

Multiple discrimination and equality conflicts

Lynn Roseberry, J.D., LL.M., Ph.D.
Associate Professor, Copenhagen Business School

Outline

1. What is “multiple discrimination”?
2. How does it conflict with equality?
3. Examples of practical solutions
4. Conclusions

What is multiple discrimination?

- ▶ Discrimination based on any combination of protected grounds.
 - ▶ Sex
 - ▶ Racial or ethnic origin
 - ▶ Religion or belief
 - ▶ Disability
 - ▶ Age
 - ▶ Sexual orientation
 - ▶ Nationality

Early scholarship on multiple discrimination

- ▶ Elizabeth Spelman, *Inessential Woman* (1988)
- ▶ Kimberlé Crenshaw, “Demarginalizing the intersection of race and sex: a black feminist critique of antidiscrimination doctrine, feminist theory and anti-racial politics”, *University of Chicago Legal Forum* (1989) 139-67.

International recognition of concept

- ▶ **Beijing Declaration, Fourth World Congress on Women (1995)**
 - ▶ We are determined to:...
 - ▶ 32. Intensify efforts to ensure equal enjoyment of all human rights and fundamental freedoms for all women and girls who face multiple barriers to their empowerment and advancement because of such factors as their race, age, language, ethnicity, culture, religion, or disability, or because they are indigenous people...
- ▶ **Committee on the Elimination of Racial Discrimination, General Recommendation No. 25: Gender related dimensions of racial discrimination (20 March 2000)**
 - ▶ The committee notes that racial discrimination does not always affect women and men equally or in the same way. ...

EU recognition of multiple discrimination

- ▶ **Preambles to 2000 Directives: “women are often the victims of multiple discrimination”**
 - ▶ Preamble, Recital 14, 2000/43 (racial and ethnic origin)
 - ▶ Preamble, Recital 4, 2000/78 (framework directive)
- ▶ **Council Decision of 27 November 2000, 2000/750, OJ L 303, 2/12/2000**
 - ▶ “equality of women and men requires action on multiple discrimination”
 - ▶ “new practices and policies to combat discrimination should include multiple discrimination”
- ▶ **Community action programme to combat discrimination, “Non-discrimination and equal opportunities: a renewed commitment”, COM(2008)420 final, p. 9**
 - ▶ Announcing use of “new governance mechanisms to address the issue of multiple discrimination” through, inter alia, “providing funding for smaller networks of NGOs representing intersectional groups”.
- ▶ **Decision 771/2006 establishing the “European Year of Equal Opportunities for All (2007) – Towards a Just Society”**
 - ▶ Preamble, recital 14: The European Year “will also seek to address issues of multiple discrimination, that is discrimination on two or more of the grounds listed in Article 13 EC”.

Proposal for new directive

- ▶ Council Directive on implementing the principle of equal treatment between persons irrespective of religion and belief, disability, age or sexual orientation other than in the field of employment and occupation. COM(2008)426
- ▶ European Parliament proposed adding a provision (Article 1(1)) explaining that the directive's framework for combating discrimination includes multiple discrimination within its scope.

Identifying multiple discrimination: different understandings

▶ Additive discrimination

- ▶ Simultaneous discrimination on different grounds can be analyzed ground by ground.
 - ▶ Equality Tribunal, Ireland, 18 December 2001, DEC-S2001-020, *Maughan v. The Glimmer Man*

▶ Intersectionality

- ▶ The combined effects of discriminatory practices based on more than one characteristic. Different combinations produce different effects.

▶ Compound discrimination

- ▶ Discrimination on different grounds at different times.

Conflicts with equality

Anti-discrimination law and multiple discrimination

Multiple Discrimination and Equality

- ▶ **Dominant model of discrimination**
 - ▶ Non-discrimination = equality or equal treatment
 - ▶ Comparator required
- ▶ **Problem**
 - ▶ With whom do you compare an elderly, homosexual female of minority ethnic or racial origin?
 - ▶ A man?
 - ▶ A younger person?
 - ▶ A heterosexual person of either sex?
 - ▶ A member of the ethnic or racial majority?

Problems with Multiple Discrimination in EU and National Law

- ▶ Choice of relevant comparator in cases of indirect discrimination.
- ▶ Differences in personal and material scope of protection against discrimination on different grounds.
- ▶ Differences in enforcement mechanisms.
- ▶ Differences in exceptions, justifications.

Some practical solutions

Germany

European Court of Human Rights

Germany

- ▶ **General Non-Discrimination Act of 2006**
 - ▶ In cases of multiple discrimination the justification must meet the requirements of the strictest exception clause applicable to the case at hand.

European Court of Human Rights: Rasmussen v. Denmark, 28 November 1984

- ▶ For the purposes of Article 14, the Court...finds that there was a difference of treatment as between Mr. Rasmussen and his former wife as regards the possibility of instituting proceedings to contest the former's paternity. There is no call to determine on what ground this difference was based, the list of grounds appearing in Article 14 not being exhaustive.

Concluding questions

- ▶ **Out of conflict an invitation?**
 - ▶ Deeper understanding of the phenomenon anti-discrimination law is intended to address?
 - ▶ A new paradigm?

Thank you for your attention

And good luck!

References

- ▶ Dagmar Schiek, Lisa Waddington, Mark Bell, *Cases, Materials and Text on National, supranational and International Non-Discrimination Law*, 2007, Oxford and Portland Oregon: Hart Publishing.
- ▶ Sarah Hannett, “Equality at the Intersections: The Legislative and Judicial Failure to Tackle Multiple Discrimination” (2003) 23 *Oxford Journal of Legal Studies* 68.
- ▶ Lynn Roseberry, “Multiple Discrimination” in Malcolm Sargeant (editor), *Age Discrimination and Diversity: Multiple Discrimination from an Age Perspective*, 2011, Cambridge University Press, pages 16-40.