

## THE EVOLUTION OF MULTIPLE DISCRIMINATION TODAY

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### ABSTRACT

*Democracy and human rights achieve indestructible unity; democracy marks the emancipation of the people, their becoming as a subject of government, emancipation presupposes the power of self-determination of each person, thus endowing them with the rights that are inherent as man and citizen.*

*By adhering to international documents, the states of the world commit themselves to take legislative and administrative action, acting progressively, using appropriate means, to exercise these rights without discrimination.*

*Discrimination is a dynamic concept whose content and approach is continually evolving.*

*The proposed specific objective is the conceptual clarification regarding multiple discrimination and the research and approach way of this type of discrimination by state institutions. Thus, it can be dealt with in two respects: a) multiple discrimination as additional discrimination addressed uniaxially and b) multiple discrimination as intersectional discrimination.*

*Collaboration between state institutions has the role of reducing discrimination and encourages the development of back-up actions in support of effective combating of all forms of discrimination.*

Equality and non-discrimination must be fundamental rules of government action in any democratic state. The idea of equality and non-discrimination has, over time, been placed on an important level in world law. In the beginning, equality and non-discrimination were regulated by normative acts in different fields, then they were asserted in the Community jurisprudence, reaching a general principle present in the draft normative act with constitutional value at the level of the European Union. The principle of equality is considered to be a derivation of Community law which presupposes the elimination of discrimination by the equal treatment of parties in identical and comparable situations. It is provided, by way of application, even in the texts of the Community treaties (Treaty establishing a Constitution for Europe, adopted by consensus of the European Convention in 2003, which was sent to the President of the Council of Europe in Rome (18 July 2003) and signed on October 29, 2004 in Rome (including Romania, even if it had observer status), contains „Equality” as a title.)

The principle of equality is to be considered as a consequence of the nature of the community law, with the direct consequence of non-discrimination. Thus, alongside the principle of equality, the principle of non-discrimination applies to

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all legal relationships that can be established within the territory of the community regardless of where they have been agreed or where produce the effects.

The judicial practice of the courts of the European Union has contributed to the nuance of the content of these principles but also of the concepts of equality and discrimination. The right to equality is the right of all human beings to be equal in similar conditions, to be treated with respect, dignity and consideration and to participate on an equal footing in any aspect of economic, social, political, cultural or civil life. Hence the idea of equal opportunities for social access that has become a fundamental value for all democratic societies.

The Universal Declaration of Human Rights<sup>2</sup> was a landmark achievement. By setting out universal values and a common human rights standard for everyone, it underlines how every person is born free and equal. It has helped shape human rights all over the world and in Europe has guided the development of the European Convention on Human Rights and the EU's very own Charter of Fundamental Rights.

According to the principle of equality, all human beings are born equal, have equal rights and must be treated equally. Unfortunately, this natural principle of equality has not been and is not fully assured to all human beings. Over time, society has generated inequalities. Emphasizing the particular importance of the principle of equality in democratic societies, Montesquieu argues: „All men must enjoy the same happiness and the same advantages, each must feel the same pleasure and nurture the same hopes, and this can only be achieved by general temperament „Because“ the love of democracy is the love of equality. „Thus, the application of this principle gives people the feeling that they are treated with the due respect and enjoy the dignity and justice that all human beings deserve.

The right to equality before the law and the protection of all against discrimination are fundamental norms of international human rights law. The evolution of legislation and jurisprudence on the implementation of the principle of equality and non-discrimination has significant dynamics in recent years, both at the international level and in the national legal system of the states.

Discrimination as a problem of today's societies has become more and more important in recent years; that is, instead of giving signs of disappearance, it knows, thanks to its practices, higher odds. Preventing and combating discrimination is a basic obligation of all the world's states. Legislative provisions of a discriminatory nature contribute to the erosion of any state in which they act; sometimes slow, sometimes not, but regardless of the form of action and its impact in society contributes to the degradation of social life. Discrimination as a modern-day phenomenon knows different forms, which are related to each society, on a case-by-case basis.

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<sup>2</sup> The Universal Declaration of Human Rights was adopted on December 16, 1948, by Resolution 217 A at the Third Session of the United Nations General Assembly. Through a historical act, the Assembly asked all member countries to publish the text of the Statement, which was then „distributed, exhibited, read and commented in schools and other educational institutions without distinction on the political condition of the countries or territories“. The document has a preamble and 30 articles defining the main rights of the human being.

The multiple discrimination phenomenon has been treated from several points of view.

Multiple discrimination occurs when a person is discriminated against by several criteria, such as sex and religion, age and ethnicity, etc.

