Combating multiple discrimination: ECRI's work

by Stefano Valenti

The European Commission against Racism and Intolerance (ECRI) is a body of the Council of Europe, composed of independent experts, which monitors problems of racism, xenophobia, anti-Semitism, intolerance and discrimination on grounds such as race, national/ethnic origin, colour, citizenship, religion and language. It prepares reports and issues recommendations to Council of Europe member states.

ECRI and multiple discrimination

Effective monitoring should be accompanied by the identification of good practices in the fight against racism and intolerance. ECRI therefore provides national authorities with concrete and practical advice on how to tackle these problems in their country.

In the findings and recommendations it addresses to states, ECRI quite often deals with multiple discrimination, in other words situations where people experience disadvantage because of discrimination on several grounds. For instance, ethnic minority people, including young people, may find themselves discriminated against not only because of their national or ethnic origin but also because of their gender, or disability, or sexual orientation or any combination of these factors.

... and "intersectional discrimination"

Multiple discrimination is not exactly the same as "intersectional discrimination", a concept that has been only recently recognised, at least in international fora. The latter refers to a situation where several grounds interact with each other in a way that they become inseparable and their combination creates a new ground for discrimination. For instance, an employer promotes both black men and white women but never black women. The employer does not discriminate on grounds of race or gender, but may do so on ground of a combination of race and gender.

The concepts of multiple and intersectional discrimination are rarely covered by national antidiscrimination law which tends to focus on one ground of discrimination at a time.

Multiple discrimination and employment

ECRI's experience shows that multiple discrimination is a particular problem in the field of employment, affecting the access to the labour market of migrants and members of other vulnerable groups, in particular young people and women.[1]

In its General Policy Recommendation (GPR) No. 14 on combating discrimination in employment, ECRI recommends that the member states of the Council of Europe provide legal protection from multiple forms of discrimination. Moreover, in GPR No. 3 on combating racism and intolerance against Roma/Gypsies, ECRI recommends that governments "pay particular attention to the situation of Roma/Gypsy women, who are often the subject of double discrimination, as women and as Roma/Gypsies"; similarly in GPR No. 5 on combating intolerance and discrimination against Muslims, ECRI recommends that the governments of member states "pay particular attention to the situation of Muslim women, who may suffer both from discrimination against women in general and from discrimination against Muslims".

As everyone knows, and as ECRI has observed in many countries, a major point of difficulty for young Muslim women is the impact of their choice to wear a headscarf on their chances of finding employment. However, the problems of the Muslim community are of a deeper and more pervasive nature. Nowadays, the prejudice against Muslims, including women and young people, is often expressed in the context of debates about "values". Islamophobia is almost invariably the result of multiple discrimination and it materialises in widespread discrimination in everyday life.

The way forward

What ECRI always stresses is that multiple discrimination in employment and education has become a major social problem as it constitutes an obstacle to the durable integration of vulnerable groups, including young people of immigrant origin.

ECRI has, therefore, encouraged employers to ensure that their recruitment and selection criteria focus only on the experience, qualifications and competences required for each post. In this context, ECRI has welcomed as good practice the adoption of legislation providing for the use of anonymised CVs in job applications in the private sector.[2] However, the application of such measures has proved to be quite difficult in the absence of positive incentives for employers. These can be of a financial nature, for instance tax or insurance reductions for employers with a multicultural workforce or funding for training programmes. They can also be non-financial, such as recognition awards or certificates.

In general terms, more has to be done to project a positive image of a diverse society and to explain better its advantages. For example, eliminating discrimination in employment can result in the creation of a diverse workforce offering employers an unlimited pool of talent, which is at the basis of any successful business. In order to eliminate discrimination in access to education, ECRI has recommended that authorities promote a social mix in state schools and place greater emphasis, in the course of teacher training, on the need to combat racism and racial discrimination and on the way in which diversity enriches society (report on Belgium published on 26 May 2009, point 68).

In the end, countering multiple discrimination of vulnerable groups, such as migrants and the Roma, with positive messages based on fact is the strategy to follow, in particular emphasising the multifaceted contribution these groups have made to the cultural richness and the economic wealth of most, if not all, European societies.

1. Report on Austria published on 2 March 2010, paragraphs 53 and 92; report on Belgium published on 26 May 2009, paragraph 113; report on Greece published on 15 September 2009, paragraph 49; report on Norway published on 24 February 2009, paragraph 91; and report on Switzerland published on 15 September 2009, paragraph 119

2. Report on France published on 15 June 2010, paragraph 48.

Children in conflict with the law: a case of discrimination?

by Jonathan Evans

Juvenile justice systems typically attempt to reconcile such potentially conflicting principles as punishment, justice, welfare, rehabilitation, reparation, children's rights, restorative justice and risk management.

