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# Multiple Discrimination Between the EU Agenda and Civic Engagement: the Long Road of Intersectional Perspective

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## Introduction

In the European Union, the need to move from the traditional principle of formal equality to a strategy pursuing substantive equality has been largely recognised in practice.<sup>2</sup> New EU anti-discrimination legislation, which followed the amendments of Article 13 of the Amsterdam Treaty,<sup>3</sup> has enhanced the debate on how to achieve the substantive equality of the most marginalised people. It goes without saying that equal opportunities of the Roma minority belong among the priorities of an enlarged Europe. Since 2000, the concept of “multiple discrimination” has started appearing in the political debate and legal documents of the EU, but no definition or regulation has been provided so far. Therefore, scholars from a wide range of disciplines and law practitioners have been trying to fill the conceptual gap concerning multiple discrimination. While the European debate on this issue has been quiet recently, multiple discrimination has already been discussed for more than two decades at the international level, within the United Nations and in American academic discourse. This contribution will describe diachronically the main theoretical issues surrounding the concept of intersectionality in the US-European debate, highlighting the interrelations of the concept of multiple discrimination at the international level. It will focus on the attempts and limits of European (binding and non-binding) legislation and policy in tackling multiple discrimination in relation to Roma. It will then describe one

best practice in tackling multiple discrimination against young Roma and offer some conclusions.

## “Transatlantic discourse”<sup>4</sup> on intersectionality and its contribution to multiple discrimination

In the 1970s, black feminists in the US developed the idea that female identities are multiple and complex and consequently, they may experience multiple forms of discrimination. In particular, they pointed out that black women experience oppression differently compared to “white middle-class women” because sex, class and race are inextricably bound together.<sup>5</sup> In 1977, the Combahee River Collective (a black, feminist, lesbian group based in Boston) stated in its manifesto that “the major systems of oppression are interlocking” and committed to struggling against racial, sexual, heterosexual and class oppression.<sup>6</sup> Black women were later joined by women with disabilities, poor women and women from different ethnic and cultural backgrounds; all demanded their right to equal treatment. Professor Kimberlé Crenshaw coined a neologism for this idea: “intersectionality”, which she illustrated through the famous “Traffic Intersection Metaphor.”

According to this metaphor, categories such as race, gender, class and others provide a route for determining the social, economic or political positions of empowerment and disempowerment of each person. At the crossroads of these routes are groups of women marginalised because

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2 Marc De Vos, “Beyond Formal Equality. Positive Actions under Directive 2000/43 and Directive 2000/78”, (Luxembourg: Office for Official Publications of European Communities, 2007), 74.

3 The Amsterdam Treaty, 1997, available at: [http://europa.eu/legislation\\_summaries/institutional\\_affairs/treaties/amsterdam\\_treaty/index\\_en.htm](http://europa.eu/legislation_summaries/institutional_affairs/treaties/amsterdam_treaty/index_en.htm).

4 Kathy Davis, “Intersectionality in Transatlantic Perspective”, in *Ueberkreuzungen. Fremdheit, Ungleichheit, Differenz* ed. Cornelia Klinger & Gudrun-Aveli Knapp (Münster: Westfälisches Dampfboot, 2008).

5 Gloria T. Hull, Barbara Smith & Patricia Bell Scott, eds., *All the Women Are White, All the Blacks Are Men, But Some of Us are Brave: Black Women's Studies* (New York: Feminist Press, 1982, new edition) 432.

6 Combahee River Collective, “A Black Feminist Statement”, in *All the Women Are White, All the Blacks Are Men, But Some of Us are Brave: Black Women's Studies* (New York: Feminist Press, 1982, new edition) 13-22.

of their specific intersectional identities and the overlapping of two or more of such categories. In this case:

[women] must negotiate the traffic that flows through these intersections to avoid injury and to obtain resources for the normal activities of life. This can be dangerous when the traffic flows simultaneously from many directions. Injuries are sometimes created when the impact from one direction throws victims into the path of oncoming traffic, while on other occasions, injuries occur from simultaneous collisions. These are the contexts in which intersectional injuries occur – when multiple disadvantages or collisions interact to create a distinct and compound dimension of disempowerment.<sup>7</sup>

Intersectionality was born as an attempt to deconstruct the monolithic idea of “women” and to overcome the dichotomy between race and gender by bringing race into the feminist discourse and by raising awareness of the specific vulnerabilities of women of colour. After focusing on the “triad of discrimination” or “triple jeopardy” deriving from the overlapping of class, race and gender, feminist discourse increasingly took into consideration other categories (sexual orientation, religion, illness, etc.). Intersectionality provided a broader approach suitable to tackling discrimination beyond traditional categories. This intersectional approach helps us understand how the convergence of multiple factors in a human being’s life takes place; and, more specifically, how racism, gender, class and other grounds contribute to create layers of inequality that help position human beings. In doing so, the approach challenges both monolithic constructions of specific groups and their stigmatisation or homogenisation. The approach can be used to describe each individual as a dynamic combination of categories (e.g. comprising gender, race, class, ethnicity, religion, age, health, language, economic and social status, affiliation and education). In recent years, scholars have formed different attitudes toward the analytical categories used in the intersectional approach. The three main ones are described by Leslie McCall, who distinguishes the “anti-categorical” approach, the “intra-categorical” approach and the “inter-categorical approach to intersectionality”. In

doing so, McCall also provides a methodological platform by which intersectionality can be a tool in feminist research.

