

# Multiple Discrimination

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## Multiple discrimination



**BBC culture WAS biased against its older women (Daily Mail, UK, 15 January 2015)**

One minority at a time  
Being black and gay

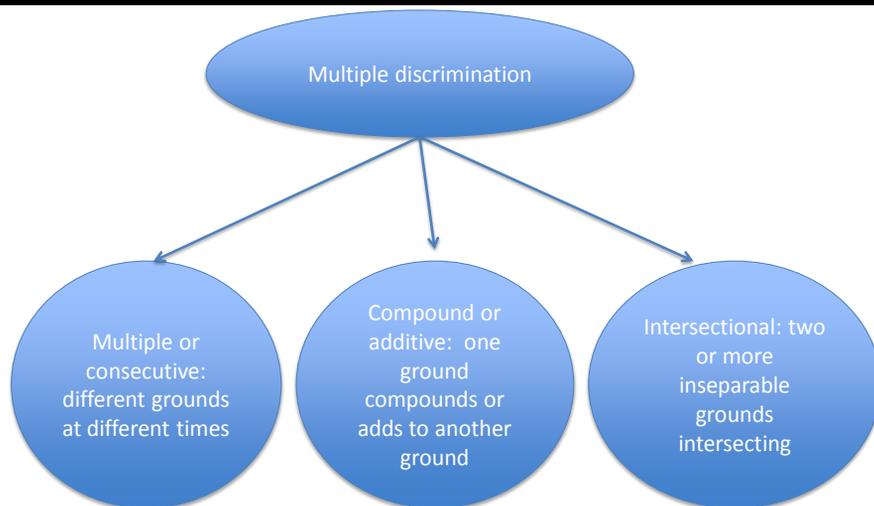
**Stop and search used 'disproportionately' on black and Asian people**



The governments expressed that they were determined to:

*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*

## Multiple discrimination



- Directives 2000/43/EC and 2000/78/EC (cover racial or ethnic origin, religion or belief, disability, age and sexual orientation):
  - “women are often victim of multiple discrimination” (Recitals 14 and 8 respectively)
  - Duty to report, ‘in accordance with the principle of gender mainstreaming’, on the **impact on women and men** (articles 17 and 19 respectively)
- Gender Directives (2004/113/EC and 2006/54/EC):
  - **No reference** to multiple discrimination
- Added problem: **different levels of protection for different grounds**

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- Proposal **COM (2008) 426** for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation

### Explanatory Memorandum:

*“Attention was also drawn to the need to tackle multiple discrimination, for example by defining it as discrimination and by providing effective remedies. These issues go beyond the scope of this Directive but nothing prevents Member States taking action in these areas”.*

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- **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

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- **Case C-1/77** *Defrenne v Sabena*: sex, also possible age?
- **Case C-152/84** *Marshall v Southampton and South Hampshire Area Health Authority*: sex, also possible age?
- **Case C-227/04**: *Lindorfer v Council of the European Union*: sex, age, nationality?
- **Case C-303/06** *Coleman v Attridge law and Steve Law* 17 July 2008: discrimination on grounds of disability, possible also gender?

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- **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
- **Case C-363/12** *Z v a Government Department and the Board of Management of a Community School* 18 March 2014: gender, disability and family status

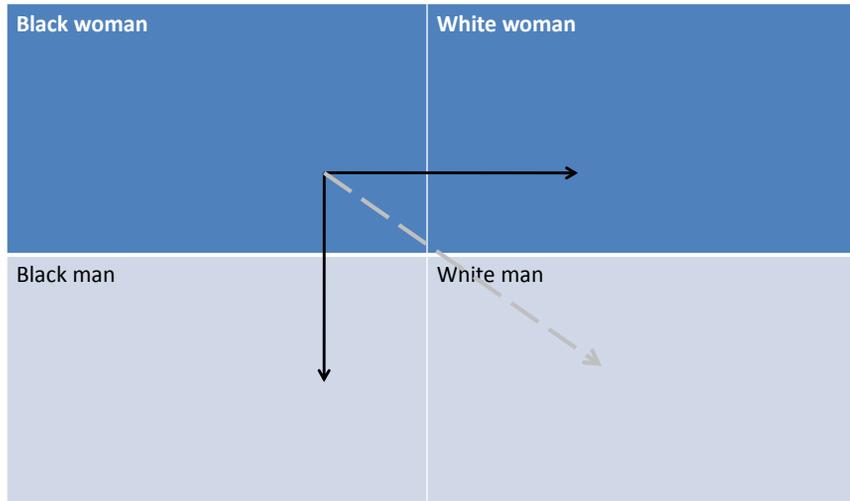
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## Multiple discrimination, problems in law

- 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
- Not recognised by victim
- **Strategic decisions** as to which grounds to pursue

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## Comparator combined grounds



## Other examples of national provisions

- **Greece:** a provision explicitly refers to multiple discrimination
- **Poland:** both direct and indirect discrimination can be on multiple grounds
- Art 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)'
- Art 4 revised **Romanian** Act on Equal Opportunities defines multiple discrimination: 'any discriminating action based on two or more discrimination criteria'
- **Germany:** in cases of multiple discrimination, the justification requirements for each single ground must be fulfilled
- **Austrian, Italian** and **Romanian** laws: multiple discrimination taken into account when calculating compensation

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- 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**

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- **South African Promotion of Equality and Prevention of Unfair Discrimination Act 2000**
- 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

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## Further information

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## Further information

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- Monaghan, K. (2011), Multiple and Intersectional discrimination in EU law, 13, *European Anti-discrimination Law Review*, 20-32
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