



# Exploring the links between sexism, sex-based discrimination and violence against women

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# 1. INTRODUCTION



## **2. UNDERSTANDING THE CONCEPT OF SEXISM**



# Sexism is ambivalent

- Sexism not purely negative
- Ambivalent sexism theory
- Test yourself!

<http://www.understandingprejudice.org/asi/>





## Hostile Sexism ('HS')

- Conveys antipathy/antagonism
- HS objectifies women, denies their human agency and reduces them to acted-on objects rather than autonomous actors. (Glick and Fiske 2011)





## Benevolent Sexism (BS)

- Appears to convey a positive view, but is patronizing
- ‘a set of interrelated attitudes toward women that are sexist in terms of viewing women stereotypically and in restricted roles but that are subjectively positive in feeling tone . . . and also tend to elicit behaviors typically categorized as prosocial (e.g., helping)’ (Glick & Fiske, 1996)
- Often not recognized as a form of sexism -> jokes & compliments



## BS and HS much in common

- In common: idea that men and women inhabit separate spheres + women are the weaker sex
- BS is the carrot, HS is the stick







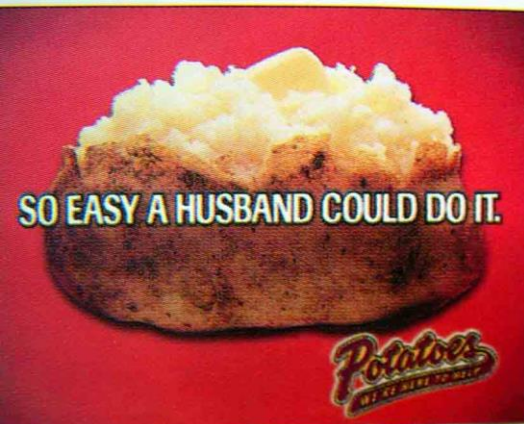
## **Result BS+HS-> maintaining structural power hierarchy**

- Together, BS and HS maintain and justify gendered status quo, serving men's structural power
- Complementary supports for gender inequality
- BS uniquely problematic, because not often recognized as sexism

## Sexism against men

- Sexism also affects men
- Distribution of power makes that it affects women differently
- Important to recognize both sides: also to enable emancipation of women

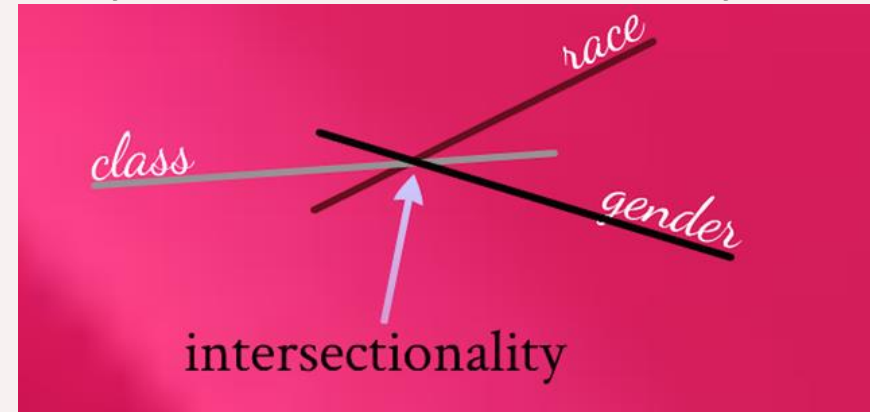
AGE 2





# Sexism and intersectionality

- Sexism, racism, classism and other systems of oppression are all connected – all create hierarchies
- Intersectionality difficult to apply in law







## Conclusions on the concept of sexism

- Sexism can also appear in 'benevolent' form
- Both BS and HS serve structural gender inequality
- CoE should emphasize structural aspects of sexism
- Sexism is also intersectional





# 3. SEXISM AND GENDER STEREOTYPING



## Concept of stereotypes

- Simple definition:  
“stereotypes are beliefs about groups of people”.
- Rebecca Cook & Simone Cusack, *Gender Stereotyping* (2010):  
“a stereotype is a generalized view or preconception of attributes or characteristics possessed by, or the roles that are or should be performed by, members of a particular group”.
  - *Stereotypes are not necessarily negative or inaccurate!*
  - *Stereotypes are both descriptive and prescriptive*