The first approach is called “anti-categorical complexity” because it is based on a methodology that deconstructs analytical categories:

Social life is considered too irreducibly complex – overflowing with multiple and fluid determinations of both subjects and structures – to make fixed categories anything but simplifying social fictions that produce inequalities in the process of producing differences.<sup>8</sup>

The second approach is called “intra-categorical complexity” because authors working in this vein tend to focus on particular social groups at neglected points of intersection – “people whose identity crosses the boundaries of traditionally constructed groups” – in order to reveal the complexity of lived experience within such groups.<sup>9</sup> At the end of the continuum, there is “inter-categorical complexity”, which requires that scholars “provisionally adopt existing analytical categories to document relationships of inequality among social groups and changing configurations of inequality along multiple and conflicting dimensions.”<sup>10</sup>

Having hereto described the very general development of intersectional debate in the US, it is time now to cross the ocean and look into the European debate, which came into being in the mid-1990s and developed predominantly in Austria, France, Germany, the UK, the Netherlands and Scandinavia. European scholars have been (critically or emphatically) looking at US developments of intersectionality in their conceptualisations.

In her recent contribution to the book *Überkreuzungen. Fremdheit, Ungleichheit, Differenz* Professor Kathy Davis pinpoints at least four main differences between US and European feminist approaches to intersectionality, which are mainly due to “the different histories of domination and exclusion, as well as the current multicultural realities of Europe, particularly in the context of increasing migration.”<sup>11</sup>

7 Kimberlé Crenshaw, “Traffic at the Crossroads: Multiple Oppressions”, in *Sisterhood is Forever: The Women’s Anthology for a New Millennium*, Robin Morgan, (Washington Square Press, 2003), 512.

8 Leslie McCall, “The Complexity of Intersectionality”, *Signs* 30(3), (2005): 1771-1800.

9 Ibid.

10 Ibid.

11 Davis, “Intersectionality in Transatlantic Perspective”, 19-35.

The first difference concerns the centrality of the category “race” itself, which has been replaced by “ethnicity” in European academic discourse, because it seems to better explain “cultural differences, religious beliefs or adherence to traditions” and detaches itself from the “the biological determinism and essentialism” embodied in the term “race”.<sup>12</sup> Incidentally, in EU institutions, the category of “race” has not been left aside, given that European anti-discrimination legislation mentions discrimination based both on race or ethnic origin, as will be explained later in this article.<sup>13</sup> According to Davis, the second difference in the debate concerns “which and how many” categories are necessary for an intersectional analysis, going beyond the traditional triad of “gender-race-class” and questioning whether the category of “gender” itself should be a central category of the analysis. The third difference regards a departure from Crenshaw’s “Traffic Intersection Metaphor”, which is seen to conceive of “the axes of inequalities”<sup>14</sup> as separate systems more likely to be “additive than interactive”. Concerning this aspect, German scholars have contrasted US intersectional theory with another based on gender as an “interdependent category” with the aim of analysing the area between the various categories.<sup>15</sup>

The fourth difference concerns the issue of agency, meaning that in the US debate differences are often seen as a source of disempowerment undermining the ability of individuals to negotiate their multiple *identities in society*, whereas some scholars in Europe have used the expression “doing intersectionality” in order to inquire how the intersection of categories may enable creative ways of action.<sup>16</sup> In recent years, many other voices have emerged and have complemented

the European debate, also outside feminist discourse, (e.g. the concept of “super-diversity” which describes the dynamic interplays of variables characterising complex social formations).<sup>17</sup> This short and non-exhaustive overview tries to provide the reader with insight into the complex and still ongoing debate on intersectionality in order to set the scientific scene in which the concept of multiple discrimination has taken root. Indeed, as Professor Marsha Darling in the US has underlined: “intersectionality is conceptually inseparable from the anti-discrimination and women’s human rights legal standards established by the United Nations Charter and the Universal Declaration of Human Rights.”<sup>18</sup> Therefore, the task of subsequent sections will be to describe the emergence of the concept of “multiple discrimination” in both international and European legal discourse, with a specific look at those legal documents which concern Roma.

## Multiple discrimination at the international level

Outside academic debate, the official birth of the concept of “multiple discrimination” dates back to September 1995 when the Fourth World Conference on Women adopted the Beijing Declaration and Platform for Action and referred to the need to take into consideration the “multiple barriers” faced by minority women.<sup>19</sup> Five years later at the Beijing Plus 5 Global Feminist Symposia (5-8 June 2000, City University of New York Graduate Center), the International Movement Against All Forms of Discrimination and Racism (IMADR) organised a workshop focusing on multiple discrimination

12 Ibid.

13 Consideration 6 of Directive 2000/43/EC makes clear that: “the European Union rejects theories which attempt to determine the existence of separate human races. The use of the term ‘racial origin’ in this Directive does not imply an acceptance of such theories.” Council Directive 2000/43/EC of 29 June 2000, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:en:HTML>.

