court drew attention to 'the applicant's particular vulnerability inherent in her position as an African woman working as a prostitute.'⁹⁶ The Court's attention to the applicant's position defined by her "race", gender, class and employment status demonstrated its awareness of intersectionality in deciding human rights violations under the Convention not only in respect of the right to equality and non-discrimination under Article 14 but also in respect of other rights, and in this case, the right against torture under Article 3.⁹⁷ The Court in *BS*, however, limited its finding to a procedural violation of Article 14 read in conjunction with Article 3. It is only in *FM* that the Court has finally arrived at its first finding of substantive violation in a case of intersectional discrimination under Article 14.

For its part, the European Committee of Social Rights has made a finding of intersectional discrimination in *International Planned Parenthood Federation European Network (IPPF*

⁸⁹ Application Nos. 71671/16 and 40190/18, decided on 10 December 2024 (ECtHR).

⁹⁰ *Ibid.*, paras 340–347.

⁹¹ *VC v Slovakia* (2012) Application No 18968/07 (ECtHR); *NB v Slovakia* (2010) Application No 29518/10 (ECtHR); *IG v Slovakia* (2013) Application No 15966/04 (ECtHR).

⁹² *Ibid.*

⁹³ *JD and A v UK* (2019) Applications No 32949/17 and 34614/17 (ECtHR).

⁹⁴ *Semenya v Switzerland* (2023) Application No10934/21 (ECtHR); *SAS v France* [2014] ECHR 695.

⁹⁵ (2012) Application No 47159/08 (ECtHR).

⁹⁶ *Ibid.*, para 62.

⁹⁷ Keina Yoshida, 'Towards Intersectionality in the European Court of Human Rights: The Case of *BS v Spain*' (2013) 21 *Feminist Legal Studies* 195.

EN) v Italy.⁹⁸ The claim concerned an Italian law that regulated conscientious objection of medical practitioners in relation to termination of pregnancy. The claimants contended that the law discriminated against women both on the grounds of territorial and/or socio-economic status; and on the grounds of gender and/or health status. The Committee held that:

these different alleged grounds of discrimination are closely linked together and constitute a claim of ‘overlapping’, ‘intersectional’ or ‘multiple’ discrimination, whereby certain categories of women in Italy are allegedly subject to less favorable treatment in the form of impeded access to lawful abortion facilities as a result of the combined effect of their gender, health status, territorial location and socio-economic status: the complainant organisation in essence alleges that since women who fall into these vulnerable categories are denied effective access to abortion services as a consequence of the failure of the competent authorities to adopt the necessary measures which are required to compensate for the deficiencies in service provision caused by health personnel choosing to exercise their right of conscientious objection, this constitutes a discrimination.⁹⁹

Though not every intersectional claim argued before the European Committee of Social Rights has succeeded,¹⁰⁰ the Committee has certainly shown openness to the concept.

The Council of Europe Commissioner for Human Rights¹⁰¹, as well as monitoring bodies, such as the European Commission against Racism and Intolerance (ECRI) as well as the Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM), have also recognised and addressed intersectionality in their work whether in their state reporting, country visits, or thematic reports and recommendations.¹⁰²

To conclude, although the challenges to addressing intersectional discrimination remain formidable, they are gradually being overcome.¹⁰³ The rest of the Study considers how Council of Europe member states have attempted to overcome these challenges (Part II) and lays bare a framework of best practice for the future (Part III).

⁹⁸ Complaint No. 87/2012 (30 April 2014).

⁹⁹ *Ibid*, para 190.

¹⁰⁰ See for e.g., *European Roma Rights Centre (ERRC) v Bulgaria* (Complaint No. 151/2017) (11 December 2019).

¹⁰¹ See, for e.g., the Commissioner’s [keynote speech](#) at the conference “Addressing violence and discrimination against lesbian, bisexual, and queer women in Europe”, 6 December 2024; and the Commissioner’s [memorandum](#) on the human rights of Roma in Finland, published on 25 February 2025.

¹⁰² See, for e.g. [Gender sensitive analysis in the Advisory Committee’s jurisprudence 2021–2024](#).

¹⁰³ Maria Caterina La Barbera and Marta Cruells López, ‘Toward the Implementation of Intersectionality in the European Multilevel Legal Praxis: B. S. v. Spain’ (2019) 53 *Law and Society Review* 1167.

**PART II: INTERSECTIONAL
DISCRIMINATION IN COMPARATIVE
LAW, POLICY AND PRACTICE**

II. LAW, POLICY AND PRACTICE

This Part examines how the current law, policy and practice across the 46 Council of Europe member states address intersectional discrimination. It is divided into three sections. Section A considers how intersectional discrimination is addressed in law and in particular in the text of the constitutions, statutes and case law. Section B examines how policies concerning gender, “race”, SOGIESC, disability and age respond to intersectional discrimination. Section C considers how various public and private actors mobilise intersectionality in their work. The vast cross-section of law, policy and practice considered in this Part of the Study shows that there is no single or consistent way in which intersectional discrimination is addressed. Instead, the following trends emerge within and across the member states:

LAW

- **Constitutions**

- While countries do not explicitly protect against intersectional discrimination, they do not often bar such protection either.
- Countries with general equality/non-discrimination guarantees which are not limited to some grounds provide the most comprehensive protection against intersectional discrimination.

- **Statutes**

- Intersectional discrimination is being increasingly recognised as a distinct form of discrimination in statutory law; where the adoption of the term specifically matches the qualitative meaning of intersectional discrimination identified in Part I, it makes for the strongest protection in discrimination law.
 - Where explicitly prohibited, intersectional discrimination is often also considered a worse/grave/more serious/aggravated form of discrimination.
 - Where explicitly prohibited, intersectional discrimination often also leads to a greater amount of damages to be awarded to the claimant, when proven.
- While intersectional discrimination is distinct from multiple discrimination which is a broader term, intersectional discrimination can be recognised within the protection from multiple discrimination either because it is explicitly included or because it can be read into a broad understanding of multiple discrimination.
- Intersectional discrimination can also be recognised within general equality/non-discrimination guarantees in statutory law.

- **Case law**

- No judicial system has adopted intersectional discrimination as a specific category unequivocally.
- Some countries show willingness to allow claims based on multiple grounds.
 - Some of these claims are decided as claims of intersectional discrimination even though judges do not often use the term as such.

- Some of these claims do not adopt any particular qualitative framework for deciding claims based on multiple grounds.
- Some of these claims adopt a quantitative as opposed to a qualitative approach to claims based on multiple grounds.
- Adoption or rejection of intersectional discrimination in judicial reasoning does not directly correspond with the permissiveness of the constitutional or statutory text.

POLICY

- **Twin-track approach**

- General Policy (viz. gender equality policy or education policy)
 - Increasing conceptual mainstreaming of intersectionality as an overarching framework. But policies also refer to terms like ‘multiple’, ‘additive’, ‘cross-sectoral’ and ‘cumulative’ discrimination, often not defining or distinguishing between these forms of discrimination precisely or not isolating what policy measures are directed at which form of discrimination.
 - Identification of intersectionally disadvantaged groups within general policies for targeted action, monitoring of progress, impact assessment, prioritisation for remedial measures and ensuring participation.
- Specific Policy (viz. for Roma women or disabled children)
 - Dedicated to intersectionally disadvantaged groups for targeted action, monitoring of progress, impact assessment, prioritisation for remedial measures and ensuring participation.

PRACTICE

- Equality Bodies
 - Demand for harmonisation of mandates and enhancement of powers to address intersectional discrimination across all areas.
 - Practice of working across or within mandates and powers related to each ground to address all forms of discrimination, including intersectional discrimination, associated with each ground.
 - Practice of collecting data through surveys, research projects, interviews and reported incidents of intersectional discrimination.
 - Issuing practical guidelines for ensuring the prohibition, punishment and prevention of intersectional discrimination in public and private spheres.
- Service Providers
 - Awareness of unique needs of intersectionally disadvantaged individuals and groups at risk of, for example, gender-based violence and the urgency in catering to their needs.
- Capacity building
 - Research-development, awareness-raising, knowledge-sharing, training, cross-sectoral cooperation.

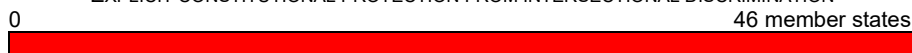
A. INTERSECTIONAL DISCRIMINATION IN LAW

This section is divided into three subsections. Section A.1 considers whether protection from intersectional discrimination could be read into constitutional texts especially the general equality/non-discrimination guarantees. Section A.2 considers whether protection from intersectional discrimination is provided for in national statutory laws. Section A.3 considers whether intersectional discrimination has been recognised in case law and if so to what extent.

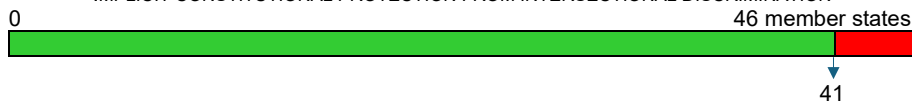
A.1 Constitutional Protection from Intersectional Discrimination

Although no constitution in any of the 46 Council of Europe member states explicitly protects against intersectional discrimination, few constitutions can be read to exclude such a protection entirely. Only five countries may be said to bar the possibility of recognition of prohibition of intersectional discrimination constitutionally. One of these countries is the United Kingdom (UK), where the absence of a single written document in the form of a constitution as well as the absence of an independent constitutional principle of equality¹⁰⁴ effectively ousts the protection from intersectional discrimination from the ambit of constitutional law. In another four countries—Denmark, Ireland, Lithuania and Malta—the possibility of a constitutional prohibition of intersectional discrimination is stymied (i) either by the absence of a general equality/non-discrimination guarantee within which intersectional discrimination can be read (ii) or the absence of an open-ended list of grounds which prohibits discrimination not only on grounds explicitly enlisted but also those which are not. Thus, for an overwhelming number of countries—forty-one—it is the presence of either a general equality/non-discrimination constitutional guarantee or an open-ended list of grounds which allows reading in the protection from intersectional discrimination within the constitutional text itself.

EXPLICIT CONSTITUTIONAL PROTECTION FROM INTERSECTIONAL DISCRIMINATION



IMPLICIT CONSTITUTIONAL PROTECTION FROM INTERSECTIONAL DISCRIMINATION



¹⁰⁴ Jeffery Jowell, 'Is Equality a Constitutional Principle' (1994) 7 Current Legal Problems 1; Colm O'Cinneide, 'Equality: A Constitutional Principle?' (2011) UKCLA Blog <<https://ukconstitutionallaw.org/2011/09/14/colm-ocinneide-equality-a-constitutional-principle/>> accessed 4 August 2024.

Commented [SD5]: Building on the comments made above, it would be useful to note that by embedding intersectionality solely within general equality clauses, there is a risk of diluting the specific legal obligations states hold under human rights instruments, which treat sex as a fundamental and irreducible ground of discrimination that requires targeted legal protections for women and girls. Therefore, promoting a framework in which sex is treated as merely one among many intersecting axes of identity, the legal analysis risks collapsing distinct sex-specific harms into an amorphous category of disadvantage. While it is encouraging that some judges adopt a holistic approach in cases involving multiple grounds, the interpretative latitude offered by intersectionality must not be used to erase the distinct legal category of discrimination against women grounded in sex.

This section may be strengthened with a clearer articulation that sex is not just another identity market, but a material and legal category with distinct implications for rights and protections. Legal reform efforts should not only add sex to a list of factors, but centre sex as the organising axis around which many intersecting inequalities play out.

Of these, twenty-two countries have *both* a general equality/non-discrimination guarantee and an open-ended list of grounds and thus provide the most comprehensive protection from discrimination including from intersectional discrimination.¹⁰⁵ For example, the Constitution of Albania, provides that ‘all are equal before the law’¹⁰⁶ and that ‘no one can be unjustly discriminated’¹⁰⁷ on the basis of an open-ended and illustrative list of grounds which include gender, “race”, religion, ethnicity, language, political, religious or philosophical beliefs, economic condition, education, social status, or ancestry.¹⁰⁸

Constitutional references to equality for ‘all’,¹⁰⁹ ‘every person’¹¹⁰ or ‘everyone’¹¹¹ and on the basis of an open-ended list of grounds implicitly allow reading in a protection from all forms of discrimination in the constitutions themselves. This comprehensive protection from discrimination would thus include protection from intersectional discrimination as it covers equality for all people even if they are not discriminated against on a single ground alone or a ground which is not explicitly listed in a constitution.

Constitutions, such as those of France and Norway, which do not explicitly provide a list of grounds also leave open the possibility of the constitutional guarantee of equality to extend to protection from discrimination on all grounds.

Some constitutional texts go further than others in enshrining comprehensive protection from discrimination by explicitly prohibiting all forms of discrimination. The Constitution of Montenegro, for example, provides that ‘direct or indirect discrimination on any grounds shall be prohibited’ and that the rights cannot be limited ‘on any ground’.¹¹² Likewise, the Constitution of Serbia prohibits ‘all direct or indirect discrimination based on any grounds’.¹¹³ Intersectional discrimination, though explicitly absent, may be strongly considered as implicitly prohibited in these constitutions.



¹⁰⁵ These countries include: Albania, Andorra, Bosnia and Herzegovina, Croatia, Cyprus, Czechia, Estonia, Finland, France, Hungary, Iceland, Latvia, Montenegro, the Netherlands, Norway, Poland, Serbia, Slovak Republic, Slovenia, Sweden, Türkiye and Ukraine.

¹⁰⁶ Article 18(1), Constitution of Albania.

¹⁰⁷ Article 18(2), Constitution of Albania.

¹⁰⁸ *Ibid.*

¹⁰⁹ See for e.g., Albania, Andorra, Croatia, Latvia, the Netherlands, Norway, Poland, Serbia, Ukraine.

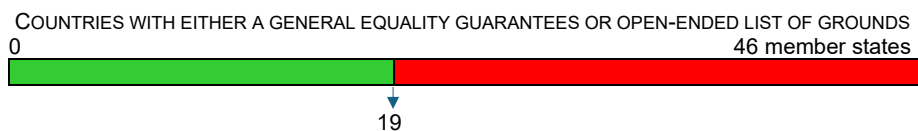
¹¹⁰ See for e.g., Cyprus.

¹¹¹ See for e.g., Czechia, Estonia, Hungary, Iceland and Türkiye.

¹¹² Article 8, Constitution of Montenegro.

¹¹³ Article 21, Constitution of Serbia.

In contrast, countries which include either a general equality/non-discrimination guarantee or an open-ended list of grounds in their constitution but not both, may not be considered as providing comprehensive protection from discrimination. In fact, in the absence of an explicit recognition of the prohibition of intersectional discrimination, the implicit recognition of such a norm may also be limited in such contexts.¹¹⁴ Nineteen countries belong to this category.¹¹⁵ Of these at least twelve countries further limit their general equality/non-discrimination guarantees to their citizens or nationals.¹¹⁶ A more restrictive constitutional landscape appears in Switzerland which includes a ban on face coverings in the text of the constitution itself.¹¹⁷ Given that a ban on face coverings in Europe is known to overwhelmingly impact Muslim women on the grounds of their “race”/religion and sex/gender, a ban on face coverings in the constitution may be considered as affecting Muslim women.



To conclude, a vast majority of countries appear to have constitutional texts which are permissive enough to be able to read in a protection from intersectional discrimination in them. Those with general equality/non-discrimination guarantees which apply to all (and are not restricted, say, to citizens alone) and on any ground (and not only those explicitly listed in the constitution) or include an explicit prohibition of all forms of discrimination naturally provide the most comprehensive protection from all forms of discrimination, including intersectional discrimination. Other countries which lack comprehensive protection but still have an equality/non-discrimination guarantee even if it is limited to the grounds listed in the constitution may be considered as providing protection from intersectional discrimination at least to those to whom the equality/non-discrimination guarantee applies and on the basis of the combination of grounds listed in the constitution. Thus, since no constitution explicitly permits intersectional discrimination or bars the recognition of the prohibition of intersectional discrimination—the constitutional landscape in the Council of Europe member states should be considered generally hospitable to a prohibition of intersectional discrimination in fact.

¹¹⁴ These countries include: Armenia, Austria, Azerbaijan, Belgium, Bulgaria, Italy, Georgia, Germany, Greece, Lichtenstein, Luxembourg, Monaco, Portugal, the Republic of Moldova, North Macedonia, Romania, San Marino, Spain and Switzerland.

¹¹⁵ Ibid.

¹¹⁶ These countries include: Austria, Belgium, Bulgaria, Italy, Greece, Lichtenstein, Luxembourg, Monaco, the Republic of Moldova, North Macedonia, Romania and Spain.

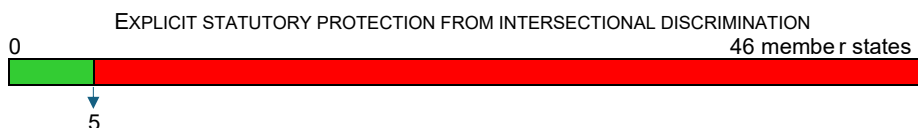
¹¹⁷ Article 10a, Federal Constitution of the Swiss Confederation of 18 April 1999 (Status as of 3 March 2024).

A.2 Statutory Protection from Intersectional Discrimination

There are two ways in which intersectional discrimination has been recognised in statutory law—either (i) explicitly, through the incorporation of the term and/or its conceptual understanding in the text of the statute; or (ii) implicitly, through (a) the recognition of multiple discrimination which is a broader concept within which intersectional discrimination can be read into, or (b) the general equality/non-discrimination guarantees in statutory law.

(i) Explicit recognition of intersectional discrimination

In contrast with the total absence of explicit constitutional recognition, statutes in five countries explicitly address intersectional discrimination—Albania, Andorra, Belgium, North Macedonia and Spain.



In Albania, the Law on Protection from Discrimination defines intersectional discrimination as ‘a form of discrimination, whereby several grounds operate and interact with each other simultaneously in such a way that they are inseparable and produce distinct forms of discrimination’.¹¹⁸ In Andorra, Law 6/2022 on the direct application of the right to equal treatment and opportunities and to non-discrimination between women and men includes a reference to ‘multiple and intersectional discrimination’ that is ‘understood to mean the situation in which a woman, because she is a woman and belongs to other groups that are also discriminated against for other reasons’.¹¹⁹ Since June 2023, the federal anti-discrimination legislation in Belgium incorporates the concepts of cumulative and intersectional multiple discrimination. Furthermore, Article 5 of a Joint Decree and Ordinance of the Brussels-Capital Region, defines ‘discrimination intersectionnelle’ as ‘direct or indirect discrimination, discriminatory or sexual harassment, or injunction to discriminate based simultaneously on several protected criteria, real or supposed, attributed individually or by association, which interact and become inseparable’.¹²⁰ In North Macedonia, Law No. 258/2010 on Prevention and Protection against Discrimination (Anti-Discrimination Law) defines intersectional discrimination as ‘any discrimination on two or more discriminatory bases that are

¹¹⁸ Article 3, Law on Protection from Discrimination (Law No. 10 221, dated 4.2.2010, as amended by Law No. 124/2020, dated 15.10.2020) (Albania).

¹¹⁹ Article 6, Law 6/2022 on the direct application of the right to equal treatment and opportunities and to non-discrimination between women and men (Andorra).

