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**Multiple Discriminations –  
between a Contravention *Per Se* and an Aggravating Circumstances**

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**Abstract:** In spite of a lack of a legal definition of multiple discrimination UE is showing a high interest in dealing with multiple discrimination. Preparatory work of the European Commission for a new Directive prohibiting discrimination on different grounds – commonly referred to as the ‘Horizontal Directive’ – reference is made to ‘the need to tackle multiple discrimination, for example by defining it as discrimination and by providing effective remedies’ (which, however, is considered as going beyond the scope of the directive). In Romania the legal provisions on combating discrimination lies on a law from 2000. In that law multiple discrimination is seen as an aggravating circumstances as follows, art 2 (6), OG 137/2000: „Any difference, exclusion, restriction or preference based on more than one criteria will be an aggravating circumstances and it will be take into account when trigger contravention liability, unless it falls under the incidence of criminal law”. That means that the Romanian National Council for Combating Discrimination, the specialized authority in the field of discrimination, when judges a case of multiple discrimination must prove not only one, but at least two acts of discrimination and then when fines takes into consideration the aggravating circumstances.

**Keywords:** discriminations; aggravating circumstances; Romanian National Council for Combating Discrimination,

## **1. EU Legal Provision on Multiple Discrimination**

It is well known that the combating discrimination legislation lies at the level of European Union in three distinct Directives. The three Directives are:

- Directive 2000/43/EC – Racial Equality Directive: establishes a framework against discrimination based on racial or ethnic origin inside and outside the labour market;
- Directive 2000/78/EC – Employment Equality Directive: establishes a framework for equal treatment in employment and occupation, and in Article 1 lays down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation;

- Directive 2004/113/EC – Gender Directive (and Gender Recast Directive 2006/54/EC): establishes a framework for equal treatment between men and women in access to and supply of goods and services.

The approach of multiple discriminations in the three directives is quite the same: there are **no legal provisions** regarding combating multiple discriminations.

## 2. Comments of Multiple Discriminations from EU Perspectives

There are some references on multiple discrimination like in the Recital 14 of the Racial Equality Directive, **2000/43/EC**: „*In implementing the principle of equal treatment irrespective of racial or ethnic origin, 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***”. Even in this case there is no legal definition of multiple discriminations.

In **2008**, so after 8 years, in the Explanatory Memorandum of the Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation there is a reference regarding multiple discrimination in the sense that „*Attention was also drawn to the need to tackle **multiple discrimination**, for example by defining it as discrimination and by providing effective remedies. These issues go beyond the scope of this Directive but nothing prevents Member States taking action in these areas.*”

There are more references on multiple discriminations in Recital 13 of above mentioned Proposal.

*(13) In implementing the principle of equal treatment irrespective of religion or belief, disability, age or sexual orientation, the Community should, in accordance with Article 3(2) of the EC Treaty, aim to eliminate inequalities, and to promote equality between men and women, **especially since women are often the victims of multiple discrimination.***”

But in the same time it is quite strange that multiple discrimination it is not mentioned in the Recital 12, where are underlined the forms of discrimination: “*(12) Discrimination is understood to include direct and indirect discrimination, harassment, instructions to discriminate and denial of reasonable accommodation.*”

More than that there is no reference at multiple discriminations on the body of the **2008** Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation.

There are another two documents, both Communications From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions, in which multiple discrimination is not mentioned: **2008** Non-discrimination and equal opportunities: A renewed commitment and **2008** Renewed social agenda: Opportunities, access and solidarity in 21st century Europe.

There are some suggested definitions and anyway there is no difficulty to define multiple discriminations. One of the last definitions is suggested within the EU – MIDIS European Union Minorities and Discrimination Survey in **2011**. Defining ‘multiple discrimination’: *The term ‘multiple discrimination’ can be understood as meaning discrimination on more than one ground” or a sum of*

*various discriminations*. In the same Survey it is admitted that *No specific definition of multiple discrimination was used in the survey*.

From the legal point of view there are two possible situations:

- on the one hand multiple discrimination could be taken into account as an fact *per se*, suggested in the new Horizontal Directive: defining it as discrimination and by providing effective remedies;
- on the other hand it could be considered as an aggravating circumstances.

Indifferent the way the multiple discriminations are considered, there are another related issues and this is how to prove any of the two situations and how to sanction.

In **2008** EU Justice, Freedom and Security Commissioner, Jacques Barrot, said that the proposal of Horizontal Directive, which would bar discrimination not only on the grounds of disability or age, but also of religion or sexual orientation, will be put forward as early as at the beginning of July 2008. Not much happened since then.

### **3. EU Concern on Multiple Discriminations**

In spite of a lack of a legal definition of multiple discrimination UE is showing a high interest in dealing with multiple discrimination. Preparatory work of the European Commission for a new Directive prohibiting discrimination on different grounds – commonly referred to as the ‘Horizontal Directive’ – reference is made to ‘the need to tackle multiple discrimination, for example by defining it as discrimination and by providing effective remedies’ (which, however, is considered as going beyond the scope of the directive).

In addition, the European Commission has commissioned reports and has funded research on multiple discriminations – such as the ‘Genderace’ project under the 7th Framework Programme.

### **4. Multiple discriminations – a Romanian approach**

In Romania the legal provisions on combating discrimination lies on a law from 2000. In that law multiple discrimination is seen as an aggravating circumstances as follows, art 2 (6), OG 137/2000: „Any difference, exclusion, restriction or preference based on more than one criteria will be an aggravating circumstances and it will be take into account when trigger contravention liability, unless it falls under the incidence of criminal law”.

That means that the Romanian National Council for Combating Discrimination, the specialized authority in the field of discrimination, when judges a case of multiple discrimination must prove not only one, but at least two acts of discrimination and then when fines takes into consideration the aggravating circumstances

### **5. Conclusions**

After analyzing various document, European and national we could draw some conclusions:

- there are no legal provisions defining multiple discrimination at the EU level, there are just mentions of it in various legally or politically binding documents. In spite of this lack of legal

framework EU shows great concern into this issues, a prove in that sense is the last EU – MIDIS European Union Minorities and Discrimination Survey in **2011**, called Data in Focus Report – Multiple Discrimination. Being no legal definition it is difficult to have a common and uniform approach of multiple discrimination at the EU level. After analyzing EU – MIDIS European Union Minorities and Discrimination Survey in **2011** it is also very difficult to discover what is EU approach on multiple discrimination.

- We may find various provisions regarding combating multiple discrimination at national level and those provisions may be more specific in terms of definition or national approach.

## **6. Recommendation**

To conduct a research at the EU level to analyze the national provisions, if any and then to agree upon what is multiple discrimination: a contravention *per se* or aggravating circumstances and to check how many cases where submitted to the national specialized institutions.