14 Gudrun Aveli Knapp, Birgit Sauer & Cornelia Klinger, *Achsen der Ungleichheit: Zum Verhältnis von Klasse, Geschlecht und Ethnizität (Politik der Geschlechterverhältnisse)* (Campus Verlag, 2007) 289.

15 Gabriele Dietze et al., *Geschlecht als interdependente Kategorie. Intersektionalität, Interdependenz, Diversity-kritische Perspektiven aus den Gender Studies* (Budrich Verlag, 2007) 200.

16 Helma Lutz & Kathy Davis, “Geschlechterforschung und Biographieforschung: Intersektionalität als biographische Ressource am Beispiel einer außergewöhnlichen Frau”, in *Biographieforschung im Diskurs*, eds. Bettina Völter, Bettina Dausien, Helma Lutz & Gabriele Rosenthal (Wiesbaden: VS Verlag, 2005), 228-247.

17 Among these variables, Vertovec mentions “country of origin (covering ethnicity, language, religious tradition, regional and local identities, cultural values, practices, etc.), migration channel (often related to highly gendered flows, specific social networks and particular labour market niches), and legal status (including categories determining a hierarchy of entitlements and restrictions)”. Steven Vertovec, “Super-diversity and its implications”, *Ethnic and Racial Studies*, 30: 6, 1024-1054, available at: <http://dx.doi.org/10.1080/01419870701599465>.

18 Marsha Darling, “Human Rights for all: Understanding and applying ‘intersectionality’ to confront globalization”, quoted in *Women’s Rights and Economic Change*, No. 9 (August 2004), available at: [http://www.hhh.umn.edu/centers/wpp/flf/pdf/AWID\\_intersectionality.pdf](http://www.hhh.umn.edu/centers/wpp/flf/pdf/AWID_intersectionality.pdf).

19 Fourth World Conference on Women, *Beijing Declaration and Platform for Action*, 1995, available at: [http://www.unesco.org/education/information/nfsunesco/pdf/BEIJIN\\_E.PDF](http://www.unesco.org/education/information/nfsunesco/pdf/BEIJIN_E.PDF).

against minority women in parallel to the UN-sponsored Women 2000 Conference in New York in June 2000.<sup>20</sup> In the workshop, minority women from different countries raised awareness of the need to build a network of movements to connect racial and gender dimensions of discrimination. This helped to make clear that racial and ethnic discrimination does not affect women and men in the same way (women are more likely to suffer from discriminatory labour practices and be forced into underground or informal sectors) and that, on the other hand, gender discrimination has a different impact on black and white women, both in their public and private lives (women belonging to racially discriminated groups do not enjoy equal access to health, education or justice).

In 2001, the concept of multiple discrimination was finally explicitly addressed in the Declaration and the Programme of Action<sup>21</sup> signed at the UN World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban, South Africa.

In April 2009, the Durban Review Conference took place in Geneva with the aim of evaluating the progress achieved in the goal areas set out in the abovementioned Declaration and Programme of Action. Among the relevant activities organised during the conference, the side-event “Double odds: women overcoming multiple discrimination” should be mentioned.<sup>22</sup> This forum, opened by UN High Commissioner for Human Rights Navi Pillay, marked the long-lasting UN commitment to tackling multiple discrimination. Awareness of the need to mainstream gender equality and racial equality throughout UN policy also led to a deeper cooperation between the Committee on the Elimination of Racial Discrimination, (the expert body that monitors the implementation of the UN Convention on the Elimination of All Forms of Racial Discrimination by States Parties) and the Committee on the Elimination of Discrimination against Women, (the

body of independent experts that monitors the enforcement of the UN Convention on the Elimination of All Forms Discrimination against Women). This cooperation aims at mainstreaming gender-related dimensions of racial discrimination in the works of the UN.<sup>23</sup>

Going beyond the intersection of gender and race, the UN has recently used the term “multiple discrimination” in its Convention on the Rights of Persons with Disabilities: Article 6 recognises “that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms”.<sup>24</sup>

From a strictly legal point of view, the main obstacle to enforcing the UN legal body on discrimination is the lack of compelling sanctions and penalties for non-compliance. Notwithstanding the non-binding nature of the UN anti-discrimination apparatus and initiatives, they have strongly influenced the European concern with multiple discrimination, as is described next.

## Multiple discrimination as a European issue

Looking at the level of the EU, multiple discrimination has recently been mentioned in both EU binding and non-binding legislation. Increased attention to multiple discrimination has also been paid at the EU policy level. In order to provide a clear description of EU engagement in the field of multiple discrimination and its relevance with regard to Roma, this article describes the legal and political levels, distinguishing general instruments which fight multiple discrimination (which are *also* relevant for Roma, but do not directly address them) from those which specifically and directly address the situation of Roma.

