

Multiple Discrimination

Professor Dagmar Schiek, University of Leeds (for: ERA seminar - Current Reflections on EU Equality and Non-discrimination Law)

Abstract

Since 1999, when the EU Commission presented its first legislative package on combating racism and other forms of discrimination, EU legislation has proliferated on the characteristics on grounds of which discrimination shall be prohibited within its Member States. With each added ground (so far sex, racial and ethnic origin, sexual orientation, age, religion and belief and disability), it becomes more likely for factual scenarios to potentially illicit several or interrelated non-discrimination claims. Non-discrimination cases before the Court of Justice mirror this potential. For example, Seda Küçükdeveci had originally raised a claim of racial discrimination, after she was dismissed instead of being offered a post which involved customer contacts due to her accented German. The case was later framed as age discrimination case, although there were also elements of indirect sex discrimination. Also, when Tadao Maruko challenged the fact that he was not eligible for a survivor's pension on the grounds that his partner was male, he did rely on discrimination on grounds of sexual orientation, instead of relying on precedents that classed refusal to pay a survivor's pension for a same sex partner as sex discrimination. More recently, Servet Kamberaj raised a claim of racial discrimination when he was denied a housing benefit on grounds of his Albanian nationality, and Galina Meister complained of simultaneous racial, sex and age discrimination before a German court which referred her case to the Court of Justice.

In sociological and critical legal literature, the alleged inability of law to respond adequately to those at the intersection of inequalities has been widely debated under the key word "intersectionality". The EU institutions have not yet used this term, but rather refer to multiple discrimination. This term was also used by the Beijing declaration on equal rights for women and girls (1995) and has also found its way into the recitals of EU legislation (Directives 2000/43 and 2000/78). Arguably, the relatively neutral term of multiple discrimination is well suited to describe the problem, while intersectionality has more analytical strength.

This presentation critically assesses the extent to which EU law is capable of responding adequately to discrimination at the intersection between race, gender and disability, focusing on legal and political developments at EU level, while not neglecting national approaches and model. It will argue that more must be done to achieve that goal, and that incremental development of adequate doctrine and analysis through policy and case law is preferable to rash legislative initiatives. As a guideline for such development, the paper proposes the concept of nodes to refocus EU non-discrimination law. It will offer some practical examples on what that concept can achieve.

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