# *Traditional Gender Stereotypes.*

## *Feminine.*

*Not aggressive.*  
*Dependent.*  
*Easily influenced.*  
*Submissive.*  
*Passive.*  
*Home-oriented.*  
*Easily hurt emotionally.*  
*Indecisive.*  
*Talkative.*  
*Gentle.*  
*Sensitive to other's feelings.*  
*Very desirous of security.*  
*Cries a lot.*  
*Emotional.*  
*Verbal.*  
*Kind.*  
*Tactful.*  
*Nurturing.*

## *Masculine.*

*Aggressive.*  
*Independent.*  
*Not easily influenced.*  
*Dominant.*  
*Active.*  
*Worldly.*  
*Not easily hurt emotionally.*  
*Decisive.*  
*Not at all talkative.*  
*Tough.*  
*Less sensitive to other's feelings.*  
*Not very desirous of security.*  
*Rarely cries.*  
*Logical.*  
*Analytical.*  
*Cruel.*  
*Blunt.*  
*Not nurturing.*





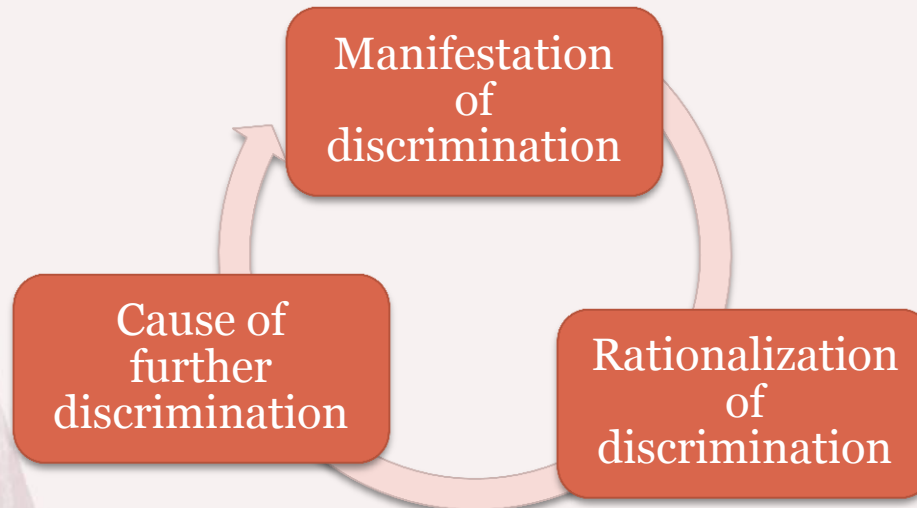
## Sexism ↔ gender stereotypes?

- Gender stereotypes underlie both BS and HS
- Gender stereotyping is broader than sexism: not all gender stereotypes are sexist
- Concept note is right to connect sexism to *harmful* gender stereotypes → harm depends on context



# Gender stereotyping and inequality & discrimination

- Stereotypes fixate identities, and make these look 'natural' and inevitable.
- Stereotypes reinforce inequality and discrimination. Invidious circle:





# **4. LEGAL APPROACHES TO SEXISM, SEX DISCRIMINATION, GENDER (IN)EQUALITY AND GENDER STEREOTYPING**



## The EU and CEDAW

- EU law and CEDAW
- No mention of sexism in EU legislation
- No definitions of ‘sex’ or ‘gender’
  - e.g. gender mainstreaming in Art. 29 of Directive 2006/54
- Prohibition of sex discrimination
  - includes gender reassignment, case C-13/94, *P/S*