¹²⁰ Article 5, Joint Decree and Ordinance of the Brussels-Capital Region, the Joint Community Commission and the French Community Commission on the Brussels Code of Equality, Non-Discrimination and the Promotion of Diversity of 4 April 2024 (2024003443) (Belgium).

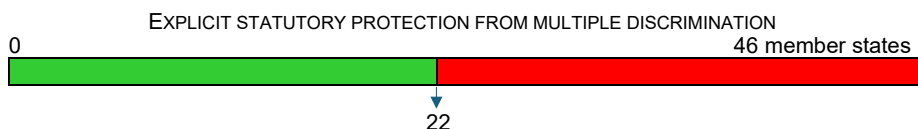
simultaneously and inseparably connected'.¹²¹ In Spain, the comprehensive law on equal treatment and non-discrimination provides that 'intersectional discrimination occurs when several of the causes foreseen in this law concur or interact, generating a specific form of discrimination.'¹²²

All of these definitions of intersectional discrimination squarely map onto the conceptual understanding of intersectional discrimination set out in Part I of the Study. Intersectional discrimination in these definitions is considered qualitatively distinct from both single-axis discrimination (which is discrimination based on a single ground) as well as multiple discrimination (which is discrimination based on multiple grounds). These definitions instead treat intersectional discrimination as not only based on multiple grounds but, as a consequence, representing a synergistic form of discrimination which cannot be disentangled into its constitutive elements.

(ii) Implicit recognition of intersectional discrimination

(a) via multiple discrimination

In a vast number of countries—twenty-one—statutory law includes a reference to multiple discrimination.¹²³



The terms in which multiple discrimination is mentioned vary. For example, in Germany, the term 'multiple discrimination' does not appear. Instead, 'difference of treatment on several grounds' is included in the General Act on Equal Treatment.¹²⁴ Such discrimination is also limited to the grounds specified in the statute.¹²⁵ Likewise, in Bosnia and Herzegovina, Law BiH No. 59/09 on Prohibition of Discrimination defines multiple discrimination as 'any discrimination...based on multiple grounds specified

¹²¹ Article 4, Law No. 258/2010 on Prevention and Protection against Discrimination (Anti-Discrimination Law) (North Macedonia).

¹²² Article 6, Law 15/2022, of 12 July, comprehensive law for equal treatment and non-discrimination (Spain). See also Organic Law 3/2007 of 22 March 2007 for the effective equality of women and men (Spain) and Royal Decree 246/2024, of 8 March, which develops the basic organic structure of the Ministry of Equality, and modifies Royal Decree 1009/2023, of 5 December, which establishes the basic organic structure of the ministerial departments (Spain).

¹²³ These countries include: Albania, Andorra, Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Georgia, Germany, Greece, Iceland, Lichtenstein, Montenegro, North Macedonia, Portugal, the Republic of Moldova, Romania, Serbia, Slovenia, Türkiye, Ukraine and the UK.

¹²⁴ Section 4, General Act on Equal Treatment of 14 August 2006, as last amended by Article 4 of the Act of 19 December 2022 (Germany).

¹²⁵ Sections 1 and 4, General Act on Equal Treatment of 14 August 2006, as last amended by Article 4 of the Act of 19 December 2022 (Germany).

under the provisions’ of that law.¹²⁶ This means that claims of multiple discrimination are limited to grounds specified in the statute.

In contrast, in Bulgaria, while the Protection Against Discrimination Act defines multiple discrimination as ‘discrimination on grounds consisting of more than one characteristic referred to in Article 4 (1)’, where the list of grounds in article 4(1) is open-ended and provides that ‘any direct or indirect discrimination on grounds of gender, race, nationality, ethnicity, human genome, citizenship, origin, religion or belief, education, convictions, political affiliation, personal or social status, disability, age, sexual orientation, marital status, property status, *or on any other grounds* established by law or by an international treaty to which the Republic of Bulgaria is a party, shall be banned.’¹²⁷

In Georgia, Law of Georgia on the Elimination of All Forms of Discrimination defines multiple discrimination as ‘discrimination based on the combination of two or more characteristics’¹²⁸ where ‘characteristics’ need not necessarily be limited to those specified in the text of the statute.¹²⁹ More importantly, it appears that the way multiple discrimination is defined in Georgia as ‘discrimination based on *the combination* of two or more characteristics’¹³⁰ actually resembles the conceptual core of intersectional discrimination rather than the broader and more general category of multiple discrimination. The Georgian anti-discrimination law shows that depending on how multiple discrimination is defined, it too can be understood qualitatively as intersectional discrimination.¹³¹

Similarly, Iceland’s Act on Equal Status and Equal Rights Irrespective of Gender uses the term multiple discrimination to refer to both multiple discrimination where there are ‘two or more independent reasons for discrimination’ as well as intersectional discrimination where discrimination is ‘integrated in such a way that two or more reasons for

¹²⁶ Article 4, BiH Law No. 59/09 on Prohibition of Discrimination, published on 28 July 2009 and entered into force on 5 August 2009 (Bosnia and Herzegovina). See also Article 6, Anti-Discrimination Act of 2008 (Croatia) which limits multiple discrimination to the grounds listed in the statute.

¹²⁷ Article 4, Protection Against Discrimination Act (as amended SG No. 70/2004 and effective from 1 January 2005).

¹²⁸ Article 2, Law of Georgia on the Elimination of all Forms of Discrimination (Georgia).

¹²⁹ See also Law on Prohibition of Discrimination, adopted in April 2014 in Montenegro which includes multiple discrimination (article 20) based on an unrestricted list of protected characteristics (article 2).

¹³⁰ *Ibid* (emphasis supplied).

¹³¹ This is also the case for Portugal which defines multiple discrimination as ‘discrimination arising from a combination of two or more discriminating factors, in which case the objective justification permitted under subparagraph (c) must apply to all the factors concerned’. Article 3, Law no. 93/2017 of 23 August (establishing the legal framework for preventing, prohibiting and combating discrimination on the grounds of racial and ethnic origin, skin colour, nationality, descent and territory of origin) (Portugal). See also Article 13(5), Law No. 22/2009 on the Prohibition of Discrimination of 26 March 2009 (Serbia) which defines multiple discrimination as ‘based on two or more personal characteristics, regardless of whether the impact of individual characteristics can be delineated (multiple discrimination) or cannot be delineated (intersectional discrimination)’.

discrimination create a special basis for discrimination'.¹³² This shows that multiple discrimination can be defined broadly to include a diverse range of qualitative understandings of discrimination based on multiple grounds, of which intersectional discrimination is but one.

It is also important to note the location of inclusion of multiple discrimination in statutory law. Multiple discrimination may not always be included in the general equality/non-discrimination statute which applies across grounds. Instead, it may be included selectively in an anti-discrimination statute on one ground (say, sex or gender) and be excluded from the general equality/non-discrimination statute (if it exists) and/or anti-discrimination statutes on other ground (say, "race"). For example, in Iceland, multiple discrimination is included in the anti-discrimination statute on gender¹³³ but not in the anti-discrimination statute on "race".¹³⁴

In some countries, multiple discrimination as a term only appears in provisions for compensation or damages. For example, in Austria, the Federal Equal Treatment Act of 1 July 2004 provides that 'if there is *multiple discrimination* on the grounds specified [in the statute] this shall be taken into account when calculating the amount of compensation for the personal detriment suffered.'¹³⁵ In Lichtenstein, Act on Equality of Persons with Disabilities mentions multiple discrimination in the following terms: 'when calculating the amount of non-material damages, the duration of the discrimination in particular on the duration of the discrimination, the severity of the fault, the seriousness of the impairment and *multiple discrimination* must be taken into account.'¹³⁶ Multiple discrimination is not per se defined anywhere in these statutes. But the reference to multiple discrimination makes clear that discrimination based on several grounds is a part of statutory law and where established, inter alia, makes a difference to the amount of non-material damages to be awarded.

Some countries take the approach of mentioning multiple discrimination in their criminal law (as opposed to or in addition to civil law on anti-discrimination). For example, in Romania, the Law No. 202/2002 on the equality of opportunity and treatment between women and men, defines multiple discrimination as 'any act of discrimination based on

¹³² Articles 2, The Act on Equal Status and Equal Rights Irrespective of Gender (Gender Equality Act No. 150/2020), in force since 6 January 2021 (Iceland).

¹³³ Articles 2 and 16, The Act on Equal Status and Equal Rights Irrespective of Gender (Gender Equality Act No. 150/2020), in force since 6 January 2021 (Iceland).

¹³⁴ Act No. 85 of 25 June 2018 on Equal Treatment irrespective of Race and Ethnic Origin (Iceland).

¹³⁵ Section 19a, Federal Equal Treatment Act of 1 July 2004 (Austria).

¹³⁶ Article 23, The Act on Equality of Persons with Disabilities, 25 October 2006 (Behindertengleichstellungsgesetz) (Lichtenstein).

two or more grounds of discrimination’ and declares that it ‘shall constitute an offense and shall be penalized’.¹³⁷

Finally, several of the countries which recognise multiple discrimination explicitly in statutory law also recognise multiple discrimination as a form of discrimination which is worse than discrimination based on a single ground alone. Different terminologies are used to convey this idea. In the Republic of Moldova, ‘discrimination against people based on two or more criteria’ in Article 4 of the Law No. 121/2012, is considered as a type of ‘worst form of discrimination’. In Spain, multiple discrimination under Article 47 of the Law 15/2022 of 12 July (the comprehensive law for equal treatment and non-discrimination), is considered a ‘very serious infringement’. In Montenegro, multiple discrimination, under Article 20 of Law on Prohibition of Discrimination, adopted in April 2014, is considered a ‘grave form of discrimination’. In Croatia, multiple discrimination, under Article 6 of the Anti-Discrimination Act of 2008, is considered as a type of ‘more serious form of discrimination’. In Bosnia and Herzegovina, multiple discrimination, under Article 4 of the BiH Law No. 59/09 on Prohibition of Discrimination, is considered an ‘aggravated form of discrimination’. In Andorra, both multiple and intersectional discrimination, under Article 6 of the Law 6/2022 on the direct application of the right to equal treatment and opportunities and to non-discrimination between women and men, are considered ‘aggravated and specific forms of discrimination’. Finally, in Albania, North Macedonia, Serbia and Slovenia, multiple discrimination is considered one of ‘severe forms of discrimination’.¹³⁸ What such a qualification ordinarily does is that ‘worse’, ‘very serious’, ‘grave’, ‘aggravated’ or ‘severe’ forms of discrimination lead to a higher compensation or punishment to be awarded in claims of multiple or intersectional discrimination. For example, in Slovenia, Article 39 of the Protection Against Discrimination Act of 2016 provides that ‘when determining the amount of compensation, the duration of discrimination, exposure to *severe forms of discrimination* and other circumstances of the case shall be considered’.¹³⁹

¹³⁷ Articles 4 and 37, Law No. 202/2002 on the equality of opportunity and treatment between women and men (Romania). See also Article 80, Criminal Code (Luxembourg) as amended by law of 23 March 2023 which implicitly made multiple or intersectional discrimination an aggravating circumstance in a crime.

¹³⁸ Article 3/1, Law on Protection from Discrimination (Law No. 10 221, dated 4.2.2010, as amended by Law No. 124/2020, dated 15.10.2020) (Albania) (‘Any discriminatory behaviour that is motivated by more than one ground, committed more than once, which has lasted for a long period of time, or when it has caused particularly harmful consequences for the victim, is considered a severe form of discrimination’); Article 13, Law No. 258/2010 on Prevention and Protection against Discrimination (Anti-Discrimination Law) (North Macedonia) (‘As a severe form of discrimination, within the meaning of this law, multiple discrimination, intersectional discrimination, repeated discrimination, and continuous discrimination are considered’); Article 13(5), Law No. 22/2009 on the Prohibition of Discrimination of 26 March 2009 (Serbia) (‘Discrimination against individuals based on two or more personal characteristics, regardless of whether the impact of individual characteristics can be delineated (multiple discrimination) or cannot be delineated (intersectional discrimination)’); Article 12, Protection Against Discrimination Act, in force as of 24 May 2016 (Slovenia) (‘Severe forms of discrimination shall include:...multiple discrimination occurring when a person is discriminated against simultaneously due to several personal circumstances’).

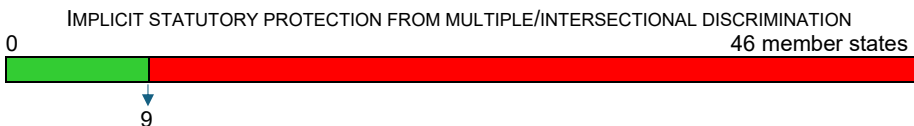
¹³⁹ Emphasis supplied.

But intersectional discrimination should not automatically be considered worse or more severe just because it is based on more than one ground. Full consideration should be given to the qualitative nature of intersectional discrimination.

The recognition of intersectional discrimination should leave open the possibility for such discrimination to be considered worse, severe or aggravated on a case-by-case basis.

(b) via general non-discrimination provisions

In another nine countries, although there is no reference to either intersectional discrimination or multiple discrimination explicitly, statutory texts seem permissive enough to be able to read in a protection from discrimination based on multiple grounds, including protection from intersectional discrimination.¹⁴⁰



For instance, in Czechia, the Anti-discrimination Act 2008 established the right to equal treatment which means ‘the right not to be discriminated against on the grounds laid down in this Act or the directly applicable regulation of the European Union on freedom of movement for workers.’¹⁴¹ Although the Act does not explicitly mention multiple or intersectional discrimination, the right to equal treatment or the right against discrimination can be read to implicitly include the right to equal treatment or the right against discrimination based on an intersection of multiple grounds specified in the law. Likewise, the Labour Code in Czechia prohibits ‘any form of discrimination in labour relations’¹⁴² which can be potentially read to include intersectional discrimination.¹⁴³

Similarly, in Estonia, although the Equal Treatment Act 2008 does not mention multiple or intersectional discrimination explicitly, the broad purpose and scope of the Act ‘to ensure the protection of persons against discrimination’ on the specified grounds can be read to include discrimination based on an intersection of multiple grounds that are specified.¹⁴⁴ There is no credible reason for confining the prohibition of discrimination in such a general provision to discrimination based on a single ground alone.

¹⁴⁰ These countries include: Czechia, Estonia, Ireland, Italy, Finland, France, Hungary, Latvia and Luxembourg.

¹⁴¹ 198/2009 Coll. ACT of 23 April 2008 on equal treatment and on the legal means of protection against discrimination and on amendment to some laws (Czechia).

¹⁴² Section 16, Labour Code No. 262/2006 Coll., as amended „Zákoník práce“ (Czechia).

¹⁴³ See also Labour Law of 17 October 2019 (Latvia) where section 7 provides that: ‘(1) Everyone has an equal right to work, to fair, safe and healthy working conditions, as well as to fair remuneration. (2) The rights provided for in Paragraph one of this Section shall be ensured without any direct or indirect discrimination - irrespective of a person's race, skin colour, gender, age, disability, religious, political or other conviction, ethnic or social origin, property or marital status, sexual orientation or other circumstances.

¹⁴⁴ See also section 19, Chancellor of Justice Act 1999 (Estonia).

In Finland too, where the Non-discrimination Act provides that ‘no one may be discriminated against on the basis of age, origin, nationality, language, religion, belief, opinion, political activity, trade union activity, family relationships, state of health, disability, sexual orientation or other personal characteristics’, the broad terms of the general statutory protection inevitably cover intersectional cases of discrimination within its fold.¹⁴⁵

In Hungary as well, direct discrimination in the equal treatment statute is defined in relation to a list of grounds, the last of which is ‘any other status, characteristic, or attribute (hereinafter jointly “characteristic”)’.¹⁴⁶ This conveys a strong sense of prohibition of direct discrimination not only on the basis of a single listed ground but also multiple grounds including those not listed in the statute.¹⁴⁷

In Luxembourg, there are legislations which enshrine the importance of considering several grounds or vulnerabilities together. For instance, the Law No. 255 on the reception of applicants for international protection and temporary protection obligates authorities to take account of an applicant’s vulnerability associated with ‘age, sex, sexual orientation or gender identity, disability, serious illness, mental disorder, or the consequences of torture, rape or other serious forms of psychological, physical or sexual violence’.¹⁴⁸

These examples show that the absence of intersectional discrimination in the explicit text of statutory law may be no bar to the recognition of the concept of intersectional discrimination. To the contrary, general equality/non-discrimination guarantees in statutes including in different areas of law such as employment or labour law may be broad enough to include intersectional discrimination.

(c) Latent statutory recognition to intersectional discrimination

In fourteen countries, there appears to be neither explicit nor implicit recognition of either intersectional discrimination in statutory law.¹⁴⁹ This does not, however, mean that intersectional discrimination is necessarily excluded from statutory law as there is no explicit bar on the recognition of intersectional discrimination in any statute either. It only means that no obvious case for intersectional discrimination can be made as being a part of statutory protections such as those considered in the previous section above. But even in seemingly inflexible statutory texts which limit discrimination to discrimination based

¹⁴⁵ Non-discrimination Act (1325/2014) (Finland).

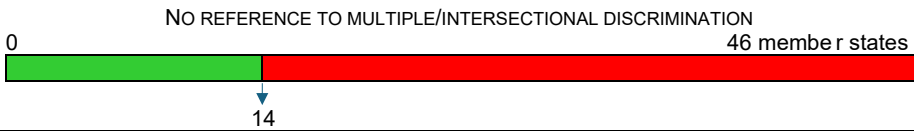
¹⁴⁶ Section 8, Act CXXV of 2003 on equal treatment and the promotion of equal opportunities (Hungary).

¹⁴⁷ See also section 3, Equal Status Act 2000 (Ireland) (where discrimination is taken to occur ‘where a person is treated less favourably than another person is, has been or would be treated in a comparable situation (on any of the grounds specified...’).

¹⁴⁸ Articles 19 and 53, Loi No. 255 du 18 Decembre 2015 relative à l'accueil des demandeurs de protection internationale et de protection temporaire (Luxembourg).

¹⁴⁹ These countries include: Armenia, Azerbaijan, Cyprus, Denmark, Lithuania, Malta, Monaco, the Netherlands, Norway, Poland, San Marino, Slovakia, Sweden and Switzerland.

‘on grounds of’¹⁵⁰ or ‘on the grounds of’¹⁵¹ those listed within the statute—there is a possibility of claiming for intersectional discrimination based on a combination of the grounds listed in the statute itself.



When statutes do not themselves limit discrimination to single-axis discrimination, in principle, the possibility of arguing a case of intersectional discrimination remains theoretically open under statutory law across all Council of Europe member states.

A.3 Case law on Intersectional Discrimination

The judicial appreciation of intersectional discrimination involves the appreciation of the particular conceptual meaning of intersectional discrimination set out in Part I of this Study. That is, it involves understanding intersectional discrimination as a unique form of discrimination based on several grounds which is both similar to but also different from discrimination based on individual grounds.

