



MULTIPLE DISCRIMINATION – European perspective

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+ The definition of multiple discrimination

- **should recognize**, as the current European legal framework does not, that factors such as gender, age, disability, ethnicity, religion and sexual orientation can interact to create multiple or intersectional disadvantage.
- The fact that the current legislation does not expressly address multiple or intersectional discrimination leaves the most disadvantaged members of society, unable to challenge the discrimination they experience.
- <https://www.youtube.com/watch?v=beDfBYH2RxE>

+ Research on multiple discrimination in Europe shows:

- The largest number of cases is reported under the heading of **gender and racial or ethnic origin (e.g. Roma women)**.
- The next large number of cases are combinations **gender and family status/reconciliation of paid and family work (including part time work)**,
- **cases of gender and age.**

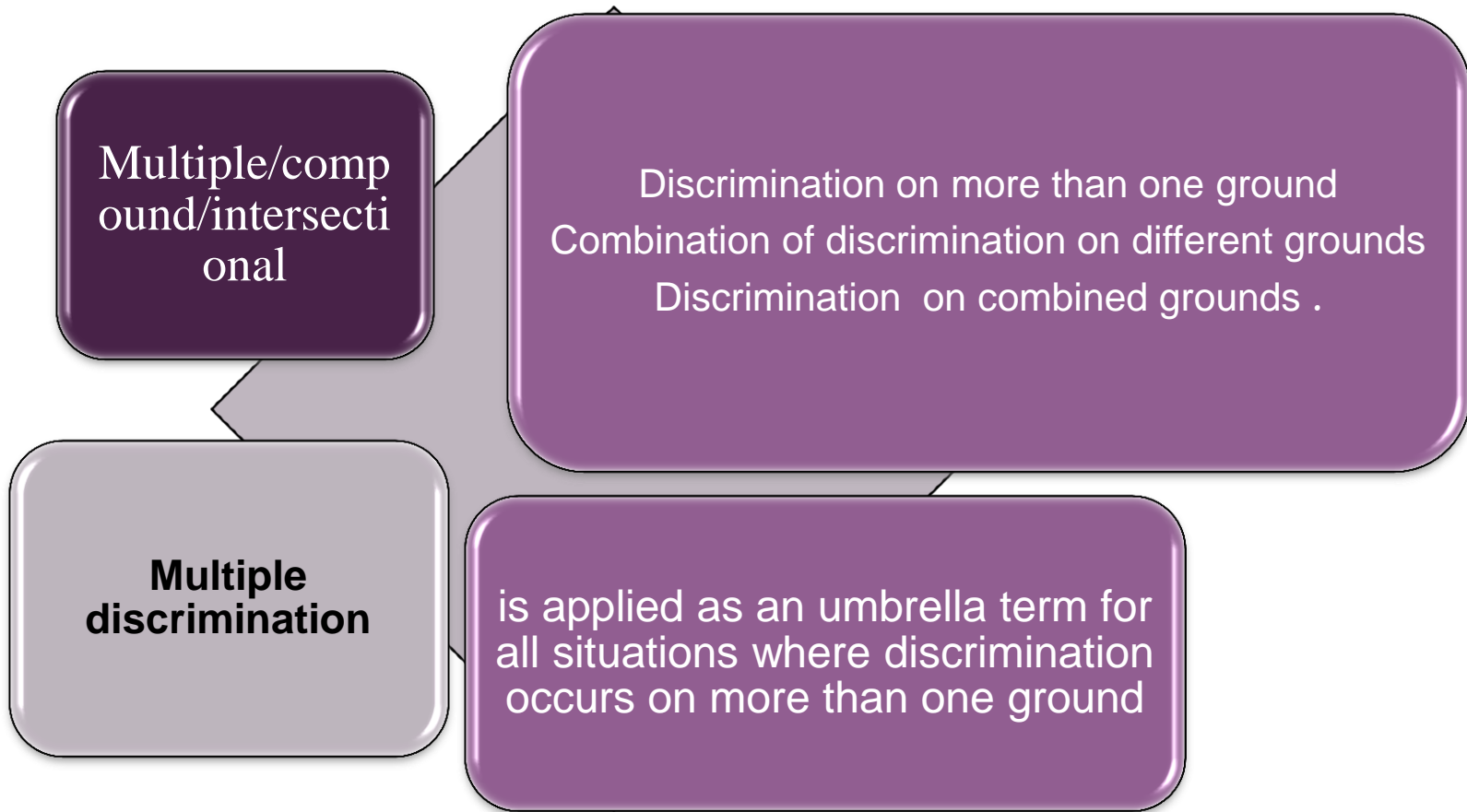
+ THEORETICAL OBSTACLES

- A normative principle that respects only what we have in common does not respect women's individuality, ignores differences (experiences of women of African-American descent, migrant women, lesbians, women with disabilities, etc.), and **sends out the message that the differences among women are not relevant.**

+ No unified theoretical model applicable



+ Examples



+ Definition and several meaning – discrimination on more than one ground (3 different forms)

discrimination on different grounds in different situations – several grounds operating separately

- E.g. ethnic minority woman may experience discrimination on the basis of her gender in one situation and because of her ethnic origin in an other.

+ Compound Discrimination – additive discrimination

describes a situation where a person suffers discrimination on the basis of two or more grounds at the same time and where one ground adds to discrimination on another ground

- Interaction of grounds in the same time and situation

in relation of accumulation

example: the employer sets up a series of requirements, such as age, working experience, good command in English and nationality – complex of criteria with point system of evaluation and rating

+ The candidate did not get the job

- The lack of one factor does not prevent the candidate getting the job but it makes it less likely, and the lack of two factors decreases yet further his chances of selection for the job.

+ Intersectional discrimination