> *"Arguably all youth justice systems (in developed countries) are required to fulfil two potentially competing objectives: firstly to help troubled young people to change; and secondly to deliver firm, prompt and appropriate responses to youth offending – a response which offers the best means of protecting the public when necessary."*
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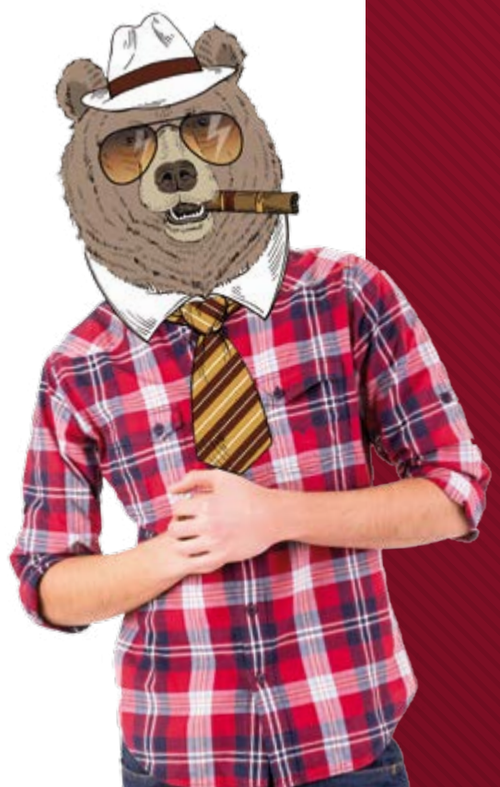
> ***McAra (2010: 288)***

At the outset it should be recognised that not all young people who offend are necessarily troubled by profound psychological difficulties requiring intensive therapeutic interventions. Indeed, self-report studies suggest that impulsive, transgressive and high-risk behaviours are far from being uncommon among most young people. Zimring (2005: 63) has argued that it is "...a more or less normal adolescent phenomenon ... a by-product of adolescence". Young people's illegal behaviour tends to be of a relatively trivial nature and in most cases is transient and short lived (Rutherford, 2002; Roe and Ash, 2008). Most young people are not apprehended by the police for their misdemeanours and, as a consequence, their crimes are not processed by the criminal justice system. Presumably most go on to lead pro-social and law-abiding lives.

Some years ago I visited one jurisdiction as part of a research project and asked a room full of respectable, middle-aged sentencers whether they had ever broken the law during their youth. After a few uncomfortable moments I was treated to a deluge of confessional reminiscences – accompanied by head-shaking and embarrassed smiles – which included episodes of substance misuse, public disorder, theft, vandalism and assault. It is probably reasonable to assume that similar anecdotes could be shared by middle-aged members of other professional groups.



This is not to suggest that youth is an inherently troublesome condition which can only be cured by the maturation process. Although youth tends to be represented negatively and stereotypically in terms of unruliness in places such as Britain (Pearson, 1983, 2006), elsewhere young people are rightly celebrated for their idealism, energy, creativity and courage. What is being suggested, though, is that childhood should enjoy a protected status, particularly within the context of powerful social systems that can blight young people's future prospects. In short, children in conflict with the law should be protected from the formal criminal justice system. A clear distinction needs to be made between – on the one hand – young people taking responsibility for the harms they have caused others, and – on the other – the toxic processes of labelling, criminalisation and social exclusion which are an inevitable and integral part of any formal criminal justice system. In other words, a young person taking responsibility for her or his actions should not be conflated with the concept of criminal responsibility. No one is suggesting that a young person who has done something wrong should not be held to account. It is this author's view, though, that young people should be held to account outside of the criminal justice system in ways that take full cognizance of their age, level of maturity and personal circumstances. Given that many young people are themselves the victims of juvenile crime, it makes sense to promote more informal, child-friendly, restorative approaches to dealing with social harms (Moore and Mitchell, 2009). However, to treat children as if they are adults is actually profoundly discriminatory.

European criminal justice systems are based, *inter alia*, on the concept of fully competent rational actors who can take full criminal responsibility for their actions. Three main arguments are used against imposing the full weight of criminal responsibility on children who offend. Firstly, young people are in the process of maturing: their cognitive and emotional competences are, quite simply, stlll developing. The pre-frontal cortex, which is the main part of the brain responsible for cognitive functioning and impulse control, is one of the slowest to develop. Changes in the limbic system, meanwhile, may account in part for strong mood swings. Although young people are certainly not devoid of moral awareness, the wider ethical issues of taking certain actions are not always appreciated by them. In light of the implications of recent neuroscientific research on adolescent impulse control, decision making and moral development, the legal context should be considered seriously in relation to setting an appropriate age of criminal responsibility (Blakemore and Choudhury, 2006; Delmage, 2013; Lamb and Sym, 2013). It is important to emphasise the point that child and adolescent development is highly individualised. Nevertheless, on average, it is not until the early 20s that the process of neural circuitry is complete; with young males often lagging behind young females. In Europe the age of criminal responsibility ranges from 7 to 18 years old. The case for a higher age is compelling on developmental grounds alone.

Secondly, although young people are certainly not without independent personal agency, they are less powerful than their adult counterparts. They are generally less able to exercise choice in relation to their living arrangements, the school they attend and the neighbourhood which shapes their opportunities. In practice it is far more difficult for them to implement critical decisions about their lives because they rely so heavily on adults for the key necessities of life.