While intersectional discrimination has not been named or analysed explicitly in case law, twenty countries seem to have recognised discrimination based on multiple grounds in some of their case law—a development which opens the door to the potential recognition of intersectional discrimination in the future.¹⁵²

That still leaves a majority of countries—twenty-six—who do not seem to recognise intersectional discrimination in their case law.¹⁵³ Within this group, some countries have simply lacked litigative or judicial focus on intersectional discrimination when claims of discrimination are brought, argued and decided. But what is interesting is that, for most

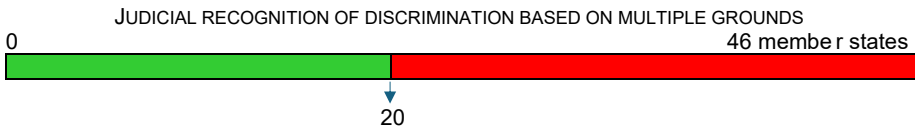
¹⁵⁰ See for e.g. the Law on Equal Treatment of 18 November 2003 (No IX-1826) in Lithuania which in article 2 defines discrimination as ‘any direct or indirect discrimination, harassment, instruction to discriminate on grounds of sex, race, nationality, citizenship, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion.’

¹⁵¹ See for e.g. Equal Treatment Act of 2 March 1994 in the Netherlands which in section 1 defines discrimination as including direct and indirect forms where direct discrimination is defined as ‘discrimination between persons on the grounds of religion, belief, political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status’ and indirect discrimination is defined as ‘discrimination on the grounds of characteristics or behaviour other than those referred to [above], resulting in direct discrimination.’

¹⁵² These countries include: Albania, Austria, Bulgaria, Belgium, Croatia, Italy, Finland, France, Ireland, Latvia, Lithuania, the Republic of Moldova, Malta, Norway, Poland, Romania, Slovenia, Spain, Türkiye, and the United Kingdom.

¹⁵³ These countries include: Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Cyprus, Czechia, Denmark, Estonia, Georgia, Germany, Greece, Hungary, Iceland, Lichtenstein, Luxembourg, Monaco, Montenegro, Netherlands, North Macedonia, Portugal, San Marino, Serbia, Slovak Republic, Sweden, Switzerland and Ukraine.

countries there is no shortage of examples of either explicit claims of intersectional discrimination or claims which could be understood as claims of intersectional discrimination within their national contexts.



Accordingly, understanding what judicial trends across countries look like is imperative. The following sections isolate these trends in three categories—(i) where intersectional reasoning is present in general claims in law and not necessarily claims of discrimination; (ii) where intersectional reasoning can be read into the reasoning in cases involving multiple grounds; and (iii) where intersectionality has been explicitly disregarded or inexplicably sidelined in discrimination claims.

The three sections below try to isolate what determines how hospitable judges have been to claims of intersectional discrimination. The conclusion is that neither formal legal text—constitutional or statutory—nor the persistence of claims pleading intersectional discrimination necessarily determine the openness of judges to intersectional discrimination. Even though in principle, the formal text of law and wider legal practice (especially litigation trends) should be a good indicator of the trends in case law, they seem to not have been determinative of judicial approaches to intersectionality. In the final analysis, the legal systems, individual justices and the proclivities of specific courts—their composition and their mandates—may have been influential. But in the absence of comprehensive sociological and empirical data on this point, suffice it to say that the reception of claims of intersectional discrimination lacks a clear judicial principle.

(i) Intersectional reasoning in general legal claims

It is important to begin by noting that intersectional reasoning can be present in cases beyond those of discrimination such as cases under constitutional and statutory provisions on equality/non-discrimination. Here, what matters is to check whether the reasoning resembles intersectionality and its focus on a combination of grounds leading to particular impact on intersectionally disadvantaged groups. It is not necessary for the claim to be a claim of discrimination or to be based on multiple grounds or to be characterised as a claim of intersectional discrimination. The form may be irrelevant so long as the substance of the judicial reasoning shows conceptual affinity to intersectionality.

Italian Corte Costituzionale's decision in Case 306/2008 exemplifies this befittingly.¹⁵⁴ The case concerned a constitutional challenge to a provision which mandated a carer's allowance for a disabled person to be subject to the possession of a residence card for foreign nationals, which in turn depended on income. The Court held that 'it is manifestly unreasonable to render the award of a social security benefit such as the carer's allowance – the prerequisites for which are, as mentioned above, the complete inability to work, as well as the inability to walk unaided or to carry out everyday acts alone – subject to the possession of the right to reside lawfully in Italy which requires for its conferral, amongst other things, the receipt of an income'.¹⁵⁵ The requirement was thus declared unconstitutional under Article 10(1) of the Italian Constitution which prohibits discrimination against foreigners who are resident in the state. What is critical here is that the claim was not primarily based on or decided as discrimination based on foreigner status, socio-economic status and disability. Yet, the analysis of constitutionality, especially under the tests of unreasonableness and arbitrariness was made contextually—keeping in focus the particular factual matrix and the situation of the specific claimant for whom these three conditions were inextricable. Intersectionality, though absent in name, seems to be genuinely applied.¹⁵⁶ It is worth thinking whether this claim could have succeeded in the absence of an inherently intersectional point of view applied by the Court in adjudging the constitutionality of the impugned provision.¹⁵⁷

The Austrian Constitutional Court's decision no. G119/2014 also exemplifies the adoption of intersectional reasoning in constitutional case law without either the adoption of the term intersectionality or an explicit reference to discrimination on the basis of multiple grounds.¹⁵⁸ The case concerned a constitutional challenge to the prohibition of same-sex partners for joint adoption of children when they were allowed to adopt another's biological child and when no such restrictions existed for heterosexual couples. The challenge was specifically framed as discrimination on the basis of gender and sexual orientation but decided mainly as a matter of discrimination against same-sex couples, that is, sexual orientation and marital status. This difference is neatly explained by the court's focus on the particular intersectional vulnerability of the claimants—as partners in a same-sex relationship—who wanted to adopt a second child jointly but were prohibited not only because they were gay (in fact there was no sex or gender-related bar for adoption by individuals) but particularly because they were a

¹⁵⁴ Corte Costituzionale, Case 306/2008 (decided on 29 July 2008) (Italy) available at <https://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/S2008306_Bile_Amirante_en.doc> (last accessed 11 September 2024).

¹⁵⁵ *Ibid.*

¹⁵⁶ See also Corte Costituzionale, Case 432/2005, decided on 28 November 2005 (Italy) available at <<https://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=2005&numero=432>> (last accessed 11 September 2024).

¹⁵⁷ See Shreya Atrey, 'Beyond Discrimination: Mahlangu and the Use of Intersectionality as a General Theory of Constitutional Interpretation' (2021) 21 *International Journal of Discrimination Law* 168–178.

¹⁵⁸ Constitutional Court, Decision No. G119/2014, decided on 11 December 2014 (Austria).

couple. Had they been in a heterosexual relationship their relationship status would have been no bar to joint adoption. But they were a same-sex couple in particular. It was thus the particular intersection of their sexual orientation and marital status that proved to be determinative in their exclusion from adoption under the law. The Court's reasoning, though did not engage intersectionality explicitly as a term, shows awareness of this and indeed in its final decision striking down the discriminatory law.

In a similar vein, the Austrian Constitutional Court's decision repealing the ban on Muslim girls under the age of 10 from wearing headscarves at school showed a clear appreciation of the intersection of age, gender and religion as the basis of the ban which stigmatised the young pupils at school and in turn had a negative impact on their education and development.¹⁵⁹ While the text of the Court's decision focuses mainly of the wide range of harms visited upon the affected pupils, it is clear that its appreciation of harm is intrinsically intersectional as in its absence it would not have been able to see the actual discriminatory impact of the ban in this case on young Muslim girls whose position is defined by their gender, age and religion, all at the same time.

Likewise, a Court of Cassation decision in France considered the exploitative treatment of a housemaid as affected by her social origin, gender and illegal status.¹⁶⁰ In particular, the Court refused to find it necessary to compare her treatment to other workers and instead focussed on her specific vulnerability and precarity in accessing her rights. Without explicitly referring to multiple grounds or intersectionality, the Court's analysis considered the applicant's situation holistically to find in her favour.

A ruling by the Romanian National Council Against Discrimination (CNCD) against a political TV show for having made a derogatory statement against Roma women was found to be 'without reasonable and objective justification'.¹⁶¹ Even though gender and "race" or ethnic origin are not invoked as the basis of the decision, they seem to have been latent in the reasoning which saw the statements made against Roma woman in particular to be unreasonable and lacking in objective justification.

These examples of intersectional reasoning in general constitutional and statutory case law are important because they show the wide relevance and applicability of intersectionality. They show that intersectionality is not only about a particular form of discrimination under discrimination law. Instead, it is a concept which has a bearing in understanding the nature of injury or harm people experience when their legal rights are impacted. These examples show that judges are capable of intersectional thinking even where the term itself is formally absent from constitutional, statutory or judicial text.

¹⁵⁹ Constitutional Court, Decision No. G4/2020 (G4/2020-27), decided 11 December 2020 (Austria).

¹⁶⁰ Court of Cassation, social chamber, Case No. 10-20765, decided 3 November 2011 (France).

¹⁶¹ CNCD, Case No. 484 of 6 September 2017 (Romania).

(ii) Implicit recognition in discrimination claims

Wherever judges have admitted and then found in favour of discrimination based on more than one ground, there is a possibility to test whether there has been an acknowledgment of intersectional discrimination. This is because when judges admit a claim of discrimination based on more than one ground—they implicitly or explicitly apply a conceptual lens to discern what it means for a claim to be based on multiple grounds at all. This conceptual lens could range from the reimposition of single-axis thinking (reducing a claim based on multiple grounds to a single ground) to multiple discrimination (allowing multiple grounds in a claim) to intersectional discrimination (allowing multiple grounds to be proven in combination) or anything in between.

Intersectional discrimination is most obviously recognised when evidence for each ground in a claim is not segregated into silos and/or when judges find for discrimination based on multiple grounds together rather than separately.

For example, the Republic of Moldova, a country which recognises multiple discrimination explicitly in its statutory law, has embraced intersectionality in its case law. In a widely reported decision of 20 June 2021, the Council for the Prevention and Elimination of Discrimination and Ensuring Equality considered a challenge to the requirement for reaching the pensionable age to be appointed to a post.¹⁶² Both the applicant—a woman—and her competitor were 61 years of age. But men had a higher retirement (pensionable) age than women. The requirement to reach the higher pensionable age thus disproportionately impacted women like the applicant. The Council found that this constituted indirect discrimination on the basis of age and sex. The analysis of discrimination on the basis of age and sex seemed to be combined and in no way disentangled from one another.

In a similar vein, in Bulgaria, where multiple discrimination can only be read implicitly into the existing statutory framework, judges have been open to adjudicating cases intersectionally and have not required the segregation of evidence for each of the constituent grounds in a claim. In Judgment No. 7081 of 19.07.2005¹⁶³ and Judgment No. 7622 of 18.07.2003¹⁶⁴ the courts found for intersectional discrimination on the grounds of age and gender and on the grounds of gender and personal status respectively with ease. In the first instance, the case concerned the age differential between men (65 years) and women (60 years) to claim access to electric powered wheelchairs. In the second instance, the case concerned the denial of possibility of scholarship to students during pregnancy, birth and parenthood. The Court had no difficulty in finding that in the

¹⁶² Council for the Prevention and Elimination of Discrimination and Ensuring Equality, Decision No. 53/21 of 20 June 2021 (Republic of Moldova).

¹⁶³ Administrative case No. 4402/2005 of the Supreme Administrative Court, II panel reporting judge Vesselina Teneva (Bulgaria).

¹⁶⁴ Administrative case No. 5063/2003 of the Supreme Administrative Court, five-member panel reporting judge Svetla Petkova (Bulgaria).

first instance age and gender and in the second instance gender and personal status combined in ways which could not be analysed independently such that they affected women disproportionately not only because of their gender but also age and pregnancy/parenthood respectively.

Similarly, in Ireland, in an equal pay claim brought on the grounds of gender and age by a young woman, the Court looked to the available comparator group of older men who did similar work as the claimant, and found that the claim of discrimination based on both gender and age was established at once.¹⁶⁵ There was no requirement for separate comparators for each ground.¹⁶⁶

In a Norwegian decision, the Equality Tribunal found that a decision to appoint a young man in a full-time post in the fire brigade over the claimant—an older, more experienced part-time worker in the fire-brigade—was considered discriminatory on the basis of both age and gender.¹⁶⁷ This was despite the fact that the advertisement for the post had explicitly only engaged age in requiring that ‘applicants should be between 27 and 35 years of age.’ The Tribunal, however, did not hesitate to find that both age and gender played a role in how the claimant was treated eventually especially as against the actual comparator who was not only younger but also a man.

In Germany too, a court in Stuttgart, found that the refusal of the defendant to allow the claimant to enter the discotheque was not only discrimination on the basis of “race” but also on the basis of gender.¹⁶⁸ The Court thus substituted a decision of a lower court which had found only for racial discrimination and instead found that the treatment was better understood as ‘multiple discrimination’ where “race” and gender were combined.¹⁶⁹ Although the Court used the term multiple discrimination, its reasoning resembles intersectional discrimination because its finding was not made on the proof of “race” and gender discrimination separately.

Similarly, in the UK, while the provision on ‘combination discrimination’ under the Equality Act 2010 is not currently enforced, courts have still been open to claims based on multiple grounds.¹⁷⁰ Some judges have shown openness to considering such claims as claims of intersectional discrimination where proof relating to each ground is not

¹⁶⁵ *Ciara O’Brien (represented by the National Union of Journalists) v ComputerScope Limited*, DEC-E2006-030, decided on 1 August 2006 (WRC/Labour Court, Ireland).

¹⁶⁶ See also *Superquinn v Freeman*, DEE0211, decided on 14 November 2002 (Labour Court, Ireland) (striking down a decision which required a claimant bringing a claim on multiple grounds to prove each separately).

¹⁶⁷ Judgment of 17 March 2010 in Case 09-13682TVI-OSFI (Norway).

¹⁶⁸ Higher Regional Court of Stuttgart, 10 U 106/11, decided 12 December 2011 (Germany). See also District Court of Oldenburg, Ref.: E2 C 2126/07 (V), decided 23 July 23 2008 (Germany).

¹⁶⁹ *Ibid*, para 14.

¹⁷⁰ *O’Reilly v BBC* [2010] UKET/ 2200423/ 2010; *Ali v North East Centre for Diversity and Racial Equality* [2005] UKET/ 2504529/ 03; *Mackie v G & N Car Sales* [2004] UKET/ 1806128/ 03; *Acharee v Chubb Guarding Services* [2000] DCLD 43 (UKET); *Tilern de Bique v Ministry of Defence* [2009] UKEAT/ 0075/ 11/ SM; *Perera v Civil Service Commission (No 2)* [1982] ICR 350 (UKEAT)

required separately. For example, the decision of the UK Supreme Court in *Hewage v Grampian Health Board* may be considered an implicit nod to intersectionality.¹⁷¹ The Court decided the appeal in relation to two issues—the legality of using a white male comparator to establish a claim of direct discrimination against a British woman of Sri Lankan origin; and the reversal of burden of proof when a prima facie case is established by the claimant. While the Court did not precisely consider the claim as a matter of intersectional discrimination based on the grounds of “race” and sex, in confirming the use of a white male comparator (as opposed to two separate comparators of Black men and white women) to establish that the claimant was subjected to bullying and harassment because of her “race” and sex, it did not dispute the plausibility of such a claim. The implied assumption that intersectional claims exist and can be effectively established even under different legislative provisions—at the time, under the Sex Discrimination Act 1975 and the Race Relations Act 1976—through evidence from a single comparator group, may encourage future litigants and courts to claim and find for intersectional discrimination with ease.¹⁷²

In a vast range of case law, it is however difficult to determine whether a finding on multiple grounds is actually a finding on intersectional discrimination as a clear line of reasoning is difficult to discern. For example, in Albania, intersectional discrimination appears to be named and found, though it is difficult to ascertain the precise lines of reasoning which lead to this. In decision no. 30 (decided on 31 January 2024), the Albanian Commissioner found a range of possibilities of intersectional discrimination including as a severe form of discrimination for the same set of facts of not providing adequate health treatment—on grounds of health status, disability and economic situation independently and in combination.¹⁷³ It is not obvious what combination of, or how, the grounds contributed to discrimination that was arguably considered intersectional in nature by the Commissioner.

In Croatia, the People’s Ombudsperson found for multiple discrimination against women belonging to the Muslim minority who were not allowed to wear head covers in photographs for driving licences.¹⁷⁴ The Ombudsperson had also raised concerns about intersectional discrimination against TV presenters based on age and gender.¹⁷⁵ Even in criminal cases such as cases of rape in prison, the Ombudsperson had requested a response on suspicion of multiple discrimination based on gender and nationality.¹⁷⁶

¹⁷¹ 2012 UKSC 37.

¹⁷² Shreya Atrey, *Intersectional Discrimination* (Oxford University Press 2019) 8–9.

¹⁷³ See also the Albanian Commissioner’s decisions in: decision no. 102, dated 07.06.2022; decision no. 188, dated 06.10.2021; decision no. 139, dated 07.07.2022; decision no. 140, dated 07.07.2022; decision no. 49, dated 03.04.2023; decision no. 178, dated 11.09.2023; decision no. 179, dated 12.09.2023; and decision no. 184, dated 14.09.2023.

¹⁷⁴ Croatia, country report, Non-discrimination, European Commission, Directorate-General for Justice and Consumers, 2023).

¹⁷⁵ *Ibid.*

¹⁷⁶ PRS 03-05/17-606 (Croatia). See also PRS-03-02/17-84 (Croatia).

Similarly, in Romania, a range of cases before the National Council for Combating Discrimination (CNCD) were decided on multiple grounds.¹⁷⁷ Icelandic courts too have made findings on multiple grounds of discrimination.¹⁷⁸

Again, it is not obvious how these cases are being conceived, though, and what the requirement of proof based on multiple grounds is. There is not so much detail in these cases to confirm that they are being treated as cases of intersectional discrimination where analysis of similar and different patterns of group disadvantage based on a combination of grounds is considered as a whole. But it is clear that there is openness to intersectional discrimination by not requiring discrimination on each ground to be proven separately. This itself leaves open the door for the recognition of intersectionality in principle.

Despite this possibility, it is more common to see discrimination claims being examined separately based on each ground rather than as claims of intersectional discrimination adjudicated based on a combination of grounds.

This is so even where grounds of discrimination are argued together. For example, the Albanian national equality body found discrimination based on multiple grounds (gender, ethnic origin, social condition and economic condition) even where the claim was argued by the claimant on the basis of ethnic origin and social condition without much distinction between grounds. While the equality body did read in other grounds (gender and economic condition) which were not explicitly argued as part of the claim of intersectional discrimination suffered by an Egyptian woman who faced housing discrimination as a homeless person—it did '[evaluate] each claim and ground of discrimination separately'.¹⁷⁹ Importantly, it termed such discrimination as 'cross-sectoral' rather than 'intersectional'.¹⁸⁰

Similarly, in Bulgaria, the term intersectional discrimination seems to have been used in some recent cases but it is not clear whether an intersectional framing was decisive in determining the substance of the claim.¹⁸¹ Claims based on multiple grounds are also frequently decided by the Turkish Human Rights and Equality Institution (HREIT) but not

¹⁷⁷ See e.g., Decision No. 619 of 25 August 2021 and Decision No. 729 of 07 December 2022 (Romania).

¹⁷⁸ See e.g., Equality Complaints Committee, *A v. Strætó bs.* Case No. 2/2021, decided 15 September 2021 (Iceland).