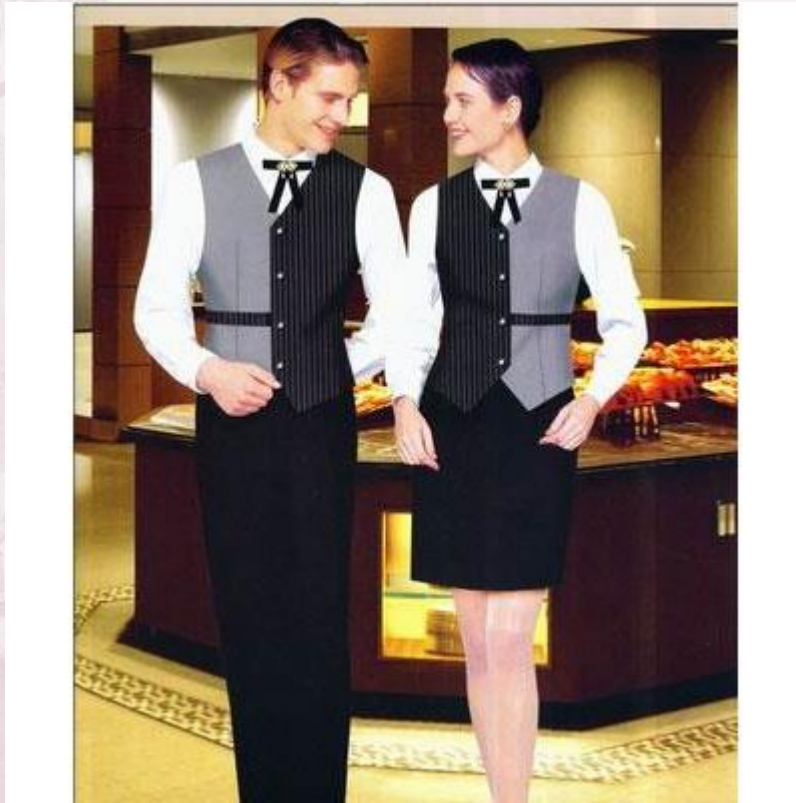
## Direct discrimination

- Where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation (Art. 2(1)(a) Directive 2006/54)
- No comparator required in pregnancy cases
  - case 177/88 *Dekker*





# Dress codes





## Indirect discrimination

Where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.

Art. 2 (1) (b) Directive 2006/54



# European Court of Human Rights

- Slightly different indirect sex discrimination test (*Hoogendijk, Di Trizio*)
- Combatting stereotypes (*Markin, parental leave*)
- Reinforcing caring roles (*Andrle*)



## Comparisons

- Military vs parental leave (CJEU case C-220/02 *Österreichischer Gewerkschaftsbund*)
- A prohibition of sexism, harassment or sexual harassment does not require a comparison





# Harassment on the ground of **sex**

- Where unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment



## Sexual harassment

- Where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment



# Protection in case of (sexual) harassment

- For the purposes of this Directive, discrimination includes:
  - (a) harassment and sexual harassment, as well as any less favourable treatment based on a person's rejection of or submission to such conduct  
Art. 2 (2) (a) Directive 2004/54
- Prevention of harassment/sexual harassment: Art. 28 Directive 2004/54



## In addition

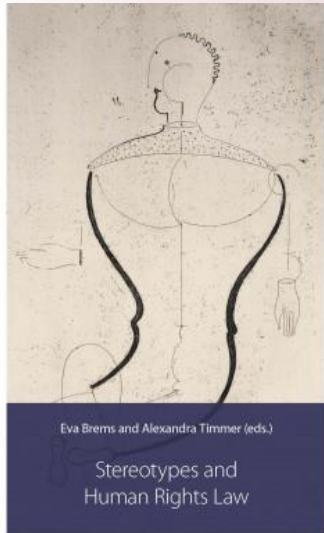
- Instruction to discriminate
- Burden of proof
- Sanctions and compensation
- Equality bodies
- Etc.





## Goods and services

- Not applicable to the content of media and advertising nor to education (Art. 3(3) Directive 2004/113)
- No prohibition concerning an instruction to discriminate
- Directive 2000/43 on racism: broader scope



# Gender stereotyping and law

(Gender) stereotyping emerging as legal concept in human rights law.

Key provisions:

- Art. 5(a) CEDAW

*States Parties shall take all appropriate measures: To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;*

- Art. 8(b) UN CRPD
- Arts. 12 and 14 Istanbul Convention





## 3 main obligations under CEDAW

Gen. Rec. 28, par. 7:

- “Firstly, States parties’ obligation is to ensure that there is no direct or indirect discrimination against women in their laws and that women are protected against discrimination — committed by public authorities, the judiciary, organizations, enterprises or private individuals — in the public as well as the private spheres by competent tribunals as well as sanctions and other remedies.
- Secondly, States parties’ obligation is to improve the de facto position of women through concrete and effective policies and programmes.
- Thirdly, States parties’ obligation is to address prevailing gender relations and the persistence of gender-based stereotypes that affect women not only through individual acts by individuals but also in law, and legal and societal structures and institutions.”



