

Intersectional discrimination in Europe: relevance, challenges and ways forward

Report Summary

Intersectionality examines the intersections of the three most important global systems of domination:

racism/colonialism

capitalism

patriarchy

and their by-products:

homo- and transphobia

cis- and heterosexism

classism

all forms of racism

ableism

ageism

Intersectionality looks at the ways in which various social categories such as gender, class, race, sexuality, disability, religion and other identity axes are interwoven on multiple and simultaneous levels. The discrimination resulting from these mutually reinforcing identities leads to systemic injustice and social inequality. The concept of intersectionality is grounded in decades of activism that battled the challenges of racism and sexism throughout the 20th century.

The concept of intersectionality gives policy makers, lawyers and sociologists the opportunity to not only approach discrimination and social **inequalities from a systemic and structural perspective**, but also to capture discrimination patterns which tend to be invisibilised or overlooked in the current legal and policy frameworks for anti-discrimination. We need to shift the understanding of discrimination from a largely individual to a more structural level, and address racial discrimination at the intersections of different grounds of discrimination, going beyond rigid categories. **Only then can the full potential of intersectionality be deployed.**

Intersectionality without race

One challenge to a true and effective mobilisation of intersectionality is the widespread reluctance to face the significance of race and the reality of racism in Europe.

Although racial discourse varies across countries in Europe, **a mentality of colour-evasiveness has prompted a post-racialist discourse**. This is extremely problematic, as any manifestation of racism in the past continues to affect the power, privileges, positions and prejudices of the white-dominated populations of Europe.

While **colour-evasiveness** refers to a legal principle which considers race as irrelevant in laws, policies and society at large, **post-racialism** is a discourse and ideology which dictates that the category "race" has been transcended and that it no longer constitutes an organising principle of society.

The **unspeakability of race** participates in a wider strategy at play: silencing and delegitimising people and movements who attempt to address the racial oppression deeply rooted in colonial history which informs European discourses, institutions and politics.

The recognition of race as a category is therefore critical in addressing structural, historical, and institutional inequalities.



Depoliticisation of intersectionality in Europe

The unspeakability and erasure of race has also shaped a process of marginalisation and depoliticisation as intersectionality has been embraced and adapted by academia and mainstream feminist movements in Europe. While the reach of intersectionality theory in Europe is unprecedented, the experiences of Black women and other women of colour no longer occupy a critical space in discussions on intersectionality.

Core aspects of intersectionality have also been lost in translation by a distorted focus on individual dimensions of discrimination at the expense of the systemic and historical

dimensions. Instead of confronting all dimensions of racism, the discourse in Europe focuses on racism as an exceptional phenomenon, refusing to address its historical, structural and institutional dimensions.



There is a sense that efforts to repackage intersectionality for universal consumption require a re-marginalizing of black women

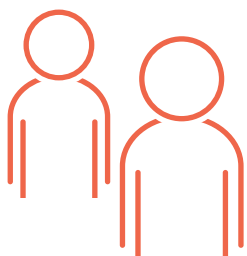
Kimberlé Crenshaw ■



European legal and policy framework on intersectionality

Different dimensions of racial discrimination

Measures to address these different dimensions of discrimination should be grounded in equality data disaggregated by race and should lead to deep institutional and systemic reforms.



Individual dimension

Individual discrimination – e.g. hate speech, denying access or rights, stereotyping, verbal and physical assault – is the most well-known and familiar form of discrimination. In most European countries, racism is primarily treated as a phenomenon rooted in individual behaviour as opposed to systemic patterns shaped by structural factors. The blame associated with individual discrimination is ascribed and limited to the person conducting the individual acts and not extended to a societal system that may be favourable to such behaviour.

Key measures to combat individual discrimination:

1. Criminal and civil law measures prohibiting discrimination (e.g. laws against hate crime and discriminatory behaviour).
2. Awareness-raising campaigns on the subtle ways in which discrimination occurs, including through unintended, unconscious behaviour (e.g. implicit bias) and on victims' rights of redress.
3. A public discourse on discrimination focused more largely on understanding how European social, historical and political systems reproduce and perpetuate racism.

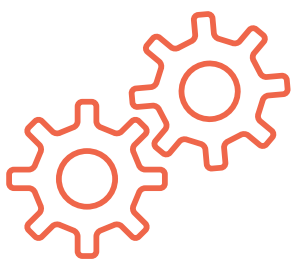


Institutional dimension

Institutional discrimination is very similar to structural discrimination as it describes discrimination patterns originated by institutions and laws. However, while structural discrimination focuses on the outcomes of societal structures and hierarchies, institutional discrimination focuses on the "input", on the actions, behaviours, decisions of people in positions of power within institutions. Individuals who make decisions and exert power on a daily basis (e.g. police officers, judges, teachers, etc.) have the ability to enforce their prejudices and stereotypes.

Key measures to combat institutional discrimination:

1. Introducing more vertical diversity – at all hierarchical levels – in public and private institutions to ensure that all social groups are proportionately represented.
2. Screening laws and policies against indirect discrimination.
3. Public awareness-raising campaigns to counter the most prevalent prejudices among the general population.
4. Implicit bias tests and anti-discrimination trainings can be used to make people employed in state and private institutions aware of the prejudices they unknowingly harbour.



