Multiple and intersectional discrimination in the case law of the European Courts: A comparative analysis

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Current Reflections on EU Anti-Discrimination Law
ERA, Trier, 4 June 2019

“We are actively committed to struggling against racial, sexual, heterosexual, and class oppression, and see as our particular task the development of integrated analysis and practice based upon the fact that the major systems of oppression are interlocking. The synthesis of these oppressions creates the conditions of our lives.”

Combahee River Collective, 1977

Angela Davis, 1972
“Intersectionality is a metaphor for understanding the ways that multiple forms of inequality or disadvantage compound themselves and create obstacles that often are not understood within conventional ways of thinking within anti-racism, feminism and [other] social justice advocacy structures”

Kimberlé Crenshaw, 2018
TYPES OF DISCRIMINATION EXPERIENCED IN THE GENERAL POPULATION

Multiple grounds
25%

Single ground
75%

TYPES OF DISCRIMINATION EXPERIENCED AMONG ETHNIC MINORITIES AND IMMIGRANTS

Multiple grounds
38%

Single ground
62%

EU Anti-Discrimination Law

MISMATCH

Intersectional Discrimination
“especially since women are often the victims of multiple discrimination”

• Recital (14) Race Equality Directive
• Recital (4) Framework Directive

“on any ground such as…”

European Convention on Human Rights

Art. 14: prohibition of discrimination

…sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”
C-443/15 David L. Parris v Trinity College Dublin and Others EU:C:2016:897

“discrimination may indeed be based on several […] grounds”

but “there is […] no new category of discrimination resulting from the combination of more than one of those grounds […]

where discrimination on the basis of those grounds taken in isolation has not been established”

→ No discrimination

BS v Spain, 24 July 2012, Application 47159/08

Grounds:
• Gender
• Race
• Social origin / professional status

Claim:
• Police violence (Art. 3)
• Discrimination (Art. 14)

“particular vulnerability inherent in the applicant’s position as an African woman working as a prostitute” [62]

→ discrimination
Implicit recognition?

- CJEU: C-152/11 Johann Odar v Baxter Deutschland GmbH Odar (EU:C:2012:772)
  - Compound disadvantage
  - Based on age and disability

- ECtHR: Carvalho Pinto de Sousa Morais Mourais c. Portugal, Application n 17484/15
  - Compound stereotyping
  - Based on gender and age

Failure to recognise intersectional discrimination

- C-157/15 Achbita (CJEU, 2017)
- C-188/15 Bougnaoui (CJEU, 2017)

Ways forward?

Legal reform?

Awareness?

Litigation?
Questions?

Thank you!
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