¹⁷⁹ See Flash Report (Case Summary), European Network of Legal Experts in Gender Equality and Non-discrimination, available at <<https://www.equalitylaw.eu/downloads/5890-albania-intersectional-discrimination-found-in-case-of-failure-to-take-measures-to-ensure-adequate-housing>> (last accessed 3 December 2024).

¹⁸⁰ *Ibid.*

¹⁸¹ See Bulgarian country Study, Non-discrimination, EUROPEAN COMMISSION Directorate-General for Justice and Consumers) (citing SAC, Decision No. 2216 of 9 March 2022 in Case No. 11865/2021; Decision No. 10759 of 24 November 2022 in Case No. 3177/2022; Decision No. 9242 of 20 October 2022 in Case No. 4689/2022).

necessarily intersectionally.¹⁸² In Austria, claims with explicit reference to multiple discrimination are meant to be proven on each ground separately.¹⁸³

In contrast, it is much harder for courts to find for intersectional discrimination when discrimination on each ground is argued independently. There is little impetus, it would seem, for judges to recognise these claims as claims of intersectional discrimination in such cases. Indeed, in some contexts, if judges do so, it may raise concerns of judicial overreach.

In cases where the state or a public authority argues against an intersectional reading of the case brought on multiple grounds, courts may be even more hesitant in recognising intersectionality. For example, in Finland, the Rovaniemi Appeal Court awarded compensation separately for gender discrimination and disability discrimination (protected under two different statutes respectively) when the City of Oulu, the defendant in the case, had argued that compensation could not be awarded under two different statutes when there was only one discriminatory act at issue, namely, the refusal to reinstate an employee after returning from maternity leave.¹⁸⁴ Such a decision seems to be about proving each ground separately rather than in combination.¹⁸⁵

Likewise, in Slovenia, where the concept of multiple discrimination is statutorily recognised, the Advocate of the Principle of Equality has reported several cases of multiple discrimination over the last decade.¹⁸⁶ What is interesting is that, the most reported case of multiple discrimination is still from a period before the concept was enshrined in the statute,¹⁸⁷ showing that legislative developments do not often correspond to judicial developments in practice. In this light, it is also interesting to note that the list of countries where intersectional discrimination has been embraced judicially is not the same as where claims of intersectional discrimination are constitutionally or statutorily permissible. That is, judicial openness to intersectional discrimination does not seem to require explicit constitutional or statutory recognition of intersectional discrimination.

Thus, for example, in Poland, although there is no constitutional or statutory provision under which intersectional claims could be pleaded explicitly, there have been instances

¹⁸² Case No. 22 of 2020; Case No. 547 of 2021 and Case No. 68 of 2021 (HREIT, Türkiye).

¹⁸³ Supreme Court, Decision No. 80bA63/09m, decided 22 September 2010 (Austria). See also Viennese Civil Regional Court, *Hayet B v Ferdinand S*, Decision Nos. 35R68/07w and 35R104/07i, decided 30 March 2007 (Austria).

¹⁸⁴ Rovaniemi Appeal Court, 23.10.2014, 483/23.10.2014, S13/536 (Finland).

¹⁸⁵ Cf Non-Discrimination and Equality Tribunal (Finland) decision on refusal to grant credit which was found to be discriminatory based on the applicant's gender, language, age and place of residence (but no compensation was awarded). Available at <https://yvtltk.fi/material/collections/20220929103022/HmnVFeDYU/Tapausseloste_YVTltk_2xx_2017_luottokelpoisuuden_arviointimenettely.pdf> (last accessed 11 September 2024).

¹⁸⁶ See the Slovenian country report on Non-discrimination submitted to the European Commission from 2023.

¹⁸⁷ Administrative Court of the Republic of Slovenia, judgment No. U 947/2007-12, 20 March 2008.

where courts have found for discrimination based on multiple grounds.¹⁸⁸ Given that such examples are from lower courts whose judgments are not published or otherwise available in translation it is difficult to ascertain whether the finding based on multiple grounds shows an appreciation of intersectionality.

Courts also seem to be open to recognising multiple discrimination even where multiple discrimination is not claimed, and the claim is in fact pleaded on a single ground alone. For example, as early as 2005, a Latvian district court, found for multiple discrimination on the basis of gender and property status, *suo moto*.¹⁸⁹ The case, concerning a claimant's application for seasonal work at the heating plant, was only pleaded on the basis of gender. But the Court, of its own volition, found that the discrimination was based both on the claimant's gender and property status when the employer took into account the level of remuneration of the claimant for the post.

However, there are limitations to reading case law decided on multiple grounds as necessarily implying openness to intersectional discrimination.

For example, a case concerning dismissal of a wheelchair user during maternity leave has been decided as two separate claims of disability discrimination and gender discrimination.¹⁹⁰ Another case of a pregnant hearing-impaired woman who was passed over for appointment, was decided sequentially, first on the basis of disability, and then gender.¹⁹¹ In fact, claims based on two grounds often become claims of 'double discrimination'¹⁹² not in any qualitative sense but simply for the numeric reason that discrimination in the claim is based on two grounds.¹⁹³

Finally, in another approach to discrimination claims based on more than one ground, courts may try to rank the grounds by identifying the impact of each ground separately such that one ground is considered the main ground with the most impact while others are seen as ancillary grounds that contribute or compound the discrimination at hand. This approach isolates the impact of each ground in some quantitative way while intersectionality resists such tendencies entirely. For example, in an Irish case decided

¹⁸⁸ Stubice District Court, judgment of 18 June 2012, No. IV P 30/11; Gorzów Wielkopolski Regional Court, judgment of 27 November 2012, No. VI Pa 56/12 (not published).

¹⁸⁹ Cēsu District Court, Case No. C11019405, *Anga Stūriņa v Straupe Municipal Council*, 5 July 2005.

¹⁹⁰ Randers City Court, Case No. BS-35572/2018-RAN, decided 24 September 2019 (Denmark).

¹⁹¹ Judgment of 29 September 2020, Labour Court of Antwerp, AR 19/3232/A.

¹⁹² See esp Judgment of 11 August 2017, Labour Court of Liège, R.G. 16/294/A (where the Court found for double discrimination based on age and sex). See also, *Décision de la Cour du travail d'Anvers* (division Anvers), 4 janvier 2024.

¹⁹³ A similar formulation seems to have been adopted by the Ombudsperson in Lithuania who found that a person was discriminated against on the basis of their age and social status 'in parallel' because they were asked 'What is your family status?' and 'Your CV does not state how old you are?'. Annual Report of the Equal Opportunities Ombudsperson of the Republic of Lithuania (2022), page 42, available at <<https://lygybe.lt/wp-content/uploads/2023/07/2022-Annual-Report-of-the-Equal-Opportunities-Ombudsperson.pdf>> (last accessed 11 September 2024).

by the Equality Tribunal,¹⁹⁴ while the claimant had alleged discrimination on the basis of “race”, gender and family status taken together, the Equality Tribunal considered each of the grounds in turn and found that the ground of “race” had ‘compounded’ the discrimination experienced on the basis of gender.¹⁹⁵ A Romanian decision by the National Council for Combating Discrimination (CNCD) which found for gender and age discrimination separately also exemplifies this approach when different kinds of evidence was found to feed into a breach of prohibition of gender discrimination and age discrimination respectively.¹⁹⁶ The request to work with male subordinates constituted gender discrimination while the request to work with younger subordinates constituted age discrimination.

To sum up, while there are examples of discrimination claims being treated intersectionally, there are also examples where this is not the case and where: (a) it is difficult to ascertain the qualitative lens being applied; or (b) the claim is treated as either single-axis discrimination or as multiple discrimination in a quantitative sense where each ground is meant to be proven separately rather than in combination. We must thus pay great attention to detail in evaluating the treatment of discrimination claims to appreciate the wide range of approaches in case law.

(iii) Absence of intersectional discrimination

In twenty-six countries, there are few examples of intersectionality-friendly case law where either (i) the claimants or judges use intersectionality as a conceptual framework for understanding a discrimination claim or (ii) the claim is argued or decided on more than one ground.

In some countries there are few examples of intersectional cases that are known or reported.¹⁹⁷ This does not mean that cases of intersectional discrimination do not exist or have been eliminated in these countries. In fact, equality bodies and ombudspersons in several of these contexts testify to the existence of intersectional cases. For example, in Estonia, where no court case regarding multiple and/or intersectional discrimination is reported, the Gender Equality and Equal Treatment Commissioner has given several opinions where the combination of several protected grounds were at the heart of the complaint (see for example opinion No. 32 from 14 May 2013).¹⁹⁸ Similarly, in Greece, the Ombudsman intervened in cases 275685 and 235196 against job advertisements which asked women below a certain age to apply; and also intervened in case 266527 to facilitate the registration of a Greek Roma Muslim mother of three minor children. The

¹⁹⁴ *Luzak v Sales Placement Ltd*, DEC-E2011-010, decided on 24 January 2011 (Equality Tribunal, Ireland).

¹⁹⁵ *Ibid*, para 6.8. see also *McDermott v Connacht Gold Cooperative Society Ltd*, DEC-E2011-147, decided on 4 August 2011 (Equality Tribunal, Ireland).

¹⁹⁶ CNCD, No 611 of 25 August 2021 (Romania).

¹⁹⁷ These countries include: Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Liechtenstein, Monaco, Montenegro, San Marino, Switzerland and Ukraine.

¹⁹⁸ Cf Tallinn Circuit Court, administrative case 3-13-510 (*LJ v Tallinn Prison*) decided 23 January 2014 (Estonia) (where age and ethnic origin were analysed as separate grounds).

Hungarian Equal Treatment Authority in case EBH/130/2017 mandated a company to change its policy for 13th-month pay which considered attendance for bonus calculation as it disproportionately impacted mothers of young children who had been absent from work due to childcare. The Luxembourg equality body, Centre for Equal Treatment (CET), has reported that between 2020 and 2022 nearly 9% of reports concerned multiple grounds of discrimination.¹⁹⁹ The Portuguese equality body in its annual Study from 2021 reported that 3.9% of its complaints referred to multiple grounds of discrimination.²⁰⁰ The Serbian Commissioner for the Protection of Equality reported 142 complaints in 2023 alone which pertained to multiple grounds of discrimination.²⁰¹

It is thus fair to assume that the absence of intersectional case law is an indicator of the absence of legal, policy or practical frameworks supporting such claims rather than the absence of such claims at all in a particular context.

Intersectionality can be ignored in two more considered ways. First, courts can reject an intersectional framing of a case. This can mean a rejection of the initial framing of the case as being based on multiple grounds rather than a single ground. This can also mean a rejection of the particular conceptual understanding embodied in intersectionality to do with the simultaneous presence of similar and different patterns of group disadvantage. No court seems to have done the latter indicating that intersectionality has not been rejected as a conceptual framework by European judges even though it may not always have been embraced.

Second, intersectionality can be ignored in the absence of an intersectionality-friendly framing—when claimants and judges both see discrimination as nothing more than single-axis.

Intersectionality has been ignored in both ways, in countries where intersectionality is not recognised at all and in countries where intersectionality has been recognised elsewhere either legislatively and/or judicially. There is thus little consistency as to what determines when courts in a country choose to acknowledge intersectionality or when they choose to ignore it.

For example, the previous section mentioned that a Court of Cassation decision in France had applied what appears to be reasoning akin to intersectionality, despite not having used the term explicitly, in assessing the particular vulnerability of a domestic worker.²⁰² At the same time, there are cases where the Court of Cassation has not embraced intersectionality. For example, a Court of Cassation decision which struck down the refusal to allow a male steward to wear his hair in African braids as

¹⁹⁹ Reported in response to CDADI survey (Annex 1).

²⁰⁰ Portugal, country report, Non-discrimination, European Commission, 2023.

²⁰¹ Reported in response to CDADI Survey (Annex 1).

²⁰² Court of Cassation, social chamber, Case No. 10-20765, decided on 3 November 2011 (France).

discrimination based on gender was not examined as in anyway relating to ethnic origin²⁰³ as the combination of the claimant's gender as a male steward as well as the choice of wearing his hair in African braids may be considered as inextricably linked.

Intersectionality may be ignored even when brought up explicitly by the claimants. In a case decided by the Paris Administrative Court,²⁰⁴ while multiple grounds were raised/pleaded, the decision did not turn on a finding on those grounds. The case concerned discrimination against a Muslim woman who wore a headscarf and sought to pursue her education as an adult. Her educational aims were doubted as she was pregnant and because her husband had substantial financial resources.²⁰⁵ This was struck down as discrimination but the decision did not involve an examination of the treatment of the claimant on the basis of her gender, age, religion, "race", pregnancy or social origin, even though, it appears that the treatment may have been influenced by her multiple and intersecting identities.

It is difficult and perhaps futile to speculate on the reasons behind the different litigation and judicial approaches to intersectionality in the absence of a comprehensive sociological and empirical data on this very question. What can be said, however, is that there is little consistency in how intersectionality is addressed both between and within Council of Europe member states. Importantly, countries which seem to embrace intersectionality in some of their case law also seem to ignore it at other points.

Often when intersectionality is ignored, cases cannot succeed as the court is unable to appreciate on what basis discrimination did or did not occur. The absence of intersectionality muddies judicial reasoning and ultimately impedes a favourable finding. For example, in the Cyprian Supreme Court decision of 2018, the Supreme Court upheld an age restriction in a disability scheme. The decision does not consider the possibility of discrimination based on the combination of age and disability.²⁰⁶ Similarly, in a decision of the District Court of Bratislava in the Slovak Republic, despite evidence that Roma women were segregated in 'Roma rooms' in a hospital, no discrimination was found, arguably, since the practice was not viewed through the lens of ethnic origin and gender combined.²⁰⁷

At other times, the ignorance of intersectionality does not lead to an adverse finding. Some cases succeed even in the absence of appreciation of intersectionality. Where intersectionality appears relevant, but is ignored, and the case still succeeds, there may still be a reason for pressing on the importance of intersectionality. After all, discrimination claims are about ascertaining whether discrimination happened

²⁰³ Cour de Cassation, Appeal No. 21-14.060, decided on November 23, 2022 (France).

²⁰⁴ Saïd v Greta, Case No. 0905233.9, decided on 27 April 2009 (France).

²⁰⁵ France, country report, Non-discrimination, European Commission, 2023.

²⁰⁶ Supreme Court, Review Jurisdiction, *Petros Michaelides v Republic of Cyprus through the Minister of Labour and Social Insurance*, Case No. 2005/2012, decided 27 January 2016 (Cyprus).

²⁰⁷ Decision of the District Court Bratislava III, No 14 C 288/2013, decided on 29 July 2022 (Slovak Republic).

and on what basis.²⁰⁸ A lack of clarity over the basis of discrimination (the grounds involved and the particular way in which they yield the discrimination concerned) thus compromises the very point of inquiry in discrimination cases. A win does not obviate the need for clarity over finding the basis of discrimination.

For instance, a hate speech case in Czechia was brought on the grounds of religion or belief, “race” and ethnic origin when a restaurant in its social media posts declared that: ‘We do not cook for immigrants in our restaurant! STOP ISLAM!’.²⁰⁹ This particular statement could be considered hate speech on the basis of religion or “race” or both as a form of xenophobia and Islamophobia combined.

Likewise, Muslim women’s cases involving discrimination related to wearing of headscarves are not always examined as a matter of intersectional discrimination based on “race”, religion or gender or even as a matter of discrimination.²¹⁰ But they can well be examined as such for a more precise determination of the reason why Muslim women are discriminated against, either directly or indirectly.

To conclude, it is clear that intersectionality is sometimes, but not always, the preferred frame for conceiving a claim based on multiple grounds. Competing framings co-exist in case law across Council of Europe member states. While these judicial trends are useful to map, as this section does, it is difficult to surmise the reasons which influence these judicial trends in any deterministic way. What is clear is that formal law – either as laid down in constitutions, in statutory law or in case law – plays a limited role in predicting how a court may approach a potential claim of intersectional discrimination. The reception of claims of intersectional discrimination at courts may ultimately be fortuitous.

B. INTERSECTIONAL DISCRIMINATION IN POLICY

This section explores the realm of policy and its engagement with intersectionality in seven key areas. These areas represent cross-cutting themes in policy across Council of Europe member states. Needless to say, intersectionality is not a feature of all policy. This Study does not bring up examples of policies which lack an intersectional perspective. It instead focuses on policy where intersectionality is present. This means that the seven areas discussed below are where intersectionality was found to be most engaged. Across

Commented [SD6]: This section fails to distinguish adequately between sex as a structural axis of power and other identity markers. By collapsing sex into a rotating list of intersecting grounds, the analysis reduces sex-based oppression to a mere variable among others. For instance, this disregards how female sex remains the defining factor of discrimination in areas like femicide, sexual violence, reproductive control, and economic exclusion. Throughout this section, gender and sex are used interchangeably or without clear distinction, leading to policy generalisation.

²⁰⁸ Shreya Atrey, ‘On the Central Case Methodology in Discrimination Law’ (2021) 41 Oxford Journal of Legal Studies 776.

²⁰⁹ Supreme Administrative Court decision concerning discriminatory hate speech in goods and services, decided 12 April 2023 (Czechia). Case summary available at <<https://www.equalitylaw.eu/downloads/5849-czechia-the-supreme-administrative-court-affirmed-a-decision-concerning-discriminatory-hate-speech-in-goods-and-services>> (last accessed 12 September 2024).

²¹⁰ Cologne Labour Court (Arbeitsgericht Köln) (ArbG Köln), Köln/19 Ca 7222/07, decided 6 March 2008 (Germany); Federal Constitutional Court, 2 BvR 1333/17, decided 14 January 2020 (Germany); Federal Constitutional Court, 1 BvR 471/10, 1 BvR 1181/10, decided 27 January 2015 (Germany).

these areas, intersectionality is being engaged independently as a standalone subject, and also within specific grounds such as gender, “race”, LGBTI, disability, and age or a discrete policy area such as education. This demonstrates, what disability scholars call, the twin-track approach. That is, tackling a subject by referring to it both generally and in reference to other specific subjects. This section shows how intersectionality is being twin-tracked in policy. The seven areas discussed below are meant to be illustrative not exhaustive of this approach. The references to policy in this section are ultimately a snapshot and should not be taken as conveying the totality of policy or an established view on intersectionality in any member state. But they should inspire twin-tracking intersectionality in areas where it remains absent.

In the final analysis, this section shows, what could be considered, a wave of intersectional mainstreaming in policy across Council of Europe member states. Far from being absent, intersectionality appears in policy in two main ways: first, in underscoring the existence of intersectional discrimination against those who belong to intersectionally disadvantaged groups; and second, in emphasising the need to address intersectional discrimination in governance generally and in practice of the government, public authorities and other public and private actors. These two ways are gradually firmly entrenching themselves in different policy areas in member states.

B.1 Conceptual Contribution of Policy

Policy documents in a range of Council of Europe member states mark a conceptual shift towards intersectionality in understanding the nature of disadvantage, discrimination, or vulnerability of people. Intersectionality is thus beginning to be adopted as the overarching or central framework for understanding the situation of subjects of the policies themselves.