20 The International Movement Against All Forms of Discrimination and Racism, available at: <http://www.imadr.org/>.

21 United Nations, *Durban Declaration and Programme of Action*, 8 September 2001, available at: <http://www.un.org/WCAR/durban.pdf>.

22 OHCHR, “Double Odds: Women overcoming Multiple Discrimination”, April 2009, available at: <http://www.ohchr.org/EN/NEWSEVENTS/Pages/DoubleOdds.aspx>.

23 United Nations, *Report of the Subregional Workshop on the Implementation of Concluding Comments/Observations of the Committee on the Elimination of Discrimination Against Women and the Committee on the Elimination of Racial Discrimination*, 19-22 December 2005, available at: [http://www.unhcr.ch/tbs/doc.nsf/0/445756c7d088c3e4c125716c00430f7c/\\$FILE/G0641403.DOC](http://www.unhcr.ch/tbs/doc.nsf/0/445756c7d088c3e4c125716c00430f7c/$FILE/G0641403.DOC).

24 The Convention on the Rights of Persons with Disabilities and its Optional Protocol were adopted on 13 December 2006 at the United Nations Headquarters in New York, and were opened for signature on 30 March 2007. United Nations, *Convention on the Rights of Persons with Disabilities*, 2008, available at: <http://www.un.org/disabilities/default.asp?navid=13&pid=150>.

Concerning binding legislation, the 14th Consideration of Racial Equality Directive 2000/43/EC<sup>25</sup> states that “the Community should, in accordance with Article 3(2) of the EC Treaty, aim to eliminate inequalities, and to promote equality between men and women, especially since women are often the victims of multiple discrimination.” For the first time, the concept of multiple discrimination entered into EU legislation, focusing the attention of practitioners and politicians on the fact that women may easily be victim of two-fold discrimination because of the presence of more than one factor deviating from the principle of equality.

Apart from the recognition of multiple discrimination affecting women, European institutions have not staged further efforts in the binding legal framework to counter it so far. At this stage, there are at least four limits to effective protection from multiple discrimination.

First of all, the Racial Equality Directive does not provide a definition of multiple discrimination; nor does it provide a regulation for it. This lack of further provision has created uncertainty toward the concept itself.

As Timo Makkonen maintains, at the moment, “there is considerable conceptual disorganization, as several different concepts are used, and more importantly, they are seldom defined or analyzed,”<sup>26</sup> even if a deep interest has arisen in recent years, thanks predominantly to scholars who have engaged tirelessly with the topic.<sup>27</sup> Scholars in Europe are indeed developing comparative studies on multiple discrimination and on the related concept of intersectionality,<sup>28</sup> deepening existing conceptualisations within the EU and elsewhere (Australia, Canada and the US).

From a legal perspective, a body which governs liability for multiple discrimination still needs to be set up, since it is far from clear whether (with a view to protecting the victim) the perpetrator’s liability is to be evaluated with respect to every possible risk factor, or whether it is sufficient that it is evaluated with respect of one discriminatory factor, being *fumus boni iuris* sufficient for the additional causes. It will only be when this aspect is clarified that an effective, proportionate and dissuasive apparatus for imposing sanctions on such conduct can be established, as required by the anti-discrimination directives.

A major problem in tackling multiple discrimination concerns the suitable “comparator”. In fact, in order to decide whether discriminatory treatment has occurred, a comparison between two persons is usually needed. For example, in the case of two persons competing for rented accommodation, a comparison between the person allegedly discriminated against and the non-discriminated one should be made. Where no real person exists to take the role of comparator, a hypothetical comparator is needed. With multiple discrimination, this scenario becomes even more difficult and is complicated by the fact that anti-discrimination directives have adopted a single-ground comparison model without directly addressing the problem of finding a suitable comparator in this specific case.<sup>29</sup> Incidentally, some authors argue that “it may be possible to read the European anti-discrimination directives purposively, as prohibiting discrimination on combined grounds, in the fields of employment and occupation.”<sup>30</sup> Professor Dagmar Schiek speaks about the multi-dimensionality of EU non-discrimination law, which “encompasses interrelations of different conceptions of equality law as well as intersections between discrimination grounds.”<sup>31</sup>

25 European Commission, Council Directive 2000/43/EC *implementing the principle of equal treatment between persons irrespective of racial or ethnic origin*.

26 Timo Makkonen, “Multiple compound and intersectional discrimination: Bringing the experiences of the most marginalized to the fore,” (2002), available at: <http://www.abo.fi/instut/imr/norfa/timo.pdf>.

27 This European wave of scholars is quite interdisciplinary and includes law professors (e.g. Dagmar Schiek, Susanne Baer, Gay Moon, Mark Bell, Timo Makkonen), linguistics scholars (e.g. Antje Hornscheidt, Katharina Walgenbach) and many others from a very diverse set of disciplines which can be subsumed under so-called social studies (e.g. Kathy Davis, Helma Luz, Ilse Lenz).