According to the FRA report, multiple discrimination can be:

- cumulative: when specific effects can be distinguished.

or

- intersectional: when discrimination is based on the combination of two or more characteristics.

„In 2017, the Agency marked its 10-year anniversary at a time when fundamental rights continue to be challenged. It was an opportunity to take stock of what has been achieved while acknowledging much still remains to be done to reposition respect for fundamental rights as a core value across Europe. Building on the success of its, the landmark fundamental rights event will focus on strengthening the ties that bind everyone in the EU to the societies they live in. It will demonstrate that human rights are for everyone and must be respected by everyone. Increasing the sense of belonging will be greatly facilitated when partnerships are enhanced among communities and institutions that rarely engage with each other. The Forum aims to provide the space for this to happen. „Raport FRA Day in, day out we see efforts to chip away at the bedrock of human rights on which Europe is founded. Human Rights Day on 10 December is a time to reaffirm our commitment to human rights and stand up for equality, justice and human dignity for ourselves and others.

„Not a day goes by without some human right being violated somehow. While this is not new, the human rights system is increasingly under attack,” says FRA Director Michael O’Flaherty. „From the women at home to newly-arrived migrants, they all face intolerance that is far from the hopes of those that drafted and signed the Universal Declaration. We must all take a stand and uphold the values of equality, justice and dignity that have deep roots in European society. Multiple discrimination has always existed; yet it has not always been recognized as a legal concept. Current challenges regarding multiple discrimination have been magnified by the global economic crisis, which has accentuated inequalities faced by the most vulnerable members of society. In the domain of employment, there have been deleterious effects in terms of increased unemployment, reductions in remuneration and benefits, and cutbacks in government retraining and educational initiatives. During economic crises, „it is more likely that the members of disadvantaged groups are made redundant first<sup>3</sup>”.

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<sup>3</sup> European Union Agency for Fundamental Rights: The impact of the Racial Equality Directive - Views of trade unions and employers in the European Union: Strengthening the fundamental rights architecture in the EU IV, (Luxembourg, 2010) p.45. On the impact of economic crises on racism and social cohesion, see Fact-Sheet on the impact of the economic crisis on discrimination and xenophobia, UNESCO and Global Migration Group, 2009, [http://www.globalmigrationgroup.org/pdf/UNESCO\\_Fact-sheet\\_final.pdf](http://www.globalmigrationgroup.org/pdf/UNESCO_Fact-sheet_final.pdf) (accessed 28 August 2010).

Multiple discrimination also continues to be deeply affected by the political and social volatility of world. Ongoing tensions around national security, religious diversity, race and gender have led to growing controversies around racial profiling (predominantly affecting racialized Muslim men) and religious dress codes in the workplace (affecting predominantly racialized Muslim women). In these contexts, it is impossible to separate the overlapping strands of exclusion linked to national and ethnic origin, race, religion, and gender<sup>4</sup>.

The term, „multiple discrimination“ has been used in different way. In Europe, the terminology of multiple discrimination has been relied upon in a number of major reports and policy statements. It was recently defined to embrace discrimination that is based “on any combination of grounds” or „on any one or more grounds<sup>5</sup>”.

At the regional level, the European Union has been the most active in pursuing policy and law reform initiatives to recognize, define and respond to multiple discrimination. The Fundamental Rights Agency in Europe, for example, was established to „ensure respect of fundamental rights in...policymaking” and is mandated to work on „discrimination based on sex, race or ethnic origin, religion or belief, disability, age or sexual orientation and against persons belonging to minorities and any combination of these grounds (multiple discrimination)<sup>6</sup>.

Multiple discrimination is often tackled in the sense of single axial discrimination. Discrimination occurs in different contexts and implies different criteria. Neither EU legislation nor most national laws specifically recognize multiple discrimination and do not provide for measures to manage it. Only six of the 27 Member States are addressing multiple discrimination in their legislation.

From a uni-axial point of view, it is found that discrimination is made for different reasons that occur in different situations. Multiple discrimination must be seen as an additional discrimination in which multiple forms of discrimination based on different and different criteria can be joined in different contexts. Alongside the

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<sup>4</sup> J. Syed and E. Pio: „Veiled diversity? Workplace experiences of Muslim women in Australia”, in *Asia Pacific Journal of Management*, (2010), Vol. 27, No.1, pp. 115-137; see also G. Bouchard and C. Taylor: *Building the future: A time for reconciliation* (Gouvernement du Québec, 2008); D. Schiek and V. Chege: *European Union non-discrimination law: comparative perspectives on multidimensional equality law* (London; New York, Routledge-Cavendish, 2009).

