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
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

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
CJEU cases

- 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

Criticism single ground approach

- 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?
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 the 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’.

Comparator combined grounds

<table>
<thead>
<tr>
<th>Black woman</th>
<th>White woman</th>
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<tbody>
<tr>
<td>Black man</td>
<td>White man</td>
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Slide 7: 

Slide 8:
Amendments proposed by EU Parliament

- 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

S 14 Equality Act 2010 (Britain): Combined discrimination: dual characteristics

(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).
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

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
South Africa

- 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

Further information

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