

Multiple Discrimination

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'MULTIPLE DISCRIMINATION'

- Multiple or consecutive discrimination: Different grounds at different times
- Compound or additive discrimination: one ground adds to or compounds another ground
- Intersectional discrimination: two or more inseparable grounds intersecting

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EU Anti-discrimination Directives



- Cover: racial and ethnic origin, religion or belief, disability, age, sexual orientation and sex
- Protection against race and sex discrimination stronger than on other grounds
 - More areas covered
 - Duty to designate equality body/bodies
- Proposal COM (2008) 426 for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation

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Multiple discrimination, problems in law



- Law in most EU countries does not prohibit a claim on more than one ground but, if two or more grounds are claimed in a case, the courts often use a 'single ground' approach
- Increases the burden of proof imposed on the complainant
- Might leave victims without a remedy
- Comparator concept
- Strategic decisions as to which grounds to pursue

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- Case C-415/10 *Galina Meister v Speech Design Carrier Systems GMBH*, 19 April 2012: discrimination on grounds of age, sex and ethnic origin
- Case C-152/11 *Johann Odar v Baxter Deutschland GMBH*, 6 December 2012: direct age discrimination and indirect disability discrimination

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- Emphasis on difference
- Presumes easily defined and sharply drawn categories
- One social characteristic dominant, other invisible: essentialist understanding of identity
- Exclusionary and polarized groups
- Does not recognise the unique character of the victim
- Does it matter?

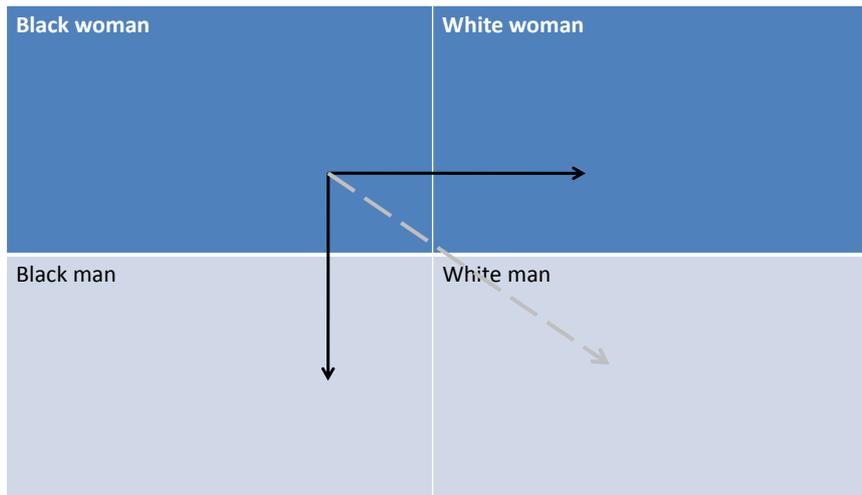
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Miriam O'Reilly v British Broadcasting Corporation 2200423/2010, 11 Jan 2011

- Employment Tribunal: age discrimination: would have been employed if 10-15 years younger
- No sex discrimination: older man would have been treated in same way
- Considered: *'we do not doubt that older women face particular disadvantages within the broadcasting media. ... While we conclude that age was a factor in the final choice of presenters, we do not accept that this particular decision involved combined age and sex discrimination or sex discrimination in addition to age discrimination'*.

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Comparator combined grounds



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- Article 1 proposed Directive: 'this Directive lays down a framework for combating discrimination, **including multiple discrimination**, on the grounds of religion or belief, disability, age, or sexual orientation, with a view to putting into effect in the Member States the principle of equal treatment other than in the field of employment and occupation'
- Multiple discrimination occurs when discrimination is based on a combination of any of two or more of the grounds covered by EU anti-discrimination law

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- (1) A person (A) discriminates against another (B) if, because of a combination of two relevant protected characteristics, A treats B less favourably than A treats or would treat a person who does not share either of those characteristics.
- (3) For the purposes of establishing a contravention of this Act by virtue of subsection (1), B need not show that A's treatment of B is direct discrimination because of each of the characteristics in the combination (taken separately).

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Other examples of national provisions

- Article 11 Bulgarian Protection Against Discrimination Act (PADA) defines multiple discrimination: 'discrimination on the grounds of more than one of the characteristics under Article 4 (1)'.
- Article 4 revised Romanian Act on Equal Opportunities defines multiple discrimination: 'any discriminating action based on two or more discrimination criteria'
- Austrian, Italian and Romanian laws: multiple discrimination taken into account when calculating compensation

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S 3 Canadian Human Rights Act

- Headed: 'multiple discrimination':
- *For greater certainty, a discriminatory practice includes a practice based on one or more prohibited grounds of discrimination or on the effect of a combination of prohibited grounds.*
- No comparator needed, concentrates on effects of the different grounds on victim

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South Africa

- South African Promotion of Equality and Prevention of Unfair Discrimination Act 2000
- outlaws discrimination on expansive list of grounds and on any other ground where discrimination on that ground causes or perpetuates systemic disadvantage or undermines human dignity
- Able to address any ground or combination of grounds

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Further information

- Carles, I. and Jubany-Baucells, O. (eds) (2010) *GenderRace - The Use of Racial Anti-Discrimination Laws: Gender and Citizenship in a Multicultural Context*. Final Report. Project funded by: EU Seventh Framework Programme, Grant Agreement number SSH7-CT-2007-217237:
<http://genderace.ulb.ac.be/rapports/GENDERACE%20FINAL%20REPORT%20sent.pdf>
- Fundamental Rights Agency (2013) Inequalities and multiple discrimination in access to and quality of healthcare,
<http://fra.europa.eu/en/publication/2013/inequalities-discrimination-healthcare>

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Further information

- Howard, E. (2011) 'Multiple Discrimination in Law'. Paper Presented at the 'Think Equal, Symposium on Multiple Discrimination', 1 November 2011, National Commission for the Promotion of Equality (NCPE), Malta. Paper available at: https://secure3.gov.mt/socialpolicy/SocProt/equal_opp/equality/projects/think_equal.aspx
- Carles, I., Howard, E. and Kofman, E. (2011) 'Gendered Experiences of Racial Discrimination – Comparative Socio-legal Research' in: D. Schiek and A. Lawson (eds.) *EU Non-Discrimination Law and Intersectionality* (Farnham, Ashgate)
- Monaghan, K. (2011), Multiple and Intersectional discrimination in EU law, 13, *European Anti-discrimination Law Review*, 20-32.

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