For example, the National Strategy for Gender Equality in Montenegro 2021–2025 marks a concerted shift to intersectionality by noting that: ‘the previous strategic document did not contain the intersectional principle sufficiently and that it failed to adequately address the matters of persons of different gender identities or women belonging to sexual and gender minorities (LBTQ women).’²¹¹ It further notes that: ‘When it comes to marginalized women, as well as those who are exposed to multiple (inter-sectional) discrimination - women with disabilities, rural women, the unemployed, members of ethnic or sexual minorities, local action plans rarely involve these groups, their position, and needs. It is striking that even gender equality action plans, targets, activities, or measures often fail to take these subgroups into account.’²¹² This criticism is followed by a corrective which aims to mainstream a fundamentally intersectional perspective on

Commented [SD7]: All intersectional policy analysis should begin with sex-disaggregated data, then built in complexity. Anything else risks making female-specific vulnerabilities invisible in favour of ideological inclusion.

²¹¹ Montenegro Ministry of Justice, Human and Minority Rights, National Strategy for Gender Equality 2021–2025.

²¹² Ibid, page 31.

gender such that the concerns and needs of the most intersectionally disadvantaged groups of women are at the forefront of policy formulation and delivery.

Some policies explicitly distinguish between multiple and intersectional forms of discrimination—using both either interchangeably or specifically.²¹³ Often where multiple discrimination and intersectional discrimination are both mentioned, the former is defined as a broader term referring to discrimination based on multiple grounds while intersectional discrimination is used where multiple grounds ‘operate and interact’ such that they are considered ‘inseparable’.²¹⁴ Spain’s National Strategy for Roma Equality, Inclusion and Participation 2021-2030 specifically adopts ‘recommendations for combating multiple discrimination’ which seem to apply to three forms of multiple discrimination: ordinary, cumulative and intersectional. While there is clarity in how each is defined it is less clear how the policy recommendations relate to each precisely.

The Finnish Policy Brief on ‘Multiple discrimination and the Need to Identify it Better’²¹⁵ also makes a sharp conceptual distinction between different forms of multiple discrimination: ordinary, cumulative and intersectional, where intersectional multiple discrimination is defined as ‘a situation where different grounds converge and intersect, forming a particular reason for discrimination.’²¹⁶ In this way, it characterises intersectional discrimination as ‘a more extensive way to approach the discriminatory mechanisms of society than multiple discrimination tied to specific bases for discrimination.’²¹⁷ The short policy brief goes over examples of intersectional discrimination and in the final analysis emphasises the importance of better identification of the different bases of discrimination in all anti-discrimination and pro-equality work.

Similarly, the Economic and Social Council of Greece together with the National Centre of Social Research, understands multiple discrimination as a broad term which includes cumulative, additive and intersectional discrimination.²¹⁸

The Hungarian National Social Inclusion Strategy II seems to use multiple and intersectional discrimination interchangeably and to mean intersectional discrimination mainly as it states that multiple discrimination is ‘concentrated discrimination based on

²¹³ See Romania, National Strategy for Equal Opportunities between Women and Men (2021-2027) and Romania, Strategy of the Romanian Government on Inclusion of Romanian Citizens Belonging to the Roma Minority (2022-2027). See also Republic of Serbia, Strategy for Prevention and Protection Against Discrimination (2022-2030).

²¹⁴ See the distinction made in these terms in, for example, the Slovak Republic’s Strategy for Equality, Inclusion and Participation of the Roma 2030, page 6.

²¹⁵ Ministry of Justice, Finland, Policy Brief 2, Discrimination in Finland, Current information on discrimination and equality (2019).

²¹⁶ *Ibid*, page 5.

²¹⁷ *Ibid*, page 6.

²¹⁸ Despoina Grigoriadou, ‘Tackling multiple discrimination in Greece: Delivering equality by active exploration and enabling policy interventions’, Qualitative field research for multiple discrimination, Program JUST/2015/RDIS/AG/DISC/9507 (2017), page 9.

gender and ethnic origin [which] affects Roma women in its greatest complexity'. Unemployment, low levels of education, persistent poverty, poor health, inadequate housing, together with low economic and social status cause multiple (intersecting) social exclusion.²¹⁹ In stating that 'multiple discrimination is interwoven discrimination',²²⁰ the policy seems to embrace intersectionality rather than multiple discrimination. It thus insists on targeted programmes aimed specifically at Roma women and Roma children so that they do not fall through the cracks of general policies aimed at women and Roma people. The policy also uses this targeted approach to show how policy across sectors such as education and employment could be adapted to benefit intersectionally disadvantaged individuals and groups within each sector.

Malta's National Strategic Policy for Active Ageing (2023-2030) adopts a holistic approach to societal ageing and challenges the monolithic view of ageing and older people in noting that: 'heterosexuality continues to be a taken-for granted norm in positive and healthy ageing policies, as well as in good practices and minimum standards in community and long-term care. The same can be argued with respect to ethnicity in active and successful ageing policies which tend to assume that the target population inhabits a mono cultural universe characterised by identical norms and values. Moreover, social groups are not only different in their personal and communal outlooks but also hold lower-than-average levels of financial, cultural, social and physical capital.'²²¹ In response, the Policy, 'recognises the significance of intersectionality by highlighting the mutually constructed nature of social division and the ways that these are experienced, reproduced and resisted in everyday life, and instigates policy directives that have the potential to improve the wellbeing of subaltern older persons.'²²²

Likewise, Malta's Anti-Racism Strategy 2021-2023 is couched in fundamentally intersectional terms.²²³ The document opens by setting out its approach as: 'This Strategy is concerned to improve the situation and experience of minority groups and to enhance the quality of relationships and interactions between all groups in society. In this, it takes an intersectional approach, acknowledging the diversity within minority groups. Particular importance will be given to identifying and addressing intersectional discrimination and responding to the particular needs of groups at these intersections.'²²⁴ This perspective seeps through every aspect of the Strategy whose objectives are to establish an infrastructure within which the Strategy unfolds; advancing intercultural

²¹⁹ Ministry of Human Capacities State Secretariat for Social Affairs and Social Inclusion, Hungarian National Social Inclusion Strategy II, Permanently Deprived – Children Living in Poor Families – Roma (2011-2020) page 13.

²²⁰ Ibid, page 30.

²²¹ Government of Malta, National Strategic Policy for Active Ageing (2023-2030), page 51.

²²² Ibid.

²²³ Government of Malta, Anti-Racism Strategy 2021-2023, page 3.

²²⁴ Ibid, page 9.

inclusion; promoting an informed public discourse; and tackling all forms of discrimination experienced by minority groups.²²⁵

Some policies not only adopt an intersectional perspective in a conceptual sense but go a step further and are dedicated to intersectionally disadvantaged groups specifically. One example of this is North Macedonia's National Action Plan for the Protection, Promotion, and Fulfilment of Human Rights of Roma Women and Girls 2022-2024.²²⁶ The Plan frames its strategic goal as 'enhanced intersectional justice, that is, equal and fair access to rights, opportunities, resources, and power in society for Roma women and girls'. The monitoring and redressal of intersectional discrimination is thus one of the key outcomes envisaged under this Plan by activating cross-sectoral and multi-agency cooperation, specifically to address the human rights of Roma women whose position is defined by both gender and ethnicity.

Two points are useful to note. First, even where intersectionality is explicitly adopted as a key conceptual lens in policy, it may not always be defined. This is the case in the Portuguese National Plan Against Racism and Non-Discrimination 2021-2025 which adopts but does not define intersectionality as one of its four main principles.²²⁷ How intersectionality is meant to be understood and mobilised is then left to the actors who implement the policy. Second, where only multiple discrimination (not intersectional discrimination) is defined, there may still be a possibility for developing that policy through the adoption of a conceptual lens of intersectional discrimination in practice. Policies which indicate the need to develop the meaning of 'multiple discrimination' leave open this possibility. For example, the Croatian National Plan for the Protection and Promotion of Human Rights and Combatting Discrimination until 2027 identifies multiple discrimination as one of its areas for development from a legal research and analytical perspective. The idea is that: 'the efficiency of the existing system for protection against discrimination will be evaluated, multiple and structural discrimination, as well as discrimination in access to goods and services, will be investigated, and data on equality in Croatian society will be made available. In partnership with the media, civil society, representatives of social groups that have higher potential exposure to discrimination, and representatives of local communities, action will be taken to prevent discrimination by raising awareness about unequal treatment and encouraging reporting of such incidents.'²²⁸ This framing accepts that multiple and/or intersectional discrimination are evolving concepts and more concerted

²²⁵ Ibid, page 10.

²²⁶ North Macedonia, Ministry of Labour and Social Policy, National Action Plan for the Protection, Promotion, and Fulfilment of Human Rights of Roma Women and Girls 2022-2024 (November 2021).

²²⁷ See also Portuguese National Strategy on Equality and Non-discrimination (2018-2030) and the Portuguese National Roma Communities Integration Strategy (Resolution of the Council of Ministers no. 154/2018).

²²⁸ The Government of the Republic of Croatia, National Plan for the Protection and Promotion of Human Rights and Combatting Discrimination for the period to 2027 (30 March 2023), page 63.

effort is required in adopting clearer conceptual frameworks in order to address the lived reality of intersectional discrimination for social groups.

B.2 Gender Equality Policy

Intersectionality and intersectional discrimination appear to be important features of recent policies on gender. In addition to using the conceptual framework, gender equality policies also (i) identify intersectionally disadvantaged groups of women, (ii) articulate their needs and (iii) enumerate steps to be taken to address those needs.

For instance, in Albania, the National Strategy for Gender Equality 2021-2030 does all three at once. The Strategy describes itself as a ‘strategic document and action plan [emphasizing] all over the importance of supporting, treating, and empowering all women, young women, and girls, including marginalized groups who suffer from intersecting forms of discrimination such as: women, young women, and girls from rural areas, ethnic minorities, with disabilities, LGBTI+, single mothers, victims of rape, victims of trafficking, elderly, asylum seekers, etc., namely from all groups and in all their diversity of society.’²²⁹ The gender equality strategy is thus intersectional from its very inception in that it is aware of women’s position as it is dictated by gender as well as age, rurality, ethnicity, disability, sexuality, motherhood, marital status, age, nationality, immigration status, and experience of sexual violence and trafficking. Women are not only seen as women but as members of ‘all groups and in all their diversity of society’. Specifically, this attention to intersectionality translates into prioritising intersectionally disadvantaged groups. Thus, one of the nine key principles of the national strategy requires ‘addressing the intersectionality of gender discrimination with other forms of discrimination: the focus should also be on the most disadvantaged women, young women, and girls, for example, Roma and Egyptian women, young women, and girls; women, young women, and girls with disabilities; economically and socially deprived women, young women, and girls; women, young women, and girls living in rural areas; women, young women, and girls victims of rape or human trafficking; single mothers; women, young women, and girls migrant and asylum seekers; women, young women, and girls LGBTI+; and older women, since they face multiple forms of discrimination.’²³⁰ Importantly, the achievement of goals and outcomes are also measured and stated in respect of various intersectionally disadvantaged groups of women rather than a general reference to women—which helps monitor not only overall progress in relation to the broad group of women (equality) but also the distribution of progress within the broad group of women (equity).

²²⁹ National Strategy for Gender Equality 2021-2030 (Albania), page 10, available at <https://albania.unwomen.org/sites/default/files/2022-02/WEB_Strategjia%20Kombetare%20-%20EN.pdf> (last accessed 13 September 2024) (emphasis in original).

²³⁰ Ibid, page 24.

All three steps in engaging intersectionality in gender equality policy also appear in policy concerning specific groups of intersectionally disadvantaged women and in relation to specific areas of concern, especially gender-based violence. Importantly, groups of intersectionally disadvantaged women may be brought up not only in gender equality policy but also other policies which concern their intersectional position, such as “race” or disability policy. For example, the Polish policy on Roma integration recognises that Roma women and girls suffer from ‘intersectional discrimination on the grounds of their ethnic origin, gender, low social and economic status as well as the patriarchal model of Roma culture.’ It thus mandates that Roma women ‘be provided with particular support under the current integration programme...by financing conferences, training, workshops and exercises for women and girls of Roma origin aimed at strengthening the broadly-understood potential of women and girls in all areas of community life as well as providing the appropriate tools and skills for smooth functioning in the modern world. Particular attention should be paid to limiting and preventing the phenomenon of early marriage and motherhood which reduces secondary education perspectives of Roma girls and thus pushes them out of the labour market.’²³¹ The same policy also highlights the specific needs of young Roma people and Roma children. Likewise, Austria’s latest Strategy for the Continuation of the Inclusion of Roma pays special attention to Roma women such that almost throughout the report the mention of Roma generally includes the specific articulation of the condition of Roma women whether it is in relation to representation, health, education or another matter. This simultaneous focus on gender and ethnicity as it defines the position of Roma women shows the careful intersectional work that is possible when high level policy is being formulated.

In relation to gender-based violence, intersectionality is prolifically engaged across national contexts to address the specific forms of vulnerability of women who belong to two or more disadvantaged groups. Intersectionality is specifically emphasised here not only as a conceptual matter but as a practical imperative to be adopted by public and private actors in responding to gender-based violence. For example, Malta’s National Strategy on Gender-Based Violence and Domestic Violence (2023–2028) engages intersectionality to strengthen a coordinated and well-resourced multi-agency approach to increase capacity building across agencies ‘to ensure implementation of evidence-based policies which consider the co-morbidity of [gender-based violence and domestic violence] with other social problems (e.g., substance abuse and mental health) and intersectional discrimination.’²³² Likewise, the current Dutch policy on gender-based

²³¹ Poland, Ministry of the Interior and Administration, Programme for Social and Civic Integration of the Roma Community in Poland for 2021-2030 (December 2020).

²³² Government of Malta, ‘Unite, Engage, Elevate: National strategy on Gender-Based Violence and Domestic Violence 2023-2028’; page 26.

violence which applies to everyone is insistent on identification of target groups who may be in need of greater protection based on their intersectional vulnerability.²³³

B.3 “Race”-related Policy

Policies which address matters of “race” and racial discrimination engage with intersectionality in two main ways across Europe: either they address the specific condition of the Roma minority, or they address the conditions of all minoritised and racialised people.

(i) Roma policy

Several of the national strategies for Roma equality across Council of Europe member states prioritise issues of social origin and poverty, taking an inherently intersectional view of Roma discrimination, as not only defined by ethnicity but also various facets of economic inequality. For example, the National Strategy of the Republic of Bulgaria for Equality, Inclusion and Participation of the Roma (2021–2030) identifies poverty amongst the Roma population as one of the main grounds of vulnerability and marginalisation. It thus frames poverty as a key challenge to be addressed through law and policy. Importantly, it adopts an ‘integrated approach’ where issues of socio-economic deprivation are considered alongside issues of inclusion especially in education, employment and representation in local and national politics. This integrated approach to different grounds, forms of vulnerability and human rights lays down a strong intersectional framework for the promotion of equality with regard to all rights (and not only the right to equality and non-discrimination).

The National Strategic Framework to Implement the EU Roma Strategic Framework in Germany brings up intersectionality both in reference to cross-sectoral concerns of education, employment, health and housing and in reference to intersectionally disadvantaged groups such as Roma women and girls.²³⁴ The Framework mentions specific programmes which are directed at intersectionally disadvantaged groups such as migrant women, for example, offering training and qualification programmes for the purposes of integration and employment.²³⁵

The Croatian National Plan for Roma Inclusion 2021–2027 discusses the situation of intersectionally disadvantaged Roma groups in detail. In particular, it pays special attention to the condition of Roma women and Roma persons with disabilities in relation to healthcare. In listing the measures for combating anti-Roma racism and

²³³ Government of the Netherlands, ‘Recognizing, Acknowledging and Respecting each other’s Wishes and Boundaries: National Action Programme for Tackling Sexually Transgressive Behaviour and Sexual Violence’ (2023).

²³⁴ German Federal Ministry of the Interior and the Community, ‘Tackling Antigypsyism: Ensuring Participation National Strategic Framework to Implement the EU Roma Strategic Framework in Germany’, page 11.

²³⁵ Ibid, page 36.

discrimination, the Plan mentions ‘activities to help combat multiple and structural discrimination against the Roma, particularly women and children in the Roma community, Roma belonging to the LGBTI group, Roma with disabilities, the elderly Roma population, stateless Roma or those travelling within the EU’.²³⁶

Intersectionality is also brought up more pointedly in relation to specific thematic issues in need of attention in Roma policy. For example, Bosnia and Herzegovina’s Roma Integration strategy specifically focusses on issues of reproductive health of Roma women.²³⁷ The need for more accessible services, including those which communicate with and educate women about their rights in family and marriage, including the importance of financial and social security are highlighted. This focus on particular areas is appropriate where evidence of particular vulnerabilities and gaps in the realisation of human rights exist.

(ii) Other “race”-related policy

Once again, broader “race”-related policy seems to engage with intersectionality both at a conceptual level and at the level of specific intersectionally disadvantaged groups.

An example of the former is the City of Brussels Action plan against racism and antisemitism which shows awareness of the fact that racism is not always on the basis of “race”, narrowly defined, but can be linked to nationality or national origin, skin colour, descent, social origin, culture, philosophical or religious belief etc.

The National Action Plan Against Racism in Ireland approved in 2023 adopts a fundamentally intersectional understanding of racism and racial discrimination as that which ‘overlap[s] with other forms of discrimination and oppression, like gender-based or ethnic-based oppression’²³⁸ such that ‘the focus on intersectionality is a core principle underpinning the plan.’²³⁹ What is significant is that the Plan does not use the language of multiple discrimination anywhere. Intersectionality is preferred not only as the main term of reference for describing multiple forms of discrimination, vulnerabilities and marginalisation across all walks of life but also as a conceptual tool which best describes that idea. This semantic and conceptual preference in turn feeds into programmatic preference to centralise and prioritise issues concerning intersectionally disadvantaged groups in all policy. This does not mean that the Plan applies differently to different people – it in fact applies to everyone – but with a clear sense that it will require being

²³⁶ Office for Human Rights and Rights of National Minorities of the Government of the Republic of Croatia, National Plan for Roma Inclusion 2021 – 2027 (June 2021), page 39.

²³⁷ See also Bosnia and Herzegovina’s Roma Integration strategy 2020, especially the Action plan for social inclusion of Roma 2021–2025, available at <<https://www.rcc.int/romaintegration2020/participants/2/bosnia-and-herzegovina>> (last accessed 14 September 2024).

²³⁸ Taoiseach, Foreword, ‘National Action Plan Against Racism’ (Government of Ireland) 2023, page 3.

