

MULTIPLE DISCRIMINATION

WHEN THE GENDER DISCRIMINATION GOES
EVEN MORE DOWN HILL

CASES OF MULTIPLE DISCRIMINATION

An Afghan woman cannot find a job because (?)

- she wears a headscarf
- she comes from a muslim country
- her colour is not white
- she is a woman

A Roma woman cannot find a flat because (?)

- she comes from Romania
- she has too many children
- she is very poor
- she is Roma
- she is a woman



MULTIPLE DISCRIMINATION

A CONCEPT THANKS TO WHICH A WHOLE PERSON SHOULD BE BETTER PROTECTED

People with multiple identities that increase their social vulnerability and marginalisation may require a multiple approach to protect their right to be treated equally and to their human rights in general.

MULTIPLE DISCRIMINATION - DEFINITION

Multiple-discrimination is the situation whereby an individual suffers from discrimination for more than one reason, based on their belonging to more than one type of social group. Multiple-discrimination is connected to the fact that each individual has complex multiple identities and is not simply 'a woman' or 'a disabled person' or subject to any other single definition.



MULTIPLE DISCRIMINATION - FORMS

Separate occasions – separate discriminatory grounds (one day one ground, other day another ground...)

Additive (compound) discrimination – series of requirements – lack of one decreases the chance of success, lack of further characteristics decreases it even more, the role of the different grounds can still be distinguished

Intersectional discrimination – discriminatory grounds interact with each other so that they are inseparable



EU LAW RESPONSE TO MULTIPLE DISCRIMINATION

No direct response in primary law

Secondary law

- Race directive (2000/43/EC)
 - Preamble, rec. 14: „ In implementing the principle of equal treatment irrespective of racial or ethnic origin, the Community should, in accordance with Article 3(2) of the EC Treaty, aim to eliminate inequalities, and to promote equality between men and women, especially since women are often the victims of multiple discrimination.“
- Framework employment directive (2000/78/EC)
 - Preamble, rec. 3: „In implementing the principle of equal treatment, the Community should, in accordance with Article 3(2) of the EC Treaty, aim to eliminate inequalities, and to promote equality between men and women, especially since women are often the victims of multiple discrimination.“

Possible future response – proposed framework directive (COM(2008)426)

Preamble, rec. 13: „ In implementing the principle of equal treatment irrespective of religion or belief, disability, age or sexual orientation, the Community should, in accordance with Article 3(2) of the EC Treaty, aim to eliminate inequalities, and to promote equality between men and women, especially since women are often the victims of multiple discrimination.“

EQUAL TREATMENT DIRECTIVE - PROPOSAL

Art. 1

1. 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.

2. Multiple discrimination occurs when discrimination is based:

(a) on any combination of the grounds of religion or belief, disability, age, or sexual orientation, or

(b) on any one or more of the grounds set out in paragraph 1, and also on the ground of any one or more of

(i) sex (in so far as the matter complained of is within the material scope of Directive 2004/113/EC as well as of this Directive),

(ii) racial or ethnic origin (in so far as the matter complained of is within the material scope of Directive 2000/43/EC as well as of this Directive), or

iii) nationality (in so far as the matter complained of is within the scope of Article 12 of the EC Treaty).

...

'Article 16 2. The Commission's report shall take into account, as appropriate, the viewpoints of the social partners and relevant non-governmental organizations, as well as the EU Fundamental Rights Agency.

... **The report shall also contain information about multiple discrimination, covering not only discrimination on grounds of religion or belief, sexual orientation, age and disability, but also discrimination on grounds of sex, race and ethnic origin. In the light of the information received, this report shall include, if necessary, proposals to revise and update this Directive.'**

The proposal is still being considered in the Council. There is a great hesitation to adopt it, especially because of a feared not sufficient clarity of the text.

EU LAW RESPONSE

Quite weak

- Almost lacking
- Only in preambles

Understandably

- Mentioned always in connection to sex discrimination (women often victims of multiple discrimination)

EU CASE-LAW?

Lawyers themselves prefer to point out one discriminatory ground, where it is more probable, that the case will be successful.

National courts only seldomly have a chance to hear a case of proclaimed multiple discrimination.

CJEU never heard a case, where multiple discrimination as such would be argued, there are however some cases, where more grounds were under consideration.



EU CASE LAW

Migrant workers

- Cases of women who followed their husbands to another country (*Spotti, Schönning-Kougebetoulou, Scholz*)
- Cases of women engaged in prostitutions using their right to free movement (*Adoui and Cornuaille, Jany et all.*)
 - In ECJ case law – only discrimination on ground of nationality acknowledged
- Interaction of age and gender
 - Compulsory retirement at an earlier pension age (*Defrenne, Marshall, Kleist*)
 - Denial of specific favourable form of part-time work at an age at which men had still access to it (*Steinicke, Kutz-Bauer*)
 - Transfer of pension rights (*Lindorfer*)
 - Early retirement support denial (*Soukupová*)
- Interaction of disability and gender
 - Harassment because of time of in order to care after disabled child (*Coleman*)

RECENT CASE LAW

Case C-415/10 of 19 April 2012

Galina Meister v Speech Design Carrier Systems GmbH

- claimed that she was treated less favourably than another person in a comparable situation, on the grounds of her sex, age and ethnic origin
- CJEU:
 - it cannot be ruled out that a defendant's refusal to grant any access to information may be one of the factors to take into account in the context of establishing facts from which it may be presumed that there has been direct or indirect discrimination

CONCLUSION

The application of the concept of multiple discrimination is very much needed, but there is still a long way to go to make legal practice consider it properly.