- situation where several grounds operate and interact with each other at the same time in such a way that they are inseparable

example:

- Roma woman did not get the vacancy job and she claims discrimination against the employer
- A Roma woman cannot compare her treatment with that of a non-Roma man, she can only compare her treatment with that a non Roma woman would have received and then separately with that a Roma man might have received.

+ Where it happens?

- The **labor market**, appears to be the sector where multiple discrimination occurs most often.
- Human beings – complex of diversity , multiple identity

some examples

- Black/Migrant/Minority, disabled/elderly women; ethnic rapes
- Gay disabled people
- Minority /Muslim young/elderly men

+ **I am a Muslim women working as a legal advisor. I aspire to become a judge!**



+ Ethnic rapes!



+ I refuse to leave the labour market because my gender, age and hearing impairment!



+ I refuse to leave the labour market because of my age and leg impairment!



+ I am a deaf gay men. I want to be a father!



+ CEDAW

- Story about MD starts from international law
- CEDAW is not really effective – BRINGS FORMAL, NOT SUBSTANTIVE EQUALITY
- E.g. gender equality concept is not uniformly implemented in all state parties
- Reasons? Historical, Cultural, Political
- CEDAW Recommendation No. 25 on Art 4 (1) **States parties may need to take specific temporary special measures** to eliminate such **multiple forms of discrimination** against women and its compounded negative impact on them.

+ European Convention on Human Rights (1950)

- Article 14 (open-ended clause)
- **Prohibition of discrimination**
- The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. **NO DEFINITION OF MULTIPLE DISCRIMINATION**
- **ECtHR does not recognize multiple discrimination!**
- **CoE Guidelines on human rights in cultural diverse societies recognizes multiple discrimination!**

+ ISTANBUL CONVENTION (2014)

- Art 4 ensuring the practical realisation of the principle of equality between men and women
- Prohibition of discrimination
- Effective sanctions
- Abolishing laws and practices which discriminate against
- **Open-ended equality clause (20 protected characteristics, including migrant or refugee & marital status)**

+ EU Charter of Fundamental Rights

- **Article 21. Non-discrimination** (exhaustive list of protected characteristics)
 - 1. Any discrimination based on any ground such as **sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.**
 - 2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