²³⁹ Ibid, pages 4, 9.

tailored to different experiences of racism such as experiences of racism which are mediated by gender.²⁴⁰

The Ministry of Education, Culture, Sport and Youth (MOECSY) in Cyprus outlines its anti-racist policy in intersectional terms by conceptualising racism ‘in a broad manner, including all sorts of discrimination.’²⁴¹ It thus traces how racism is intertwined with sexism, homophobia, transphobia etc. The anti-racist policy is implemented at various levels including at schools with the support of networks such as the School Network for the Support of Antiracist Policy Implementation. The Network affirms that: ‘the theoretical concept of intersectionality permeates all trainings conducted, as the antiracist policy views diversity as a multidimensional phenomenon, involving various aspects of people’s identities and contributes to the decrease of discrimination based on any form of diversity in schools, including religion, beliefs, ethnicity, language, appearance, disability, gender, sexual orientation, etc... Overall, the Network, employing an intersectional approach, identifies and aims to empower teachers and schools in dealing with challenges that relate to the implementation of antiracist policies not only in Cyprus but across the world: the under-reporting of racist incidents, the need for accountability on behalf of organisations and individuals, the development of contextually appropriate pedagogical interventions based on the racisms operating in each context and, the constant awareness of the continually changing and evolving racisms across the globe.’²⁴²

While Greece’s National Action Plan against Racism and Intolerance 2020–2023 does not mention intersectional discrimination, it defines the term ‘multiple’ as ‘any discrimination, exclusion or restriction against a person, based on more than one of the above grounds.’²⁴³ This Plan identifies five target groups, one of which includes persons with disabilities whose situation is described as: ‘Discrimination against people with disabilities / people with chronic condition is typical, multiple or cross-sectoral due to the combination of disability with other causes of discrimination such as gender, racial or ethnic origin, religious beliefs, sexual orientation, etc. They mainly take the form of obstacles (e.g. lack of accessibility to the buildings and public transport), which hinder their autonomous and equal participation in social, economic, political and cultural life. Barriers can be institutional, architectural, technological, and behavioural and can be found in communication, information, practices, procedures, etc.’²⁴⁴ This reference to multiple and cross-sectoral discrimination together can be understood as reflecting an

²⁴⁰ Ibid, pages 9, 12.

²⁴¹ European Commission against Racism and Intolerance, Report on Cyprus (Sixth Monitoring Cycle) (6 December 2022), page 46.

²⁴² European Commission against Racism and Intolerance, Report on Cyprus (Sixth Monitoring Cycle) (6 December 2022), pages 47-48.

²⁴³ Greek Ministry of Justice, National Action Plan Against Racism and Intolerance 2020-2023, page 52.

²⁴⁴ Ibid, page 69.

intersectional understanding where discrimination is understood as co-constituted by a range of grounds and as transpiring in all sectors of private and public life.²⁴⁵

An example of the latter is the Norwegian Government's Action Plan on Gender and Sexual Diversity (2023–2026). The Plan does not name intersectionality; but one of its three focus areas is dedicated to queer people from minority backgrounds and in religious communities.²⁴⁶ Within this, the Plan sets out eleven actions to be taken: (i) providing grants for projects on LGBT+ in religious and belief-based communities; (ii) raise competence through discussions/courses on LGBT+ in religious and belief-based communities; (iii) collect information about attitudes towards LGBT+ people in religious and belief-based communities; (iv) offer local and regional courses in religious and belief-based communities; (v) annual dialogue meeting with the Sami Parliament on queer people; (vi) support research to develop Sami terminology on gender and sexual diversity; (vii) engaging minority counsellors in schools and in directing people to support services; (viii) develop a competence package on LGBT+ for use in Norwegian language tuition; (ix) develop awareness-raising work aimed at the immigrant population; (x) develop guidance material for interpreters; and (xi) commission research on complex discrimination against queer people from ethnic minority backgrounds.²⁴⁷ These are targeted measures meant specifically for queer people from racialised, minoritised and religious backgrounds. This demonstrated substantial level of detail and precision in actualising intersectionality in policy rather than just naming it or using it as a concept.

In another concerted effort, the Ministry of Social Affairs and Employment in the Netherlands identifies not only social groups but also particular strategies for intervention. The Ministry recommends organising 'knowledge tables' on intersectionality with scientists, representatives, experts by experience and other experts from different communities and representatives who work on antidiscrimination and antiracism. The National Program Against Discrimination and Racism states that the results from these knowledge tables have indicated that 'the perspective for action on intersectionality should be expanded.'²⁴⁸ It suggest two ways of doing so through 'a pilot project of the Ministry of Social Affairs and Employment and the Ministry of Education, Culture and Science that aims to develop, execute and test a method teaching policy officials of the Ministry of Education, Culture and Science who have various topics in their portfolios that impact the efforts to tackle discrimination and racism to let intersectionality guide their thoughts and actions. If proven effective, the method will be applied more widely' and 'a more intersectional way of linking data [that] may help obtain

²⁴⁵ See also Greek Ministry of Justice, National Strategy for Persons with Disabilities 2024-2030.

²⁴⁶ Norwegian Ministry of Culture and Equality, Action Plan on Gender and Sexual Diversity 2023-2026.

²⁴⁷ Ibid, pages 26-27.

²⁴⁸ National Coordinator against Discrimination and Racism, National Program against Discrimination and Racism 2022 (Netherlands) page 22.

a more complete picture of equal participation in society and a more balanced portrayal of groups with a migration background.’ The results from these and the Intersectionality Knowledge Tables are seen as relevant in addressing discrimination against Muslims and anti-Black racism.²⁴⁹

B.4 LGBTI Policy

Much like gender and “race”-related policies, LGBTI policies have shown increasing awareness of intersectionality both conceptually and as a strategic priority for specific groups and in relation to specific issues.

The Belgian Plan d'action fédéral pour une Belgique LGBTI friendly (2021-2024) demonstrates all three policy approaches. It explicitly adopts ‘an integrated and systemic approach that takes into account intersectional aspects, paying attention to diversity within the LGBTI community, including gender, so-called “race”, religion, health status, age, etc.’²⁵⁰ Importantly, it recommends that in order to address multiple discrimination working with other national plans such as the plan to combat poverty, the HIV plan, the future action plan against racism, and the national action plan to combat gender-based violence, etc. Intersectionally disadvantaged groups are also specifically identified and named including homeless LGBTI people, LGBTI people living with HIV/AIDS, LGBTI migrants/asylum seekers/refugees, LGBTI sex workers, gay women and girls, disabled LGBTI people, as well as intersections of age and religion.

Malta’s National Strategic Policy for Active Ageing (2023-2030) specifically adopts measures to support LGBTI elderly people such as: (i) establishing a national working group to map the common but also different social and health care challenges experienced by the LGBTI population; and (ii) ensuring that care services are not only LGBTI -friendly but also backed by legal services that safeguard clients from discrimination due to sexual orientation and gender identity.²⁵¹ These measures are borne out of the concern that: ‘mainstream understandings of active ageing exist within a heteronormative framework - thus, leading to an absence of social policy understanding and scholarship relevant to LGBTI older adults. However, public policies on ageing that do not include non-heterosexual ageing are inevitably only giving partial accounts of the ageing experience.’²⁵²

As a general matter, the Albanian National Action Plan for LGBTI People (2021–2027) emphasises priority to be accorded to those most vulnerable who are in turn identified as those who suffer from multiple discrimination and especially transgender and persons

Commented [SD8]: Furthermore, we urge the harmonisation of language in line with international human rights law by referring to prostitution rather than sex work, as the latter term implies a form of legitimate labour and obscures the inherently exploitative nature of prostitution. Moreover, conflating sex, sexual orientation and gender identity under vague categories diminishes the structural analysis of prostitution as a system of male demand and female exploitation, where the vast majority of those exploited are women and girls, and the buyers overwhelmingly male.

²⁴⁹ Ibid, page 32.

²⁵⁰ Pour une Belgique LGBTQI+ Friendly Plan d'Action Fédéral 2021- 2024 (Belgium), page 9.

²⁵¹ Government of Malta, National Strategic Policy for Active Ageing 2023-2030, page 22.

²⁵² Ibid, page 54.

with differences in sexual development.²⁵³ This broad framing allows intersectionally disadvantaged groups to be identified and catered to in the course of policy implementation.

B.5 Disability Policy

The two main approaches to intersectionality in policy—of adopting the concept and naming intersectionally disadvantaged groups—are both present in disability policy too, wherein these two approaches have been considered as the ‘twin-track’ approach to disability.

In Austria’s latest National Action Plan for Disability (2022–2030) intersectional discrimination finds mention in two ways. First, attention is drawn to the concept itself. One out of eight thematic chapters is dedicated to non-discrimination and identifies as part of its key priorities: (i) measures for increased awareness raising for judges and prosecutors regarding multiple and intersectional discrimination and (ii) the development of proposals to strengthen the protection against multiple discrimination. There is also an emphasis on obtaining disaggregated data through representative surveys, statistics and indicators which focus not only on disability but also other socio-economic and intersectional factors.²⁵⁴ Second, attention is drawn to intersectionally disadvantaged groups—such as women with disabilities or the specific vulnerabilities in relation to migrants with disabilities—at relevant points throughout the Study. This integration of references to intersectionally disadvantaged groups throughout, rather than as an afterthought, to the broader group of all persons with disabilities reflects the preferred ‘twin-track’ approach in the Convention on the Rights of Persons with Disabilities which conceives disability both in terms of disability itself as well as other protected characteristics such as gender and age.²⁵⁵

This twin-track approach is also visible in Bulgaria’s National Strategy for Persons with Disabilities 2021–2030 which speaks of disability throughout and at relevant points ‘in particular’ about disabled women and girls, disabled children, and older persons with disabilities.²⁵⁶ While general reference to multiple or intersectional discrimination are absent, these specific references serve as the reminder of particular vulnerabilities to be accounted for at least for the groups specified.

²⁵³ National Action Plan for LGBTI People 2021–2027 (Albania), available at <<https://shendetesia.gov.al/wp-content/uploads/2022/01/LGBTI-NAP-2021-2027-EN-final.pdf>> (last accessed 13 September 2024) page 10.

²⁵⁴ Nationaler Aktionsplan Behinderung 2022–2030, Ministerratsvorlage Österreichische Strategie zur Umsetzung der UN-Behindertenrechtskonvention (July 2022) page 146 (Austria).

²⁵⁵ See the idea as explained by Amita Dhanda in ‘Sameness and Difference: Twin Track Empowerment for Women with Disabilities’ in Renu Addlakha, *Disability Studies in India: Global Discourses, Local Realities* (Routledge 2013).

²⁵⁶ National Strategy for Persons with Disabilities 2021–2030 (Bulgaria), page 47.

Malta's National Strategy on the Rights of Disabled Persons 2021–2030 stresses the importance of intersectionality in understanding and addressing the barriers for the full realisation of the rights of persons with disabilities.²⁵⁷

B.6 Children's Policy

In line with other policies directed at vulnerable groups, policies for children adopt the two ways of engaging with intersectionality outlined above. Greece's Child Guarantee National Action Plan of 2022 draws attention to children's multiple axes of vulnerabilities due to poverty, disability, "race", ethnicity, refugee and migrant status, parents in prison, domestic violence etc. Serbia's National Youth Strategy 2015-2025 'recognises the groups of young people who are vulnerable, marginalised, at risk of social exclusion and poverty as well as those who are exposed to multiple discrimination and exclusion.'²⁵⁸ This acknowledgement leads to the recommendation that all 'goals and activities need to provide support to these groups of young people, better identification of vulnerable young people, while the action plan indicators must address separately and monitor all categories of young people at risk of social exclusion.'²⁵⁹

B.7 Educational Policy

It is important to note that not only policies in relation to specific groups like Roma people or based on specific grounds such as gender or "race" may engage with intersectionality but also that policies in relation to public goods and services such as education, healthcare, transport etc can and should also engage with intersectionality as they too are ultimately experienced differently by different people.²⁶⁰

The examples from educational policy exemplify this broad approach to intersectionality. Malta's Policy on Inclusive Education in Schools²⁶¹ defines inclusive education itself through intersectionality where the differences between learners are seen as co-constituted by a range of non-exhaustive list of factors which must be regarded and addressed in educational settings.²⁶² Importantly, learners' intersectional realities are in fact to be treated as opportunities for enriching learning in a pedagogical sense.²⁶³ Likewise, in the

²⁵⁷ Government of Malta, 'Freedom to Live: Malta's 2021–2030 National Strategy on the Rights of Disabled Persons'. See also Government of Malta, 'A Social Vision for Malta 2035: Shaping the Future of Our Society', Policy Document, December 2022.

²⁵⁸ Serbia's National Youth Strategy 2015-2025, page 5.

²⁵⁹ Ibid.

²⁶⁰ See, for example, at Council of Europe level, Guidelines CM(2023)51-add2-final on the place of men and boys in gender equality policies and in policies to combat violence against women, which take an intersectional approach to education and health.

²⁶¹ Government of Malta, Policy on Inclusive Education in Schools A Policy on Inclusive Education in Schools: Route to Quality Inclusion (2022).

²⁶² Ibid, page 11.

²⁶³ Ibid, page 9.

Netherlands, the educational policy states that it adopts an intersectional approach.²⁶⁴ These manifestations of an intersectional approach show a trend towards mainstreaming of equality/non-discrimination and intersectionality across all policy areas, in particular those concerning basic goods and services and human rights.

C. INTERSECTIONAL DISCRIMINATION IN PRACTICE

Besides formal law and government policy, intersectionality is adopted by public and private actors in their daily functioning. Whether it is institutions and their training or practice manuals, or the terminology, framework and practice of NGOs, think-tanks, public service providers or broader civil society networks and communities, intersectionality appears pervasive. The degrees of engagement differ—from being gestured to, to being used as a background idea or framework, to being explicitly named, to being named but not utilised, to being utilised scrupulously. The engagement may also not be comprehensive, in that not every public or private actor is bringing up intersectionality in their work. Yet, looking across the broader discourse and practice in the Council of Europe member states indicates that there is openness to intersectionality across stakeholders, service providers, corporations etc.

Thus, this final section presents a brief vignette of practice which is located outside of the formal law and government policy considered in the previous two sections. The purpose is to delineate three main ways in which intersectionality is being brought up and engaged with and draw from it lessons for future practice explored in the next Part of the Study.

C.1 Work of Equality Bodies and Ombudspersons

Irrespective of what the national or governmental landscape of law and policy look like, national equality bodies or Ombudspersons in charge of equality matters show awareness of intersectionality in their work. There is a need for expanding the powers of equality bodies to be able to investigate and address all forms of discrimination based on all grounds. One of the key impetuses behind this trend has been the United Nations' recommendation for countries to develop comprehensive anti-discrimination legislations²⁶⁵ which can deal with all forms of discrimination across all grounds in a single specialised legislation. A single consolidated legislation is understood to be able to better deal with, inter alia, intersectional discrimination. For example, this recommendation was made unequivocally in the final report of the Commission for

Commented [SD9]: As per the previous comments, the study would benefit from the following incorporations: Re-anchoring intersectionality in the material reality of sex as the core structural basis for women's oppression, while acknowledging how this intersects with other systems of disadvantage (e.g. class, race, migration). Reframe intersectionality in practice to include analysis of how the sex of the service user affects their access to, and experience of, support services, especially in male-dominated institutions. Standardize and harmonize language (the repeated use of sex work, instead of prostitution).

²⁶⁴ Government of the Netherlands, 'National Action Plan for Greater Diversity and Inclusion in Higher Education and Research', available at <<https://www.government.nl/documents/reports/2020/09/01/national-action-plan-for-greater-diversity-and-inclusion-in-higher-education-and-research>> (last accessed 3 December 2024).

²⁶⁵ OHCHR, 'Protecting Minority Rights – A Practical Guide to Developing Comprehensive Anti-Discrimination Legislation' (6 December 2022) <<https://www.ohchr.org/en/publications/policy-and-methodological-publications/protecting-minority-rights-practical-guide>> (last accessed 7 March 2025).

Evaluation of Federal Anti-discrimination Legislation in Belgium in 2022.²⁶⁶ Likewise, in Andorra, the mandate of the Raonador del Ciutadà (Ombudsperson) was enlarged in 2017 with the purpose of fighting all forms of discrimination. This revised mandate was in direct recognition of the need to streamline and strengthen the fight against discrimination through a strong and independent institution with broad power, including to receive and investigate complaints across private and public spheres.²⁶⁷ The empowering of equality bodies to deal with all forms of discrimination across all grounds is understood to strengthen the competence of equality bodies on each ground and also enable co-ordination across equality bodies. This does not require the merger of competencies of equality bodies working across different grounds of discrimination. But it does require strengthening of existing and greater cooperation of work across all grounds of discrimination.

Even in contexts where there are multiple equality bodies under multiple legislations, there seems to be some coordination of action in relation to intersectional discrimination in either of the following two ways. First, where multiple equality bodies have competence across all grounds of discrimination but different operational spheres, each body is capable of addressing intersectional discrimination within its sphere. For example, in Austria, the Equal Treatment Ombudsperson focuses on employment relationships in the private sector and for discrimination outside work; the Equality Officers focus on the civil service and support those affected in the assertion of their right to equal treatment; and the Equality Commission deals with all issues related to discrimination and can, in particular, provide expertise in and examine individual cases.²⁶⁸ While each equality body operates in a different context and with specific powers, each, in principle, can address intersectional discrimination within their remit. Indeed, in practice, this is the primary route for addressing intersectional discrimination in Austria since no other formal route to recognising intersectional discrimination under a single statute or through a single equality body exists. Ombudspersons frequently make connections across other grounds mandated in their own work and cooperate with other mandate holders on questions of intersectionality.

²⁶⁶ Commission d'évaluation des lois fédérales tendant à lutter contre la discrimination, Rapport Final, 'Combattre la discrimination, les discours de haine et les crimes de haine : une responsabilité partagée', available at <https://equal.belgium.be/sites/default/files/Commission%20Evaluation%20Lois%20Antidiscrimination%20-%20Rapport.pdf> (last accessed 1 October 2024).

²⁶⁷ Citizen's Ombudsman of Andorra, European Network of National Human Rights Institutions, available at <https://ennhri.org/our-members/andorra/#:~:text=The%20General%20Council%20approved%20the,complementary%20manner%20to%20the%20jurisdictional> (last accessed 14 September 2024).

²⁶⁸ Equal Treatment, Federal Ministry Republic of Austria, available at <https://www.bmaw.gv.at/en/Topics/Labour-Law/Equal-Treatment.html> (last accessed 14 September 2024).

Second, where multiple equality bodies have competence on different grounds covered under different legislations, each body can still tackle intersectional discrimination in relation to the specific ground it is tasked to monitor.

Equality bodies have also committed to collect data where they can, through surveys, interviews, and of reported cases, and incidents which involve intersectional discrimination.²⁶⁹ In Belgium, for example, the project—IEDCB (Improving Equality Data Collection in Belgium)—seeks to improve ways to collect data especially data that is disaggregated by grounds. There also appears to be a practice of sharing research expertise and data across bodies such as between Unia and the Institute for Equality of Women and Men, which is the federal equality body for gender issues in Belgium.²⁷⁰ A similar practice exists in Croatia where Ombudspersons working across a range of different grounds cooperate where multiple grounds of discrimination are involved either in specific cases or in relation to thematic areas or issues.²⁷¹

Equality bodies may also assist in laying down guidelines or procedure for bringing claims of multiple and intersectional discrimination such as has been the case in Bulgaria.²⁷² They may equally, like the Finnish Ministry of Justice-owned Finlex website, provide equality assessment tools for duty-bearers such as employers to assess their own compliance with and understanding of obligations under equality law, including the need to prohibit, prevent and punish multiple discrimination (which includes examples of intersectional discrimination).²⁷³

C.2 Work of service providers

A range of service providers—both public bodies as well as civil society organisations engage with intersectionality on an everyday basis in their work. This is largely in recognition of the fact that service provision must be designed and delivered in such a

²⁶⁹ See for e.g., the German Federal Anti-discrimination Agency (FADA) that has commissioned narrative interviews to understand experiences of intersectional discrimination. ‘Mehrdimensionale Diskriminierung – Eine empirische Untersuchung anhand von autobiografisch-narrativen Interviews’, available at https://www.antidiskriminierungsstelle.de/SharedDocs/downloads/DE/publikationen/Expertisen/expertise_mehrdimensionale_diskriminierung_empirische_untersuchung.pdf?__blob=publicationFile&v=2 (last accessed 14 September 2024). See also the ongoing evaluation of the German Prostitute Protection Act, among other things, examines how intersectionality influences its implementation, particularly through a large-scale survey of 2000 sex workers. See also Greece’s National Centre for Social Research (EKKE)’s survey on multiple discrimination, available at <https://www.ekathimerini.com/society/235462/new-survey-exposes-extent-of-multiple-discrimination-in-greece/> (last accessed 14 September 2024).