# Anti gender-stereotyping: decisions CEDAW (I)

- *Vertido v. Philippines* (2010)
  - gender stereotypes influenced a rape trial

Par. 8.5: “It is clear from the judgment that **the assessment of the credibility of the author’s version of events was influenced by a number of stereotypes**, the author in this situation not having followed what was expected from a rational and “ideal victim” or what the judge considered to be the rational and ideal response of a woman in a rape situation”.





# Anti gender-stereotyping: decisions CEDAW (II)

- ***R.K.B. v Turkey (2012)***
  - gender stereotypes influenced a decision to dismiss a woman

Par. 8.8: ‘full implementation of the Convention requires States parties . . . to modify and transform gender stereotypes and eliminate wrongful gender stereotyping, a root cause and consequence of discrimination against women. The Committee is of the view that gender stereotypes are perpetuated through a variety of means and institutions including laws and legal systems and that they can be perpetuated by State actors in all branches and levels of government and by private actors. In this case, the . . . Labour Court has clearly allowed its reasoning based on law and facts to be influenced by stereotypes and the Court of Cassation by failing altogether to address the gender aspect, has perpetuated gender stereotypes about the role of women and men with it being accepted for the latter to have extramarital affairs.’



# Anti gender-stereotyping: key cases ECtHR

- *Opuz v. Turkey* (2009)
- *Konstantin Markin v. Russia* (2012)
- But: *Khamtokhu and Aksenchik v. Russia* (2017)

See also:

- *Alajos Kiss v. Hungary* (2010) (on disability)
- *Kiyutin v. Russia* (2011) (on HIV-status)





# Anti gender-stereotyping: cases CJEU

- Few cases
  - e.g. C-409/95 *Marschall*





# 5. SEXISM AND VIOLENCE AGAINST WOMEN





# Sexism and VAW

- Many manifestations of sexism: VAW is one of them
- Lot of research
- Sexism plays role at two levels:
  - Causing violence → positive state obligation to prevent it
  - Influencing (lack of) response from authorities → both positive and negative state obligations



# 6. CONCLUSIONS



# CONCLUSION

- Addressing sexism is an important initiative!
- Include broader international and European perspective
- Striving for a legal definition of sexism promising?
- Added value compared to other concepts? Perhaps worthwhile to focus on developing anti gender stereotyping



## Conclusions continued

- Important to address different aspects of sexism: both BS and HS
- Concept definition not clearly encompassing BS
- Legal prohibition of sexism is not enough: focus on developing positive obligations on the state to prevent sexism





# Recommended readings

- Burri, Susanne (2015). Equal treatment: The EU approach. In F. Pennings & G. Vonk (Eds.), *Research Handbook on European Social Security Law* (pp. 231-256) Cheltenham: Edward Elgar Publishing.
- Burri, Susanne (2014). *EU Gender Equality Law, Update 2013*. European Union.
- *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Marsha A. Freeman, Christine Chinkin & Beate Rudolf eds., Oxford 2012).
- Rebecca J. Cook and Simone Cusack, *Gender Stereotyping: Transnational Legal Perspectives* (University of Pennsylvania Press, 2010).
- Alexandra Timmer, *Toward an Anti-Stereotyping Approach for the European Court of Human Rights*, 11 HUMAN RIGHTS LAW REVIEW 707 (2011).
- Alexandra Timmer, 'Judging Stereotypes: What the European Court of Human Rights Can Borrow from American and Canadian Equal Protection Law', *American Journal of Comparative Law*, Vol. 63, No. 1, pp. 239-284 (2015).
- Eva Brems & Alexandra Timmer, *Stereotypes and Human Rights Law* (Intersentia: 2016).
- Reports European network of legal experts in gender equality and non-discrimination: [www.equalitylaw.eu](http://www.equalitylaw.eu)



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