28 European Commission, *Tackling Multiple Discrimination: Policies, practices and laws*, 76.

29 Gay Moon, *Multiple discrimination – problems compounded or solutions found?* available at: <http://www.justice.org.uk/images/pdfs/multiplendis-crimination.pdf>.

30 Dagmar Schiek & Victoria Chege, eds., *European Union non-discrimination law: comparative perspectives on multidimensional equality law* (Abingdon: Routledge, 2009) 411.

31 Ibid.; D Schiek, “Broadening the Scope and the Norms of EU Gender Equality Law: Towards a Multidimensional Conception of Equality Law”, *12 Maastricht Journal of European and Comparative Law* (2005): 427-466.

The second limit is found in the fact that the Racial Equality Directive and gender anti-discrimination directives do not correlate entirely as regards their objective scope. This, in practice, make it very difficult to tackle multiple discrimination. For example, the Racial Equality Directive<sup>32</sup> forbids racial and ethnic discrimination in such sectors as employment, training and education, social protection, social advantages and access to goods and services (including housing). Protection against gender discrimination is more limited: Directive 2006/54/EC<sup>33</sup> concerns the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. Council Directive 2004/113/EC<sup>34</sup> however, implements the principle of equal treatment between men and women in the access to and supply of goods and services.

Thirdly, while dealing with multiple discrimination in legal documents, the European institutions have predominantly focused on the overlap of race/ethnic origin and gender, disregarding the overlap of other discrimination grounds (age, disability, religion or belief, sexual orientation) covered by Council Directive 2000/78/EC on employment.<sup>35</sup> In any case, had higher attention been given to the multiplying effect of the grounds covered by Directive 2000/78/EC, there would still be the same gap as with regard to the gender directives. Indeed, the objective scope of this Directive does not go beyond occupation and work and this circumstance has led

some authors to envisage a “hierarchy of equalities” in the EU anti-discrimination framework.<sup>36</sup>

A final concern regards the exclusion of the grounds of class<sup>37</sup> and citizenship from the anti-discrimination directives, which would otherwise play a relevant role in enhancing the socio-economic inclusion of Roma, given that Roma are victims of high rates of poverty throughout Europe and are in many cases third-country nationals.<sup>38</sup>

We can conclude that binding EU legislation gives evidence of the EU institutions’ awareness of the need to provide holistic protection against discrimination based on gender and race/ethnicity. However, it ignores both the multiplying effect of the other grounds of discrimination mentioned in the anti-discrimination directives and the relevance of poverty.

The situation does not look much better at the national level. Going through the national implementation of EU anti-discrimination directives, few states (Austria, Germany, Romania and Italy) explicitly address the circumstance of discrimination based on more than one ground.

In Austria, Amendment BGBl. I Nr. 67/2008 altered Article 11 of the Austrian Disability Equality Act of 2005, empowering authorities to consider multiple discrimination based on the intersection of disability with gender and/or ethnicity, when assessing the remedy for discrimination.<sup>39</sup> The German legislation dedicates an

32 Council Directive 2000/43/EC of 29 June 2000, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:en:HTML>.

33 Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:204:0023:0036:EN:PDF>.

34 Council Directive 2004/113/EC of 13 December 2004, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0113:EN:HTML>.

35 Council Directive 2000/78/EC of 27 November 2000, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:EN:HTML>.

36 E. Barry, “Different Hierarchies-Enforcing Equality Law”, in *Equality in Diversity – the New Equality Directives*, eds. C. Costello & E. Barry, (The Irish Centre of European Law, 2003).

37 The term “class” is used instead of “income level” or “socio-economic status” because the main feminist theories of intersectionality use class as a sociological category of analysis. See, e.g., Margareth Andersen & Hill Collins, *Race, Class, and Gender*, (Wadsworth Publishing, 2009, 7th Edition). Morag Goodwin suggests exploring the intersection of race and poverty when dealing with Roma. See Morag Goodwin, “Multidimensional Exclusion and the (mis)uses of Non-Discrimination Law in Tackling Romani Exclusion” in Dagmar Schiek, *European Union Discrimination Law: Comparative Perspective on Multidimensional Equality Law* (2008) 137-161.

38 Article 3.2. of Directive 2000/43/EC states: “This Directive does not cover difference of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons on the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned.”