²⁷⁰ UNIA, Anti-discrimination legislation, available at <https://www.unia.be/fr/publications-et-statistiques/publications/protocole-daccord-relatif-a-la-collaboration-entre-linstitut-pour-legalite> (last accessed 14 September 2024).

²⁷¹ Croatia, Country report, Gender equality, European Commission, Directorate-General for Justice and Consumers.

²⁷² See for e.g., the work of the Commission for Protection against Discrimination in Bulgaria.

²⁷³ Finlex, Assessment of Equality, available at <https://yhdenvertaisuus.finlex.fi/en/yhdenvertaisuuden-arviointi/mita-arvioidaan/> (last accessed 3 December 2024).

way that it responds to the unique needs of people especially those whose needs are exacerbated by various forms of discrimination. Two areas where intersectionality is considered carefully are particularly instructive—gender-based violence and migration and asylum.

(i) Gender-based Violence Work

There is acute awareness of intersectionality and the experiences of intersectional discrimination in work against gender-based violence across sectors.

In Andorra, the services engaged in work with victims of gender-based violence and domestic violence show awareness of intersectionality in their work. In Bosnia and Herzegovina, there is a commitment to address gender-based violence through cross-sectoral cooperation, even where this commitment has been difficult to realise in practice.²⁷⁴ Barriers to cross-sectoral cooperation range from, at the broadest level, the lack of a clear formal or legal definition of intersectional discrimination which all sectors and stakeholders adopt; to the specific level, of implementation, to be able to deliver both victim-centric and structural remedies for redressing and preventing violations.

The Council of Europe’s Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO)’s report on Greece²⁷⁵ takes an intersectional view of gender-based violence and incorporates a reference to intersectionality as a concept and to vulnerable intersectional groups where relevant, throughout. In particular it emphasises the need for ‘the inclusion of an intersectional dimension into the policies and programmes to prevent and combat violence against women, and the fact that these policies form an integral part of gender equality policies, should be underlined’.²⁷⁶ GREVIO thus ‘strong[ly] encourages’ Greek authorities to: ‘a. step up their action to prevent and combat violence against women exposed to intersectional discrimination by taking measures to eliminate any discrimination faced by Roma, LGBTI, asylum-seeking, refugee and migrant women, and women with disabilities; b. raise the awareness of victims belonging to these groups of women about their rights to protection and support services; c. develop and improve access to protection and support services for the above-mentioned groups of women; d. support research into the forms of violence

²⁷⁴ Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) (Baseline) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), Bosnia and Herzegovina, 2022.

²⁷⁵ Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), GREVIO’s (Baseline) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) in Greece (2023).

²⁷⁶ Ibid, page 6.

experienced by specific groups of women and girls at risk of or exposed to intersectional discrimination.²⁷⁷

Likewise, research focussed on intersectionally disadvantaged groups such as Roma women also expands the knowledge base of intersectional discrimination. In Hungary, the European Roma Rights Centre, for example, has produced a detailed report on the reproductive rights of Romani women.²⁷⁸ The report covers the geographic and contextual information in which the report is based, and then provides an account of human rights fact-finding in relation to forced sterilisation, segregated maternity wards, mistreatment and access to healthcare. It concludes with five recommendations to: 'provide Romani and socially marginalised girls and boys with adequate sexual education; provide Romani and socially marginalised women with adequate family planning counselling services; provide pregnant Romani women with accessible birth-preparation sessions (including labour room visits organised by the maternity units of public hospitals); raise awareness among Romani and socially marginalised women and girls about legislation and access to justice regarding reproductive rights, patient's rights, and the principle of non-discrimination; empower pregnant Romani women through peer support, promoting the presence of companions during labour and birthing (partners, female friends, family members, or doulas).²⁷⁹

In a similar light, the Italian Ministry of Interior, together with the Central Directorate of the Criminal Police and the Observatory for the Security against Discriminatory Acts (OSCAD), have conducted research on violence faced by women with disabilities.²⁸⁰

In the Netherlands, the Ministry of Health, Welfare and Sport commissioned research on the relationship between sexual orientation, gender identity and domestic violence. The report focuses on (1) risk factors and perpetrator profiles for 'bi+, trans and intersexual victims', (2) effective and inclusive support for victims and (3) effective prevention for the target groups. The research was published in 2022 and consisted of several recommendations. Victim Support Netherlands provides emotional, practical, and legal support in the criminal process to victims of (suspected) criminal offenses,

²⁷⁷ Ibid, page 13.

²⁷⁸ European Roma Rights Centre, 'Reproductive Rights of Romani Women in Hungary', Cause of Action Series (2020).

²⁷⁹ Ibid, page 37.

²⁸⁰ Italian Ministry of Interior, Central Directorate of the Criminal Police and the Observatory for the Security against Discriminatory Acts, 'La Violenza Contro Le Donne Con Disabilita', available at <https://www.interno.gov.it/sites/default/files/2022-12/la_violenza_contro_le_donne_con_disabilita.pdf#:~:text=La%20E2%80%9Cdiscriminazione%20multipla%20%9D%20C3%A8%20quella%20vissuta%20da%20un,che%20caratterizzano%20la%20vittima%20nella%20sua%20E2%80%9Ccom-plessit%C3%A0%20identitaria%20%9D> (last accessed 3 December 2024). See also The Italian Multiple Sclerosis Association (AISM), in partnership con Associazione Differenza Donna, Human Foundation e ASPHI, which has led a project dedicated to all women with multiple sclerosis who suffer double discrimination first as women and then as persons with disabilities, available at <<https://www.progettoideaism.it/home/>> (last accessed 3 December 2024).

including forms of gender-related violence covered by the Istanbul Convention. Civil society organisations are also invested in strengthening the position of women victims of intersectional forms of gender-based violence. An example is the initiative of the Foundation Clara Wichmann, which pays specific attention to intersectional discrimination including through its focus on non-binary or trans persons.²⁸¹

International attention, especially of the United Nations, to intersectionality in gender-based violence and domestic violence also creates a boomerang effect of further raising the profile of intersectional work in Europe.²⁸²

(ii) Migration and Asylum Services

Actors engaged with migration and asylum services employ intersectionality in their work not only to assess and understand risk but also to develop practices which are sensitive to those who are accessing these services, and to cater to their unique needs and vulnerabilities.²⁸³

For example, in Armenia, a free-of-charge mobile application (MigApp) was developed to assist migrants with a range of helpful services and information based on their particular requirements.²⁸⁴

Likewise, in Denmark, the police have been maintaining an active relationship of dialogue with migrant communities and Muslim communities in order to address hate speech and hate crimes by working together with asylum-seekers reception centres and Mosques as part of confidence-building measures.²⁸⁵ While this may not be sufficient to tackle the scale of racism, Islamophobia and xenophobia, the effort to work with and alongside racialised, minoritised and marginalised communities is indispensable in tackling forms of discrimination which are fundamentally intersectional in nature.²⁸⁶

In Malta, the Agency for the Welfare of Asylum Seekers (AWAS) and the Migrants Advisory Unit have produced a leaflet providing information on gender-based violence, female genital mutilation, domestic violence and health. AWAS also provides counselling group

²⁸¹ Bureau Clara Wichmann, available at <<https://clara-wichmann.nl/>> (last accessed 3 December 2024).

²⁸² See for e.g., Government of Iceland, 'UN Women Peer to Peer Dialogue - Sexual Harassment and Intersectionality' available at <<https://www.government.is/diplomatic-missions/embassy-article/2022/03/03/Opening-remarks-at-CEB-Task-Force-on-Addressing-Sexual-Harassment/>> (last accessed 3 December 2024).

²⁸³ Council of Europe Recommendation CM/Rec(2022)17, 'Protecting the Rights of Migrant, Refugee and Asylum-Seeking Women and Girls', adopted by the Council of Ministers on 20 May 2022 <<https://rm.coe.int/prems-092222-gbr-2573-recommandation-cm-rec-2022-17-a5-bat-web-1-1680a6ef9a>> (last accessed 22 February 2025)

²⁸⁴ ECRI Report on Armenia, sixth monitoring cycle, adopted on 29 March 2023.

²⁸⁵ ECRI sixth monitoring cycle report for Denmark, 2022.

²⁸⁶ Shreya Atrey, 'Understanding Xenophobia as Intersectional Discrimination' (2022) 79(3) Washington and Lee Law Review 1007; Shreya Atrey, 'Xenophobic Discrimination' (2024) 87 Modern Law Review 80.

sessions to women migrants. The Migrants Advisory Unit also provides information on legal rights and procedures including legal aid.

In Portugal, the High Commission for Migration (ACM) created the Project Team on Intersecting Inequalities (EPDI) in 2019, with the core mission of mainstreaming gender equality through the implementation of policies for the integration of migrants, including refugee and asylum-seeking women and the integration of Roma communities.²⁸⁷ In 2022, the ACM launched the project 'Portugal: Enhancing Migrant Integration Services' whose aim is to enable successful integration of migrants and refugees in the country by improving existing service provision across sectors including housing, education, employment and health.²⁸⁸

Adventist Development and Relief Agency (ADRA) in its report 'Room for Women and Girls: Female Voices from Refugees and Migrants in Serbia' uses women's testimonies to show how migrant women not only have a higher risk of exposure to gender-based violence but also to a 'higher risk of more violent form[s] of violence'.²⁸⁹ The report underscores the importance of qualitative research on and active participation and involvement of women migrants from a range of backgrounds in preventing and combating human rights violations.

C.3 Capacity building and awareness-raising work

A range of capacity building efforts towards education, dialogue, awareness-raising and training around intersectionality are being pursued across local and national, and public and private sectors.

There is increasing emphasis across countries on raising awareness and training judges, lawyers, police, prosecutors and service providers on intersectionality.²⁹⁰ The emphasis here is twofold. To have judges, prosecutors and service providers engage with intersectionality intellectually and also to develop practical tools for them to identify and address cases of intersectional discrimination capably.

Research projects, seminars, roundtables and other events which bring together various stakeholders to share their research and/or experience of intersectional discrimination

²⁸⁷ Alto Comissariado Para As Migrações (Portugal), 'Intersecting Inequalities', available at <<https://www.acm.gov.pt/en/-/desigualdades-interseccionais>> (last accessed 3 December 2024).

²⁸⁸ 'Enhancing Migrant Integration Services in Portugal' (28 November 2022), available at <<https://unofficeny.iom.int/news/enhancing-migrant-integration-services-portugal>> (last accessed 28 November 2024).

²⁸⁹ Adventist Development and Relief Agency, 'Room for Women and Girls: Female Voices from Refugees and Migrants in Serbia' (2019), page 58.

²⁹⁰ See Austrian National Action Plan for Disability (2022–2030). See also national workshop organised in Hungary to discuss good practices in the field of hate crime policing and prosecution to address intersectional discrimination; and the Report on 'Counter-Hate', which studies the crucial role of intersectional and victim-centred approaches to confronting bias-motivated violence in Greece, Italy, Lithuania, Slovenia, Spain and Hungary.

have played an important role in raising awareness about intersectionality at the grassroots.²⁹¹

Some countries have also invested in updating their educational, especially school, curriculum to reflect intersectionality. In Azerbaijan, for example, ‘Promoting gender transformative approaches in primary and secondary education in Azerbaijan’ project funded by the United Nations Population Fund (UNFPA) and the European Union (EU) reviewed school curricula in terms of gender equality, intersectionality, and inclusivity.²⁹²

Likewise, knowledge sharing agreements exist between civil society organisations and non-governmental organisations. For example, the organisation for Jewish people in Bulgaria (Shalom) and the GLAS (Gays and Lesbians Accepted in Society) Foundation have signed a Memorandum of Understanding and Cooperation, committing to share experience and expertise on preventing and combating forms of intolerance and their physical manifestations, in particular hate speech and hate crime.²⁹³

Research projects and focus groups are another way in which organisations undertake intersectionality-related work. For example, the Ombudsman Institution of Croatia organises an Open Ended Working Group on Ageing that has paid special attention to intersectional discrimination faced by older people.²⁹⁴ The Gay Project Cork (Ireland) gathered data on the ‘lived experiences of, and attitudes towards, racialisation and discrimination of LGBTQ+ people of colour’ and revealed ‘concerning experiences of racialisation and xenophobia across a wide range of settings including in nightclubs, in the workplace and even on the street.’²⁹⁵ The Directorate for Children, Youth and Family Affairs (Bufdir) in Norway commissioned a study ‘Queer Migrants in Norway’ about the living conditions among LGBTI migrants in Norway.

In Lithuania, a self-standing ‘Training Methodology’ lays down guidelines for ‘all agencies involved in responding to or preventing domestic violence’ in responding to domestic violence which is based on both disability and gender. The training is thus aimed at the police, the territorial offices of the State Child Rights Protection and Adoption Service, the Centres for Specialized Complex Support (working with adult victims), the

²⁹¹ Queer Cyprus Association, Thematic Discussion Event on ‘Disability and Gender’ (23 May 2022), available at <<https://queercyprus.wixsite.com/my-site-3/en/post/queer-cyprus-association-held-a-thematic-discussion-event-on-disability-and-gender>> (last accessed 3 December 2024). See also a Malta study commissioned by the Commission for the Rights for Persons with Disability in March 2022 which included ‘Intersectionality and Persons with Disability’; Monaco High Commissioner for the Protection of Rights and Liberties, and for Mediation of the Principality of Monaco, the 2022 Annual Report which included an annual seminar on ‘can intersectionality contribute to effective equality?’.

²⁹² ECRI fifth report on Azerbaijan, 6th monitoring cycle, Published on 21 June 2023.

²⁹³ ECRI Country report on Bulgaria, Sixth monitoring cycle, 2023.

²⁹⁴ See also Sweden, Stories of victimisation: An analysis of discrimination related to several grounds of discrimination (Equality Ombudsman report of 2023, in SW).

²⁹⁵ LGBTQ+ people of colour in Cork face multiple discrimination, finds new report (2022), available at <<https://gcn.ie/gbtq-people-colour-cork-multiple-discrimination-crossroads-report/>> (last accessed 3 December 2024).

institutions performing the case management function, usually the Social Service Centres and other services (healthcare, education etc) to ‘help them to increase the competence they need for their daily work.’²⁹⁶ Given that this training is specifically targeted to address experiences of domestic violence which are intersectional and thus integrates disability and gender together from the inception, it may be seen as an example of a specialised and considered response to address intersectional discrimination by modulating a training specifically from an intersectional group’s perspective. The benefit of this is that the targeting actually reaches out to a broader range of groups rather than just that group.

The National Commission for the Promotion of Equality in Malta dedicated its International Women’s Day Conference in 2022 to the topic of women’s intersecting identities. The Conference allowed a wide-ranging discussion of the concept and its challenges, as well as many examples of intersectional discrimination and the responses to them.

GREVIO also notes with satisfaction the training of 50 magistrates on domestic violence and violence against Roma women, including training 200 frontline social workers engaged with Roma women in Romania.²⁹⁷

Statistics Sweden has recently (2024) developed an online tool for how to best collect and present statistics disaggregated by sex and other grounds of discrimination.

Intersectionality is also being invoked in art and culture. This invocation creatively engages with the idea that oppression is defined by various axes of power. Such invocation plays a role in dismantling the idea that people and their disadvantage can be understood in a monolithic way or against a single framework. For example, the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe) in its Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans, and Intersex People in Albania from 2021 notes that intersectionality was addressed through theatre shows and exhibitions organised by Aleanca (Alliance Against Discrimination of LGBT people), and Roma and disability rights organisations.

These measures are essentially awareness-raising and capacity-building measures which are being pursued at various levels to increase competence, information and awareness around intersectionality. Importantly, these measures treat intersectionality as an educational, civil, cultural and social matter in addition to a legal and policy tool. The applicability and resonance of intersectionality thus exceeds discrimination law and appears instead as a broad value on par with other values such as rule of law and dignity.

²⁹⁶ Lithuania, ‘The Intersections of Disability, Gender and Violence in Response to and in Prevention of Domestic Violence’ (2023).

²⁹⁷ GREVIO’s (Baseline) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) (Romania).

**PART III:
A MODEL FOR INTERSECTIONAL
DISCRIMINATION**

III. RECOMMENDATIONS

The final part of this Study makes recommendations for mainstreaming intersectionality and responses to intersectional discrimination in the Council of Europe member states. The recommendations are drawn from the conceptual framework presented in Part I and the landscape of law, policy and practice canvassed in Part II of the Study. Together, the recommendations present a model of reform which can serve as a template for further developments. It is suggested that this model of reform be pursued through a **Committee of Ministers Recommendation**, developed by the CDADI through a dedicated working structure and in consultation with the Gender Equality Commission (GEC). The model can be fleshed out and individually expanded upon based on the needs of different intersectionally disadvantaged groups and the context of particular member states. Thus, the model will serve as a baseline for enabling further developments and importantly, for generating a shared commitment towards addressing intersectional discrimination by the Council of Europe and its member states.

A. TERMINOLOGY

Intersectional discrimination—which represents a qualitatively distinct form of discrimination that is based on a combination of two or more grounds whose effects cannot be disentangled—was embraced by the ECtHR on 10 December 2024 in its decision in *FM v Russia*. This was the first time the ECtHR adopted the term explicitly and applied it analytically in finding a violation of the Convention.

The term ‘intersectional discrimination’ has been adopted in some member states. But in other member states it is referred to by terms such as ‘combination discrimination’, ‘combined discrimination’, ‘cumulative discrimination’, ‘cross-sectorial discrimination’, ‘dual discrimination’, ‘multiple discrimination’, ‘multi-ground discrimination’, ‘multidimensionality’ etc. This variance in referring to intersectional discrimination also often alters its meaning as each of these other terms mean different things across different contexts. This variance ultimately leads to significant terminological and conceptual confusion.

To avoid this terminological and conceptual confusion, member states are recommended to adopt the terminology of intersectional discrimination especially in their equality and anti-discrimination law—whether in the text of the constitution or statutes or in case law. Furthermore, this reference should be streamlined across law, policy and practice with the use of related terms such as intersectionality—to refer to the broad idea that discrimination is co-constituted; and intersectionally discriminated groups—to denote people who are at risk of discrimination based on more than one ground, such as Roma women, Muslim women, disabled older people, Muslim LGBTI persons etc.