+ THE CURRENT STATE OF AFFAIRS

- Expansion of the EU anti-discrimination law since the Art 13 EC (now Art 19 TFEU) & 26 TFEU
- Most people have multiple identities which can intersect (cumulative effect which is the most prominent)
- Result: discrimination on more grounds **IS INVISIBLE** opposite to the most dominant single axis approach
- **In diverse societies, multiple discrimination occurs on everyday basis**
- However, it is still not recognised as a “equal” ground of discrimination in the European legislation nor in the practice of the most distinguished European courts

+ *Is EU law capable of addressing multiple and intersectional discrimination yet?*

Despite this EU directives do recognize that different grounds can intersect, in relation to gender the preamble to both the

■ **Race and the Employment Equality Directives**

.....stipulate that “in implementing the principle of equal treatment, the Community should, in accordance with Article 3 (2) of the Treaty, aim to eliminate inequalities, and to promote equality between men and women, especially since women are often the victims of multiple discrimination.”

■ Member States do not fully address Multiple Discrimination.

■ However, it is possible to read the legal framework in a way that made it possible to offer adequate solutions to intersectional discrimination (teleological legal interpretation).

+ INTERSECTIONALITY & ANTI-DISCRIMINATION LAW – problems in practice

■ SINGLE AXIS APPROACH

- Courts recognize only on legitimate ground (e.g. either sex or race) or treat discrimination as additive, not intersectional

- **COMPARATOR (either actual or hypothetical)** – unnecessary (perhaps that is the reason of reluctance of courts to multiple claims, how to decide if there is no “comparator tool”?)

+ EUROPEAN LEGAL FRAMEWORK DOES NOT RECOGNIZE MULTIPLE DISCRIMINATION IN PRACTICE

EU Race
Equality
Directive does
recognize
multiple
discrimination
in its preamble

Inconsistent
implementation
of anti-
discrimination
law in Member
States

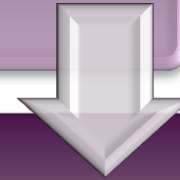
Hierarchy of
equality

+ PROBLEMS IN PRACTICE

Inconsistent equality mechanisms



No unique unified data collection & anti-discrimination policy
e.g. Data disaggregated by race & gender and other grounds



No effective remedy

+ LIMITATIONS



LACK OF
CASE LAW

LACK OF
APPROPRIATE
LEGAL
FRAMEWORK

LACK OF
RESEARCH

LACK OF
RAISING
AWARENESS

+ What can we do? Enforcement of positive action measures?!?

- Raising awareness on racial/religious discrimination – rigorous sanctions for hate crimes
- Rethinking Women & minority quota in politics/management boards of public/private companies? e.g. recommended female quota is 40% (zip model), how to set up the minority quota?
- Private sector initiatives/states award benefits for companies which promote diversity.
- Media present the most successful women belonging to different vulnerable groups (e.g. why women with disabilities or different ethnic background cannot be the directors of public companies)

+ Is definition of multiple discrimination necessary?

- Yes, a definition of the term is necessary.
- EU anti-discrimination and equal treatment legislation does recognize that different protected grounds can intersect, but there is no explicit prohibition of multiple discrimination.
- New legislation should cover all grounds of discrimination and in all areas (not just within the employment and occupation fields) such as social protection, including social security and healthcare; social benefits; education; and access to and supply of goods and services which are available to the public, including housing.

+ SANCTIONS- legal dilemma

- Dissuasive effect may require the sanction to be greater than what it would have been if the discrimination had related to just one of the protected grounds
- For example, multiple discrimination must carry higher penalties than ‘single’ discrimination.
- It seems that in the natural laws of the MS the problem of multiple discrimination is rarely addressed in an explicit manner, and if so, then not necessarily in the context of sanctions understood as penalizing measures (e.g. where the law provides “for higher damages because of the aggravated conducted of the discriminator.”)

+ RECOMMENDATIONS

- 1. Foster research
- 2. Rethinking the current legal framework
- 3. Education and trainings
- 4. Awareness raising
- 5. Encourage reporting
- 6. Data collection
- 7. Promoting good practices