Structural dimension

Structural discrimination describes the statistical representation of discrimination through the aggregation of individual cases of discrimination. It represents the social manifestation of structural inequalities and provides a contextual analysis for these inequalities. These statistics represent aggregate counts of discrimination and materialise the hidden effects of certain laws and policies, but also of certain unintended and unconscious actions by individuals in positions of power in state and private institutions.

Key measures to combat structural discrimination:

1. Social and political measures that specifically counteract the systematic disadvantage of certain social groups due to *implicit preferences* for the dominant group.
2. Screening laws to ensure that seemingly neutral laws and policies do not adversely affect one group in particular.
3. Promoting research on the sociological explanations of the over- and underrepresentation of certain groups in specific sectors.
4. Implicit bias trainings within institutions which tend to generate the over- or underrepresentation of certain groups.
5. Awareness-raising campaigns that aim at desegregating sectors segregated by race and gender.
6. Dismantling structures within certain sectors which drive structural discrimination, such as school systems which allocate children to different paths at an early age.



Historical dimension

The historical dimension of discrimination represents the historical roots and legacy of ideologies, past systems and events which continue to shape contemporary attitudes, events, media representations, social inequalities and hierarchies. The impact of historical events (e.g. the enslavement of the African peoples, colonialism and the Holocaust/ Porrajmos) continues to inform how people are positioned in the global hierarchy of power and privilege in modern society. Understanding historical discrimination is key to recognising and decoding the dynamics of discrimination across our European societies on an individual, structural, and institutional level.

Key measures to address the historical dimension of discrimination:

1. Adopting memorialisation policies (including reparations), and critically assessing and reviewing those already in place in order to include the perspective of minoritised groups.
2. Promoting a historical analysis of current social inequalities to enable policies and laws geared towards more equality and justice to include this perspective.

Legal grounds for an intersectional approach

International and European legal and policy frameworks have traditionally relied on addressing discrimination through a single-axis angle. Current interpretations of anti-discrimination law in Europe lack explicit standards for cases involving intersectional discrimination patterns.

While they are related concepts, **multiple discrimination and intersectionality are not identical.**

Multiple discrimination refers to separate simultaneous identity-based cases of discrimination targeted at an individual. In cases like this, the legal framework exists to address multiple separate simultaneous claims of discrimination.

Intersectional discrimination takes place when an individual or a group of individuals are discriminated against based on grounds that are intertwined in such a way that they produce a *unique* and new type of discrimination. In such cases, one would not make several claims of separate cases of discrimination, but rather one case of intersectional discrimination.

Article 14 of the European Convention on Human Rights is the key non-discrimination provision of the ECHR that prohibits discrimination on any grounds such as

“sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”.

While Article 14 only extends protection for rights explicitly mentioned in the Convention, the catchall phrase of “other status” has the potential to be applied in cases of multiple or intersectional discrimination.

Article 21 of the EU Charter of Fundamental Rights is the key provision applying to non-discrimination and explicitly states that discrimination based on

“sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited”.

The Racial Equality Directive (2000/43/EC) and **the Employment Equality Directive** (2000/78/EC) both state that implementation should

“aim to eliminate inequalities, and to promote equality between men and women, especially since women are often the victims of multiple discrimination” in accordance with Article 3(2) of the EC Treaty.

Case law exists but often clearly shows that the ways in which the concept of intersectionality addresses notions of power and privilege are grossly misunderstood or simply overlooked, such as in the case of exclusion of Muslim women wearing the headscarf from the labour market.



Recognizing intersectional discrimination as a category of EU anti-discrimination law improves the quality of this body of law and enables the EU's judiciary to confront new forms of intersectional discrimination on grounds of the so-called race and sex suffered by Muslim women

Dagmar Schiek, Professor of Law ■

Key strategies to implement an intersectional approach and reach equality

- 1 Intersectional discrimination should be enshrined in the EU policy and legislative framework for anti-discrimination and for gender equality.** Policy measures in these fields should include targeted measures and provisions on intersectional discrimination, acknowledging the combined effects of discrimination on combined and multiple grounds (e.g. EU and national gender equality policies and action plans against racism).
- 2 Cooperation and common strategies** should be developed between local, national and EU legislative and political bodies and civil society actors working with communities at particular risk of experiencing intersecting forms of discrimination. Consultation mechanisms should be increased at all levels of the law, policymaking and organising processes. Solidarity and cross-group actions should be enhanced to uncover common oppression frameworks.
- 3** Member States should establish strong mechanisms to **collect equality data** disaggregated by race (including ethnicity and religion), which is crucial to uncover existing structural inequalities and identify the groups that are most disadvantaged/privileged in specific societal sectors and institutions, while respecting key principles in line with data protection and fundamental rights standards.
- 4 Existing policies and legislation** should be routinely screened and reviewed from an intersectional and equality perspective, to ensure that measures and practices that are disproportionately impacting racialised groups are prohibited and systematically removed from existing policy frameworks (e.g. racial profiling).
- 5** The European Commission should prioritise launching **infringement proceedings against Member States** that breach EU equality legislation prohibiting racial discrimination and racist crime. This needs to be urgently done in the case of Muslim women's access to vocational training and employment, segregation of Roma and treatment of migrants.

The full report '**Intersectional discrimination in Europe: relevance, challenges and ways forward**' by the European Network Against Racism (ENAR) and written by the Center for Intersectional Justice (CIJ) is available [here](#).

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