Where countries have adopted other terms such as ‘multiple discrimination’ or ‘combined discrimination’ in their law and policy, they are encouraged to define these terms in such a way that it means intersectional discrimination. Any adoption of discrimination based on multiple grounds should exceed a merely quantitative or iterative understanding where each ground is required to be proven separately or sequentially. Thus, terminologies such as ‘double’, ‘dual’ or ‘triple’ discrimination which signify a quantitative understanding of discrimination based on multiple grounds should be avoided. Likewise, the use of several synonyms or related terms or terms which are anti-thetical to intersectional discrimination should be avoided as multiplication of terms in the area has hitherto been a source of confusion. Finally, where multiple languages are used across law and policy in a member state, translation across languages may be a barrier in adopting the recommended terminology uniformly. In such cases, the cognate closest to the recommended terminology of intersectional discrimination may be adopted.

It is recommended that member states:

- Adopt the term ‘intersectional discrimination’ in law, policy and practice.

B. MEANING

Member states should adopt a clear conceptual definition of intersectional discrimination which recognises two irreducible components of its meaning. First, intersectional discrimination is **‘based on a combination of two or more grounds’**. Second, intersectional discrimination **‘represents a qualitatively distinct form of discrimination which reflects both similar and unique patterns of group disadvantage associated with grounds including sex, gender, “race”, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity and expression, sex characteristics, age, state of health, disability, marital status, migrant or refugee status, or other status’**.

It is important for the list of grounds attached to a prohibition of intersectional discrimination to be open-ended, with the possibility of including additional new grounds, as the basis of intersectional discrimination. Likewise, references to intersectionality in policy documents and wider practice of public and private bodies should be anchored in a conceptual framework which is not limited to any specific context or set of grounds. Instead, it should embrace the broad idea that disadvantage and discrimination can be co-constituted by and associated with an open-ended list of grounds.

These conceptual meanings of intersectional discrimination and intersectionality should be adopted consistently and across law, policy and practice. This streamlining is significant both at the terminological and conceptual levels and would help generate a

Commented [SD10]: While the aim to harmonize terminology is understandable for coherence across jurisdiction, the blanket recommendation to replace all other framings risks overlooking the distinctive systemic nature of sex-based discrimination. The study rightly identifies terminological confusion, but fails to acknowledge that this confusion stems from the conceptual flattening of sex, gender, and gender identity into interchangeable grounds. The example “Muslim LGBTI persons” highlights how intersectionality is often deployed in a manner that collapses sex into identity categories.

clear commitment and consensus towards understanding and addressing intersectional discrimination in Europe.

It is recommended that member states:

- Adopt, in law, policy and practice, the meaning of intersectional discrimination as based on a combination of two or more grounds and as representing a qualitatively distinct form of discrimination which reflects both similar and unique patterns of group disadvantage associated with grounds including sex, gender, “race”, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity and expression, sex characteristics, age, state of health, disability, marital status, migrant or refugee status, or other status.

C. POLICIES AND MEASURES

In policy, intersectionality should be twin-tracked in: (i) individual policies related to different grounds (gender, “race”, disability, SOGIESC etc) and different areas (healthcare, education, gender-based violence etc); and (ii) specific policies related to particular intersectionally disadvantaged groups (Roma women, disabled older people, Muslim women etc). This simultaneous twin-tracking of intersectionality in both general and specific ways is already prevalent and should be adopted consistently and comprehensively across all areas of governance in each member state.

In addition, all policies should adopt a framework to promote equality for all, including to promote intersectional equality, to ensure that the most marginalised and disadvantaged sections of the society are protected from discrimination and enjoy and exercise their human rights on an equal basis with others. This could be done in the form of equality mainstreaming with a particular focus on intersectional discrimination.

Member states should reorient measures from being reactive to being proactive. This aligns with the jurisprudence of the European Court of Human Rights which has imposed positive obligations on member states in regards rights guaranteed in the Convention which includes the right to non-discrimination under article 14.²⁹⁸ Measures undertaken by governments and public authorities should thus not only redress but also prevent and address intersectional discrimination before incidents occur and are reported. This includes targeted programmatic remedies which prevent and redress intersectional discrimination.

A key measure here is the creation of a duty of intersectional impact assessment on public and private bodies which includes (i) the duty to identify relevant groups which are

²⁹⁸ Most recently in *FM v Russia*, Application Nos. 71671/16 and 40190/18, decided on 10 December 2024 (ECtHR). See also European Commission against Racism and Intolerance (ECRI), General Policy Recommendation N°7 revised on National Legislation to Combat Racism and Racial Discrimination (2017), para 34.

Commented [SD11]: The Study continuously conflates sex and gender as equivalent grounds of discrimination. The broad list of grounds tend toward conceptual overreach. Lumping together sex with sexual orientation, gender identity, and sex characteristics under a shared framework of intersectionality risks erasing the specific vulnerabilities of women and girls. Intersectionality can and should account for multiple, overlapping experiences of oppression but not at the expense of dissolving the material category of sex, which remains essential for understanding and combating violence against women and girls.

Commented [SD12]: The section presents a robust list of policy-level recommendations to address intersectional discrimination across Council of Europe member states, however: Gender and gender equality are repeatedly referenced, with sex being obscured, even though it remains the basis on which women and girls face structural inequalities and distinct harms. Without clear distinction, this conflation undermines the effective design of targeted measures for women and girls. This section could be enriched with further concrete proposals to counter male violence, exploitation or the commodification of women.

Policies must avoid collapsing sex into a series of floating categories; instead, intersectional frameworks should be anchored in sex-based analysis, with gender understood as a power structure attached to sex. This is necessary to ensure that the material condition and human rights of women and girls are meaningfully addressed, and not abstracted into gender-neutral categories that flatten or erase their specific oppression.

vulnerable to intersectional discrimination and may be impacted by a particular law, policy or practice, and (ii) the duty to take steps to address such intersectional discrimination and to promote intersectional equality.

Likewise, remedies for intersectional discrimination in successful cases before courts should be broadened to include preventative and structural measures which address the drivers of intersectional discrimination and not only declare and compensate discrimination which has already taken place.

Resources should be earmarked in governmental policy both at the national and local level for remedying intersectional discrimination through a broad set of measures including for the promotion of intersectional equality. Support, including financial support, should be provided to those who work with intersectionally disadvantaged groups especially civil-society actors and organisations . Finally, compensation or damages in successful cases of intersectional discrimination should be assessed on a case-by-case basis.

It is recommended that member states:

- Adopt a twin-track approach in policy:
 1. Embed intersectionality in individual policies related to different grounds (gender, “race”, disability, SOGIESC etc) and different areas (healthcare, education, gender-based violence etc).
 2. Embed intersectionality in specific policies related to particular intersectionally disadvantaged groups (Roma women, disabled older people, Muslim women etc).
- Produce practice notes, training manuals, operational guidelines of organisations to:
 1. Adopt an intersectional approach which gives due regard to intersectionality in all decision-making, service delivery, public engagement etc.
 2. Identify intersectionally disadvantaged groups whose needs must be prioritised.
- Broaden remedies to include proactive and programmatic measures to address intersectional discrimination and actively promote intersectional equality.
- Dedicate resources in budgets at the national and local levels for measures to address intersectional discrimination and to promote intersectional equality, including through positive action.
- Create a duty of intersectional impact assessment on public and private bodies

D. LEGISLATION

While intersectional discrimination concerns a range of grounds, the grounds themselves may be covered in independent legislations, viz. gender equality legislation, “race” equality legislation, disability legislation etc. This fragmented landscape in discrimination law makes it difficult to address intersectional discrimination adequately under any piece of legislation.

Member states are thus encouraged to consider enacting a consolidated equality legislations at both state and federal levels which cover all enumerated and unenumerated grounds. In addition, equality bodies should be empowered to deal with discrimination on all grounds and across all sectors (education, employment, healthcare, public and private actors, social services etc). This would enable equality bodies to respond to intersectional discrimination adequately and more broadly, to better respond to all forms of discrimination holistically. Where consolidated equality legislations do not exist, member states should consider adopting intersectional discrimination explicitly across equality legislations, and equality bodies and courts should be empowered to respond to intersectional discrimination across legislations in a holistic manner.

It is recommended that member states:

- Enact a consolidated equality legislation for all grounds of discrimination.
- Empower equality bodies to address all forms of discrimination.
- Consider intersectionality across all other areas of law especially constitutional law, human rights and criminal law.

E. PROCEDURE

Proof of claims of intersectional discrimination is often difficult because of: (i) the requirement to bring actual comparators as evidence for proving discrimination based on a combination of grounds; (ii) a high burden of proof on claimants; (iii) a low standard of scrutiny of justification provided by the respondents; and (iv) a requirement to prove of intersectional discrimination based on each ground separately. Member states should establish clear frameworks for proving intersectional discrimination which: (i) allow, but do not require, actual or hypothetical comparators to be used as evidence for proving intersectional discrimination; (ii) apportion burden of proof between the claimant and the respondent through a shifting burden of proof framework where the claimant only bears the burden to prove a plausible prima facie claim with the consequence that the burden then shifts to the respondent to disprove the claim; (iii) determine the standard of scrutiny based on the nature rather than the number of grounds involved in a claim; and (iv) do not require claimants to prove intersectional discrimination based on each ground separately.²⁹⁹

This means that, for example, differential treatment or disproportionate impact based on the grounds of “race” and sex should attract a high standard of scrutiny before courts since “race” and sex discrimination require ‘very weighty’ reasons to be justified before the European Court of Human Rights. The standard of scrutiny should not be determined

²⁹⁹ This is made explicit, for example, in the UK Equality Act 2010 which, in its provision on ‘combination discrimination’ in section 14(3) provides that: ‘For the purposes of establishing a contravention of this Act by virtue of subsection (1) [on combination discrimination], B need not show that A’s treatment of B is direct discrimination because of each of the characteristics in the combination (taken separately).’

Commented [SD13]: While legislative consolidation may enhance responses to intersectional discrimination, any intersectional approach must not relativise or subordinate sex-based rights, but should instead ensure sex is explicitly safeguarded across all relevant legal frameworks. Equality bodies must be equipped to understand and address sex-based discrimination, both on its own and where it intersects with other grounds, without eroding the clarity of enforceability of sex-based protections.

Commented [SD14]: As per the previous comment, we welcome efforts to reduce procedural barriers in proving intersectional discrimination, and we strongly support a flexible approach to evidence that allows for deductive and analogical reasoning, especially in recognizing the unique forms of disadvantage women face at the intersection of sex and other factors, such as race or migration status. However, adjudicatory bodies must retain a clear, sex-based analytical lens to avoid erasing patterns of discrimination that specifically affect women. Judicial capacity-building must include training on the material realities of sex-based oppression, to ensure that intersectional claims do not dilute the legal clarity needed to address sex-based harms.

by the fact that more than one ground is involved in a claim as that reflects a quantitative rather than a qualitative understanding of discrimination based on multiple grounds. Where intersectional discrimination cannot be proven, the adjudicatory body should be under an obligation also to examine whether discrimination on a single ground can be proven.

Importantly, proof of intersectional discrimination based on each ground separately should not be a requirement. That said, if the claimant brings evidence in respect of each ground separately, adjudicatory bodies should be open to considering such proof as proof of intersectional discrimination. They could adopt a flexible approach to considering such evidence in the following way:

- Evidence of similarity of group disadvantage between the claimant's group and other groups disadvantaged by a single characteristic could be used to establish similarities in patterns of group disadvantage.
 - Crucially, since intersectional discrimination is defined by both similar and unique patterns of group disadvantage, the same evidence could also be used to deduce unique patterns of group disadvantage which the claimant's group suffers on its own.
 - Thus, evidence related to similar patterns of group disadvantage could be used to prove both similar *and* unique patterns of group disadvantage through deductive, inductive or analogical reasoning.
 - For example, if evidence shows that in a particular instance women have suffered from gender-based violence and also that Roma people have suffered from different forms of violence, the evidence can be taken to show that Roma women have suffered both these forms of violence on the basis of their gender and ethnicity. At the same time, the same sets of evidence can be probed further to find unique patterns of violence Roma women suffer.
- Evidence of unique patterns of group disadvantage could be used to prove both unique *and* similar patterns of group disadvantage.
 - For example, if evidence shows that Roma women suffer exponential levels of gender-based violence, it could be used to reinforce the point that women suffer exponential levels of gender-based violence in comparison to men, or that gender-based violence affects women as such.

It is thus not about comparison or about evidence per se, but how adjudicatory bodies *reason with* the available evidence, that allows for intersectional discrimination to be

proven. Procedures and guidelines on proof of intersectional discrimination should enable adjudicatory bodies to find for similar and unique patterns of group disadvantage by sifting through evidence in a flexible and holistic rather than rigid and formulaic manner.

Member states should introduce in their legislative codes of procedure, or issue guidelines on, a flexible approach to evaluating evidence in adjudicating claims of intersectional discrimination to assist claimants, lawyers, equality bodies, and civil society organisations.

It is recommended that member states:

- Introduce provisions in their codes of procedure or issue guidelines on proof of intersectional discrimination before courts.
- Enhance capacity of judges to adjudicate on claims of intersectional discrimination.

F. DATA

The collection of large-scale disaggregated data may not be legally required or permissible in all member states. Yet, data is critical in identifying intersectional discrimination.³⁰⁰ Thus, public bodies, especially intergovernmental organisations, agencies (such as the Fundamental Rights Agency of the EU), national authorities responsible for conducting censuses and compiling statistics, equality bodies, national human rights institutions, service providers, research institutes (such as the European Institute for Gender Equality) and civil society organisations which work on equality and non-discrimination issues, should proactively collect disaggregated data on all grounds. The data could be obtained through monitoring exercises, surveys, interviews, reported incidents, formal complaints, investigations etc. This information gathering and analysis can thus be small and medium scale and more localised in terms of its targeted population, geography, sectors etc. Where large-scale data gathering such as in the form of census may be possible, it should be disaggregated based on each ground, in order to identify intersectionally disadvantaged groups in a particular national context.

It is recommended that member states:

- Empower public bodies, especially intergovernmental organisations, national authorities responsible for conducting censuses and compiling statistics, equality bodies, national human rights institutions, service providers, researchers, relevant stakeholders including civil society, to collect and analyse

Commented [SD15]: Sex-disaggregated data must remain central, as it provides critical evidence of sex-based inequality and structural patterns of harm affecting women and girls. We caution against replacing biological sex with self-identified gender in data collection, as this compromises the ability to track and respond to sex-specific disparities.

³⁰⁰ See, for example, the Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General on Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up to and implementation of the Durban Declaration and Programme of Action, paragraph 66.

disaggregated data through monitoring exercises, surveys, interviews, reported incidents, formal complaints, investigations etc

G. KNOWLEDGE

Knowledge and information surrounding intersectionality and the lived reality of intersectionally disadvantaged groups is central to both recognising and addressing intersectional discrimination. Knowledge generation should be shared across public and private actors and importantly should have at its centre the voice of those who are intersectionally discriminated. Member states should actively support the development of a wide knowledge base surrounding all intersectional issues including through education, research, training, art and culture in order to raise awareness and also build capacity for addressing intersectional discrimination. These efforts should be directed both at those at risk of intersectional discrimination as well as those who respond to such discrimination.

It is recommended that member states:

- Develop a wide knowledge base of intersectionality through education, research, training, art and culture, for raising awareness and building capacity to address intersectional discrimination and to promote intersectional equality.

H. VOICE

The voices of those who have been exposed to intersectional discrimination have hitherto been marginalised. Intersectionally discriminated individuals and groups thus not only suffer from pervasive and persistent intersectional discrimination but also have their experiences ignored, misheard and misrepresented. It is thus critical to centre the voice and meaningful participation of intersectionally discriminated individuals and groups in all efforts which seek to address intersectional discrimination and promote intersectional equality. Views of intersectionally discriminated individuals and groups should be considered indispensable and must be actively sought in relation to any law, policy or practice that concerns them. Wider inclusion and meaningful participation of intersectionally disadvantaged individuals and groups should be ensured across all areas of social, cultural, political and economic life.

It is recommended that member states:

- Centre the voice of intersectionally disadvantaged individuals and groups in considering, formulating, enacting, promoting, implementing, enforcing and delivering any law, policy or action that concerns them.

Commented [SD16]: While promoting intersectional awareness is important, knowledge production and generation must be grounded in the structural and sex-based oppression women face globally. Efforts to centre lived experience should not marginalize or erase the specific experiences of women, especially when sex is increasingly conflated with gender identity or subjective self-definition. Sex-based analysis must remain a core part of intersectional knowledge-production. States should ensure that initiatives aimed at advancing intersectional knowledge also safeguard sex as a key axis of power and inequality, and include feminist, sex-based perspectives among the diverse voices represented.

Commented [SD17]: We support the call to centre the voices of those most affected by intersectional discrimination. However, this must include the voice of women whose voices have historically been silenced, especially when they speak from a sex-realist perspective that challenges prevailing gender ideologies. Too often, the voices of women (particularly those who speak clearly about male violence, reproductive exploitation, or the erasure of sex-based rights) are dismissed or labeled as exclusionary. Meaningful participation must not be limited to identity-based representation, but must also reflect diverse political, feminist, and analytical frameworks, including those grounded in material analysis of sex-based oppression.

ANNEX

Call for responses of CDADI members, participants and observers regarding the feasibility study on preventing and combating intersectional discrimination

This short call for responses seeks to identify:

1. Recent legislative and policy developments in member States regarding intersectional discrimination; and
2. Attitudes towards intersectional discrimination in Council of Europe member States

Background

By its Terms of Reference for 2024-2027, the CDADI is tasked with preparing a Feasibility study and possible draft Recommendation on preventing and combating intersectional discrimination (in consultation with the Council of Europe's Gender Equality Commission (GEC)).

The term "intersectional discrimination" reflects the understanding that the interaction of two or more grounds of discrimination can produce a disadvantage which is qualitatively different to the operation of those grounds separately. Intersectionality is increasingly recognised as a tool for understanding the consequences of interaction between two or more forms of discrimination and addressing different layers of inequality. It is used as a cross-cutting principle in policy making in the Council Europe and beyond. Nevertheless, it is still a challenging concept. Equality and anti-discrimination laws often make neither explicit provision for multiple discrimination, nor reference to intersectional forms of discrimination. Council of Europe member States also apply different concepts to, or have different understandings of, intersectional discrimination (and "multiple" discrimination, as well as other related terminology). In some member States, the concept of intersectionality has triggered controversial debates, and as a result some stakeholders avoid using this term.

The first meeting of the Working Group took place on 12 April 2024. The Working Group discussed a concept note for the deliverable and it was agreed that the feasibility Study should map member States' approaches to intersectional discrimination in their national laws and policies. The Working Group agreed that the Study should explore why intersectionality may pose particular problems at national level and seek to identify an agreed terminology for use in international standard setting.

During this meeting, it was suggested that member States, participants and observers should be given the opportunity to share recent developments in their countries with the Secretariat and with Dr. Shreya Atrey, the consultant leading the drafting of the Study, where they wish to do so, in order to facilitate this first step in preparing the Study. The CDADI Bureau approved this methodology, stressing the need to stagger the sending of calls for responses across different CDADI deliverables in order to ease the workload.

Call for responses

You are invited to answer the following questions by **2 July 2024**:

1. Do your national authorities or other stakeholders in your country use the term or concept of intersectional discrimination or another similar concept? Please specify which

concepts are used and in which contexts, and in so far as possible, why these concepts are preferred to “intersectional discrimination”.

2. Are there concrete cases in your country in the practice of the judiciary, equality bodies or victim support services that concern more than one discrimination ground?
3. What legal or policy provisions exist or are under development in your country with regard to intersectional discrimination or similar concepts?