<sup>5</sup> I. Solanke: „Putting race and gender together: A new approach to intersectionality”, in *Modern Law Review* (2009), Vol. 72, No. 5, pp. 723-749 at 727-31. See also, E. Grabham et al. (eds.): *Intersectionality and beyond - Law, power and the politics of location* (New York, Routledge-Cavendish., 2009). For examples from North American government agencies, see Ontario Human Rights Commission: *An intersectional approach to discrimination: Addressing multiple grounds in human rights claims*, Discussion Paper, Policy and Education Branch, 9 October 2001; US Equal Employment Opportunity Commission: „Intersectional Discrimination,” in *Compliance manual section 15: Race and color discrimination*, at EEOC.gov, 19 April 2006, <http://www.eeoc.gov/policy/docs/race-color.html#IVC> (accessed: 21 July 2010).

<sup>6</sup> See Council Decision (2008/203/EC) implementing Regulation (EC) No 168/2007 as regards the adoption of a Multi-annual Framework for the European Union Agency for Fundamental Rights for 2007/2012, part (b) [http://fra.europa.eu/fraWebsite/about\\_fra/what\\_we\\_do/themes/themes\\_en.htm](http://fra.europa.eu/fraWebsite/about_fra/what_we_do/themes/themes_en.htm).

additional discrimination present in contemporary society, inter-secular discrimination also takes place. This is a combination of discrimination that includes several sources but acts complexly as a complicated and miraculous mixture, an intersection of inseparable identities that positions differently in different contexts in society.

Multiple discrimination is manifested at an individual, organizational and institutional level. This is why complementary strategies, policy approaches, and legislative and legal solutions are needed.

Various types of analyzes, surveys, case studies at both national and international level have been carried out to reduce this phenomenon. The results of the investigations have been transposed into legislation and implementations and mechanisms aimed at removing this phenomenon and the causes of its production. It has been found that the phenomenon of multiple discrimination has common prerequisites as well as other types of discrimination, namely negative stereotypes about certain groups and subgroups, negative feelings towards individuals belonging to certain groups and subgroups, and certain behavioral patterns. It has been concluded that the most important intervention lever for reducing the phenomenon of multiple discrimination is the intervention of local and central authorities at vulnerable communities that are predominantly exposed to social exclusion and marginalization. Given that legislation provides protection for disadvantaged groups and sets limits to the inclusion of its members, a very important role is played by the media, which could promote tolerance and mutual respect, and remove racial problems, prejudices and stereotypes, beliefs leading to behaviors discriminatory and implicit, would help combat them.

The phenomenon of multiple discrimination has intensified with the influx of migration. Exodus of migrants in states with established democracies has developed a new phenomenon. Their acceptance and integration among the indigenous population is increasingly difficult to tolerate. The source of intolerance is undoubtedly the instinct of self-preservation. Fear and natural caution towards what is unknown, unusual and foreign, often degenerates into hostility and therefore into intolerance. For man, hostility and intolerance are permanent sources of conflict, which is particularly dangerous.

The European Union Agency for Fundamental Rights (FRA) states the most recent report on migration-related fundamental rights issues points to persisting concerns as well as progress across a number of EU Member States. Released on International Migrants Day on 18 December it shows that while asylum applications have fallen in some Member States, they have risen in others which continues to strain resources and have a knock-on effect on services". In view of the increasing numbers of refugees, asylum seekers and migrants entering the EU, the EU Agency for Fundamental Rights has been collecting relevant data since November 2015. These data focus on the fundamental rights situation of people arriving in Member States particularly affected by large migration movements. The countries

covered are: Austria, Bulgaria, Denmark, Finland, France, Germany, Greece, Hungary, Italy, the Netherlands, Poland, Slovakia, Spain and Sweden<sup>7</sup>”.

Coming from different worlds, migrants have brought their culture, customs and traditions, and the local inhabitants hardly accept the new one. A type of discrimination centered on belonging to the place has been created. Their integration into the majority population can be done over time, through non-discriminatory measures and adequate public policies. In fact, the effectiveness of these measures also depends on the level of openness of the members of society to the objectives pursued.

„The EU’s Charter of Fundamental Rights prohibits discrimination on the grounds of race, colour, ethnic origin and religion or belief. The EU has passed detailed legislation that addresses discrimination in various areas of life. Member states are also bound to combat public incitement to violence and hatred against people of different race, colour, religion, or national or ethnic descent by means of criminal law<sup>8</sup>”.