39 *Bundesgesetz über die Gleichstellung von Menschen mit Behinderungen (Bundes-Behindertengleichstellungsgesetz - BGStG)*, BGBl. I Nr. 82/2005, available at: [http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=BgblAuth&Dokumentnummer=BGBLA\\_2008\\_I\\_67](http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=BgblAuth&Dokumentnummer=BGBLA_2008_I_67).

autonomous article to multiple discrimination (Section 4 of the German Equal Treatment Act),<sup>40</sup> stating that if “discrimination is based on several of the grounds [...] it] is only capable of being justified if the justification applies to all the grounds liable for the difference of treatment” and providing the positive duty on judges to take into consideration the multiple effects of discrimination when calculating sanctions.<sup>41</sup> Moreover, the German equality body (*Antidiskriminierungsstelle des Bundes*) is entitled to tackle discrimination on each ground (the so-called *Horizontaler Ansatz*).<sup>42</sup> In Italy, the law only mentions the need to take into account the multiplying effects of discrimination and the Italian equality body (*Ufficio Nazionale contro le Discriminazioni Razziali*)<sup>43</sup> is still only entitled to deal with racial and ethnic discrimination. The Romanian Equality Act between Men and Women (Act 340/2006, Article 4h) defines multiple discrimination “as an act of discrimination, based on two or more grounds of discrimination” and provides that discrimination on two or more grounds is to be treated as an “aggravating circumstance”.<sup>44</sup>

While the binding EU legislation deals with discrimination based on race and ethnic origin in general and does not explicitly address Roma as such, the non-binding legislation goes one step further. In particular, multiple discrimination regarding women within the Romani community is dealt with in more than one document. Thus, the European Parliament passed a Resolution on the situation of women from minority groups in the European Union, which, having regard to the equality directives of 2000:

draws the attention of the Commission and governments to the need to ensure (a) the effective application of policies implemented at Community and national level that are likely to improve Roma women’s

economic, social and political situation, their involvement in the decision-making process and protection of their human rights, (b) the inclusion of the issues concerning Roma populations in general, and equality of treatment and opportunity for Roma women in particular, in all relevant policies and programmes relating to employment policies and social inclusion, the European Social Fund, the Equal initiative, education and training programmes, the Daphne programme, and legislation and the action programme against discrimination, (c) consultation of Roma women when drawing up any programme or project likely to affect them and when adopting positive measures on their behalf.<sup>45</sup>

Then, it calls on governments to take measures to improve the reproductive and sexual health protection of Romani women, to prevent and put an end to forced sterilisation, and to promote family planning, alternative arrangements to early marriages and sex education. A couple of years later, the European Parliament also passed an *ad hoc* Resolution on the situation of Roma women in the European Union,<sup>46</sup> which focused the attention of politicians and civic society on several aspects impacting Romani women both inside and outside their community (i.e. both in-group and out-group discrimination). Concerning in-group discrimination, the Resolution highlights the fact that “as a result of patriarchal traditions, many women – including Romani women and girls – do not enjoy full respect for their freedom of choice in matters concerning the most fundamental decisions of their lives, and are thus thwarted in their ability to exercise their fundamental human rights.” This statement goes directly to the heart of the vulnerability of “minorities within a minority” and of the power relations within the minority, which has been long discussed in the debate between multi-culturalists and feminists, above all in North America (the US and Canada) and in the UK.<sup>47</sup>

40 Allgemeines Gleichbehandlungsgesetz, <http://www.gesetze-im-internet.de/agg/BJNR189710006.html>.

41 Alexandra Nemes et al., “Romanian Legislation and Institutional Framework on the Gender Field” (presentation), available at: [http://www.genderkompetenz.info/w/files/gkompzpdf/taix\\_alexandra\\_nemes.pdf](http://www.genderkompetenz.info/w/files/gkompzpdf/taix_alexandra_nemes.pdf).

42 Antidiskriminierungsstelle des Bundes, available at: <http://www.antidiskriminierungsstelle.de/>.

43 Presidenza del Consiglio dei Ministri, Dipartimento per le Pari Opportunità, *Ufficio Nazionale contro le Discriminazioni Razziali*, available at: [http://www.pariopportunita.gov.it/index.php?option=com\\_content&view=article&id=121&Itemid=126](http://www.pariopportunita.gov.it/index.php?option=com_content&view=article&id=121&Itemid=126).

44 Nemes et al., “Romanian Legislation and Institutional Framework on the Gender Field”.

45 European Parliament, *Resolution on the situation of women from minority groups in the European Union* (2003/2109(INI)), available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P5-TA-2004-0153+0+DOC+XML+V0//EN>.

46 European Parliament, *Resolution on the situation of Roma women in the European Union* (2005/2164(INI)), available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P6-TA-2006-0244>.

47 Susan Moller Okin, Joshua Cohen, Matthew Howard & Martha C. Nussbaum, (eds.), *Is Multiculturalism Bad for Women?* (Princeton University Press, 1999) 146; Will Kymlicka, *Multiculturalism citizenship: A liberal theory of minority rights* (Oxford: Oxford University Press, 1995).

The Resolution then calls for the adoption of “positive obligations to ensure that Roma women are represented proportionately to their presence in the local population” and for measures able to enhance the self-empowerment of Romani women in society at large.

EU institutions also set the protection from multiple discrimination of women with a history of migration or who belong to an ethnic minority, among the priorities within the *Roadmap to equality between women and men 2006/2010*,<sup>48</sup> which, at Paragraph 1.6, states:

the EU is committed to the elimination of all discrimination and the creation of an inclusive society for all. Women members of disadvantaged groups are often worse off than their male counterparts. The situation of ethnic minority and immigrant women is emblematic. They often suffer from double discrimination. This requires the promotion of gender equality in migration and integration policies in order to ensure women’s rights and civic participation, to fully use their employment potential and to improve their access to education and lifelong learning.

Within its non-binding legislation, the EU has also been stepping up efforts regarding young Roma, and this commitment can be regarded as an important attempt to deal with the intersection of ethnicity/race and age. An example is given in Article 5 of the European Parliament *Resolution on the social situation of Roma and their improved access to the EU labour market*, which:<sup>49</sup>

stresses that although the proportion of Roma young people in secondary and higher education has increased in certain Member States, their level of qualifications still remains far below the EU average; points to the gap between labour shortages on the one hand and a high unemployment rate linked with low skill levels among Roma on the other; demands, therefore, that the Member States

and the EU support the Roma to increase their qualifications as a priority; draws attention to the fact that, in the absence of formal qualifications, the position of Roma on the labour market can also be improved by devising a system for acknowledging practical skills.

Additionally, Article 9 recommends that “a comprehensive programme package be planned which promotes and motivates the return of Roma graduates to their communities and the employment of the Roma within their communities and in the interests of those communities.” Also, turning to the policy level, the EU recognises that for young, disadvantaged people “the main way of stepping out from the vicious cycle and to have positive representation within the society is (formal and non-formal) education.”<sup>50</sup>

The next section of this article describes a good practice regarding young Roma, which is a valuable example of tackling the multiple marginalisation of Romani youth (aged between 18 and 30) who face discrimination based on their ethnic origin and vulnerability due to their age (e.g. in vocational training, accessing the job market and in educational structures). Bearing in mind that gender has been mainstreamed in EU policy addressing young Roma, the best practice presented can ultimately be seen as an attempt to fight discrimination based on the trio of age, ethnicity and gender.

## **An example of best practice using non-formal education as a tool to enhance the inclusion of Romani youth**

Within the European Commission’s Youth in Action programme (YiA), an inclusion strategy has been drafted to provide a framework for non-formal education activities<sup>51</sup> and to develop the skills and competences of young people across Europe, through mobility projects as well as initiatives and training. The Inclusion Strategy of the Youth in Action programme is based on two aims:

48 European Commission, *Roadmap to equality between women and men 2006/2010*, available at: [http://europa.eu/legislation\\_summaries/employment\\_and\\_social\\_policy/equality\\_between\\_men\\_and\\_women/c10404\\_en.htm](http://europa.eu/legislation_summaries/employment_and_social_policy/equality_between_men_and_women/c10404_en.htm).

49 European Parliament *Resolution of 11 March 2009 on the social situation of the Roma and their improved access to the labour market in the EU*, (2008/2137(INI)).

50 European Commission, *Inclusion Strategy of the “Youth in Action” Programme (2007-2013)*, available at: [http://ec.europa.eu/youth/pdf/doc399\\_en.pdf](http://ec.europa.eu/youth/pdf/doc399_en.pdf).

51 Non-formal education is described as “any organised educational activity outside the established formal system – whether operating separately or as an important feature of some broader activity – that is intended to serve identifiable learning clientele and learning objectives.” Dr Pasi Sahlberg, *Building Bridges for Learning – The Recognition and Value of Non-Formal Education in Youth Activity*, European Youth Forum 1999, available at: <http://www.pasisahlberg.com/index.php?id=53>.

1. to ensure the accessibility of the Youth in Action programme for young people with fewer opportunities (both those organised in youth organisations, youth councils, etc., as well as those not fully organised); and
2. to stimulate the use of the Youth in Action programme as a tool to enhance the social inclusion, active citizenship and employability of young people with fewer opportunities and to contribute to social cohesion at large.<sup>52</sup>

As part of the European Commission's Training Strategy within the YIA, the SALTO Cultural Diversity Resource Centre<sup>53</sup> organised, in cooperation with the Hungarian National Agency (NA), a "Roma Youth Roundtable" in Budapest on 7-8 April 2008. Taking into consideration that young Roma are among the most marginalised groups in Europe, the meeting aimed at enhancing Roma youth participation through the YiA.<sup>54</sup> One of the main outcomes of the roundtable was a statement signed by the 20 Romani participants, with which they requested that the national agencies entitled to implement the YiA pay attention to the following needs of young Roma:

the Roma community (including Gypsy/Traveller/Sinti people) need recognition as an ethnic minority; the Roma issues should be mainstreamed in the activities of the National Agency (NA), in the same way as any work with other minorities is done; there must be national and international meetings between NAs and Roma organizations; there must be Roma representation and expertise in each National Agency. The role model for this is the Slovakian NA, where a Roma expert has been hired; include Roma participants in all programmes, not just in the Youth in Action Programme. Roma should be a horizontal priority in all programmes and programme elements; promotion and advertisement of the Programme to the Roma communities need to be improved.; cooperation with

existing organizations should be encouraged and more access to information should be available on a more regular basis; the Roma communities need help with the bureaucracy of project applications, and for training course participation. There should be special assistance available for young Roma in regards to the application procedure.<sup>55</sup>