Contemporary society needs the development of campaigns to raise awareness of the rights guaranteed in situations of discrimination, appropriate campaigns but to the specifics of the target groups that should become a priority. The concept of multiple discrimination is a dynamic concept whose significance and approach, both at the level of theory and policy, naturally evolved over time. Although human rights are universal and all are born equal – life, by virtue of its objective diversity, does not ensure for all equal opportunities to develop and exercise its rights, with the danger of inequalities occurring. These inequalities should be understood and tolerated.

No one should suffer because of discrimination, abuse, because everyone deserves happiness. Eliminating multiple discrimination is one of the prerequisites for building a fair and progressive society.

A basic objective of the European Union is to combat social exclusion and discrimination. There are two basic directives in the EU that prohibit discrimination on a number of criteria:

- The Directive on Racial Equality: this requires states to prohibit discrimination on criteria of racial or ethnic origin in all social activities – employment, education, health etc.

- The Employment Equality Directive: It requires states to prohibit discrimination based on religion or belief, disability, age and sexual orientation on employment and vocational training.

Efforts at European level can only be effective if they are built on the solid foundation of dedicated public authorities, equality bodies, civil society, trade

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<sup>7</sup> The European Union Agency for Fundamental Rights ( FRA) – report - December - Highlights 1-30 November 2017.

<sup>8</sup> FRA – Racism & related intolerances.

unions and employers at national, regional and local levels. By working harder and keeping the highest level of commitment, progress can be made on the path to a fairer Europe. The European Union and the Member States play essential, complementary roles in delivering sound equality policies and actions. The equality directives have been a key contribution at European level. Member States have the responsibility to transpose them fully into national law, adapting them to national realities. Several countries are above and below minimum standards.

In democratic countries, discriminatory practices are prohibited by international human rights instruments. Article 7 of the Universal Declaration of Human Rights states: „All men are equal before the law and have, without distinction, the right to equal protection of the law. All people are entitled to equal protection against any discrimination that would violate this Statement and against any challenge to such discrimination“. The Charter of the United Nations<sup>9</sup>, in Articles 1, 55 and 75, stipulates three times the obligation to respect human rights and fundamental freedoms without any distinction of race, sex, language or religion. Article 26 of the International Covenant on Civil and Political Rights<sup>10</sup> states:

„All men are equal before the law and have, without any discrimination, the right to equal protection of the law. In this respect, the law will prohibit any discrimination and guarantee to all people equal and effective protection against discrimination of any kind, such as race, color, gender, language, religion, public opinion or any other opinion of national origin or social, wealth, birth or any other circumstances ...<sup>11</sup>“.

Observance of the principle of equality leads to the exclusion of the phenomenon of discrimination. Discrimination involves limiting and violating human rights by race, gender, nationality, language, religion, wealth, opinion, etc. Equality is therefore a fundamental principle of human rights. The Constitution of Romania mentions the principle of equality in Article 16, paragraphs 1 and 2, according to which: „Citizens are equal before the law and public authorities without privileges and discrimination. Nothing is above the law“. „The criteria for discrimination are laid down in Article 4 (2) of the Constitution: „Romania is the common and

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<sup>9</sup> The United Nations Charter is a treaty that establishes the international organization called the United Nations. It was signed at the United Nations Conference on the International Organization of San Francisco, California, United States of America on June 26, 1945, of 50 of the 51 original member countries (Poland, initially, then other states that were not represented at the conference, signed it later). It came into force on October 24, 1945, after it was ratified by five permanent members of the Security Council: the Republic of China (later replaced by the People's Republic of China), France, the Union of Soviet Socialist Republics (later replaced by the Russian Federation), the United Kingdom, and the United States and most of the other signatory states. As a charter, it is a constitutive treaty, through which all members are part. Moreover, the Charter states that the United Nations' obligations prevail over everyone other obligations under other treaties. Most countries in the world have ratified the Charter. A notable exception is The Holy See, who chose to remain permanently observer and therefore is not a signatory of the Charter.

<sup>10</sup> The International Covenant on Civil and Political Rights of 16.12.1966.

<sup>11</sup> Carta.

indivisible homeland of all its citizens without discrimination based on race, nationality, ethnicity, language, religion, sex, opinion, political vision, wealth or social position. „The Romanian Constitution highlights two principles that ensure equality and non-discrimination: the principle of equality before the law and public authorities and the principle of non-discrimination.

In order to eradicate discrimination of any kind, it is necessary to have effective cooperation at the level of the state institutions, but also within the civil society. This may be possible by developing the education of the young generation by promoting and implementing the principle of equality as a fundamental value of human rights and democracy.

According to The European Union Agency for Fundamental Rights (FRA), „The European Network of Equality Bodies, Equinet, held a conference on the 7<sup>th</sup> December in Brussels to look at how equality bodies can contribute to improving inclusion of and non-discrimination in Europe” .

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