From 15-21 September 2008, the Hungarian NA and the SALTO Cultural Diversity Resource Centre promoted a youth training course with the aim of finding solutions for the challenges that young Roma are facing in Europe by: exploring how international projects can enhance the participation of Roma youth and their integration in the society; promoting good practices in local/regional or international youth projects; leading to more concrete action plans using the YiA Programme for various scale projects; and by exploring ways of cooperation between stakeholders.<sup>56</sup> Last but not least, in 2009, the SALTO Cultural Diversity Resource Centre edited a booklet entitled *Youth in Action and the Roma Community. Inclusion of Diversity*,<sup>57</sup> which describes good practices implemented through the Youth in Action Programme "with" and "for" young people belonging to the Romani community in Europe. Results were achieved with the inclusion of Romani youth through non-formal education. In an intersectional perspective, the most valuable aspect of the best practices collected in the booklet is the active participation and empowerment of Romani young people coming from very different backgrounds of gender, class, sexual orientation and religion. The booklet points out that "young people from Roma communities can see themselves represented in several of these areas [gender, religion, sexual orientation, ethnicity, etc], and as such often suffer from multiple discrimination and lack of opportunities."<sup>58</sup> This consideration leads to the argument that non-binding legislation and policy in the EU seem to be more aware and effective than the purely legal level in tackling multiple discrimination suffered by young Roma.

52 European Commission, *Inclusion on Strategy of the "Youth in Action" Programme (2007-2013)*, available at: [http://ec.europa.eu/youth/pdf/doc399\\_en.pdf](http://ec.europa.eu/youth/pdf/doc399_en.pdf).

53 Salto-youth.net is a network of eight resource centres working within the framework of the European Commission's Youth in Action Programme, available at: [www.salto-youth.net](http://www.salto-youth.net).

54 "Roma Roundtable", available at: <http://www.salto-youth.net/Romaroundtable/>.

55 "Roma Statement", available at: <http://www.salto-youth.net/Romastatement/>.

56 "Roma TC", available at: <http://www.salto-youth.net/RomaTC/>.

57 "Roma Booklet", available at: <http://www.salto-youth.net/Romabooklet/>.

58 *Youth in Action and the Roma Community. Inclusion of Diversity* (Salto Cultural Diversity Resource Centre, 2009): 18.

## Drawing conclusions on the challenges to fighting multiple discrimination

Some conclusions can be drawn on the (in)ability of EU binding anti-discrimination legislation to cover the multiple dimensions of inequality suffered by Romani people. Indeed, as far as the binding legislation is concerned, the short and not exhaustive remarks described earlier in this article elicit at least two failures of the directives:

1. The fragmentation of protection, which prevents EU legislation from providing a holistic regulation of (multiple) discrimination. This situation is also mirrored in the functioning of the equality bodies (established following the Racial Equality Directive and the Gender Directives), which, in many States, is based on a “one discrimination ground” approach; and
2. The risk that “minorities within a minority” are forgotten. Due to the lack of a horizontal approach, different grounds of discrimination are still considered as non-communicating and isolated factors. Therefore, there is a risk that “Roma rights” and “women’s rights” and “age rights” and so on will continue to be conceived as “group rights”, with no interaction between them.

With regards to non-binding legislation and EU policy, the situation slightly changes because EU documents (Resolutions and communications) and programmes (e.g.

the Youth in Action Programme, and also EQUAL<sup>59</sup> or DAPHNE<sup>60</sup>) capture the “multiple” issue as an indispensable approach for coping with the subordination of Romani women, young people and other vulnerable groups within the Roma minority.

The limit of this second level is that it provides soft law instruments, which are non-binding in a legal sense, even if they do carry some authority. In fact they are negotiated and agreed by European institutions, which hold some expectation that the non-binding commitments will be met as much as reasonably possible.

The current state of EU legislation and policy leads to the argument that the gaps which exist in EU binding legislation and in its implementation at the national level seem to be counterbalanced by EU non-binding legislation and policy, and by the spontaneous implementation of soft law instruments (primarily) by NGOs (i.e. stakeholders and civil society). If this is the case, we should conclude that the success of the fight against multiple discrimination must still rely on the activity of civil society and grassroots organisations. This then suggests that, through social dialogue, bottom-up strategies and an open method of coordination, Romani activists can place multiple discrimination onto the agenda of EU institutions, in order to pass an effective legal strategy which enhances the inclusion of all people “at the crossroads of discrimination”.

59 European Commission, *EQUAL*, available at: [http://ec.europa.eu/employment\\_social/equal/index\\_en.cfm](http://ec.europa.eu/employment_social/equal/index_en.cfm).

60 European Commission, *Daphne Programme to prevent and combat violence against children, young people and women and to protect victims and groups at risk*, available at: [http://ec.europa.eu/justice\\_home/daphnetoolkit/html/welcome/dpt\\_welcome\\_en.html](http://ec.europa.eu/justice_home/daphnetoolkit/html/welcome/dpt_welcome_en.html).