

Gender Equality and Multiple Discrimination: Challenges for European Union Law

Workshop: Migration, Multiculturalism
and Gender Equality
Zürich, 16.09.2006

The Structure

- Increasing Complexity
- Gender and other factors of vulnerability
- Context of Migration
- EU Antidiscrimination Law: Scope and Concepts
- At the Intersection: The Headscarf
- Tensions among feminism and between feminism and multiculturalism

Combining Issues

- Gender-specific problems
 - Domestic Violence
 - Sexual Exploitation
 - Workplace Discrimination
- Context of Migration
 - Residence Status
 - Language Problems
 - Culture Clash/Variations of Patriarchy

Immigration and Anti-Racism Policies

- **Restrictive trend** of EU immigration policies in the 1990s:
- **Catalyst** for EU policy on combating racism.
- “The perception of ‘Fortress Europe’ galvanised national and European civil society into transnational action for anti-racism measures at the EU level, so as to ameliorate the effects of immigration policies.” (Bell 2002: 67)

The Declared Need: A Coherent and Integrated Approach

- Joint efforts to combat discrimination;
- Transfers of experience and good practice across the various grounds;
- Addressing situations of multiple discriminations;
- **Common** legal and policy approaches covering the different grounds, including common definitions of discrimination ...
- ... while recognizing the **specific** challenges faced by different groups. (EU Green Paper on Equality)

EU Antidiscrimination Law

- Articles 2, 3, 13, 141 EC; Art. 21 Charter of Fundamental Rights of the European Union
- **Gender**
 - Equal Opportunities Directive (2006/54/EC)
 - Equal Access to Goods and Services Directive (2004/113/EC)
- **Race and Ethnicity**
 - Racial Equality Directive (2000/43/EC)
- **Religion or Belief, Disability, Age or Sexual Orientation**
 - Equal Employment Directive (2000/78/EC)

Is the EU antidiscrimination framework ...

- ... coherent? ... adequate?
- In the context of:
 - Immigration law and access to the labour market
(↔ race and ethnicity, religion and belief)
 - Marriage and family law (↔ sexual orientation, polygamous family constellations)

Scope

Gender Race and Ethnicity	Religion or Belief Disability Age Sexual Orientation
Employment Goods and Services	Employment

Discrimination and Difference – Third-Country Nationals

- This Directive does **not cover** difference of treatment based on **nationality** and is **without prejudice** to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons on the territory of Member States, and to any treatment which arises from the legal status of the **third-country nationals** and stateless persons concerned. (Art 3/2 RED)

Concept: Direct Discrimination

RED, EED	EOD
<p>where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin, etc.</p>	<p>where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation;</p>

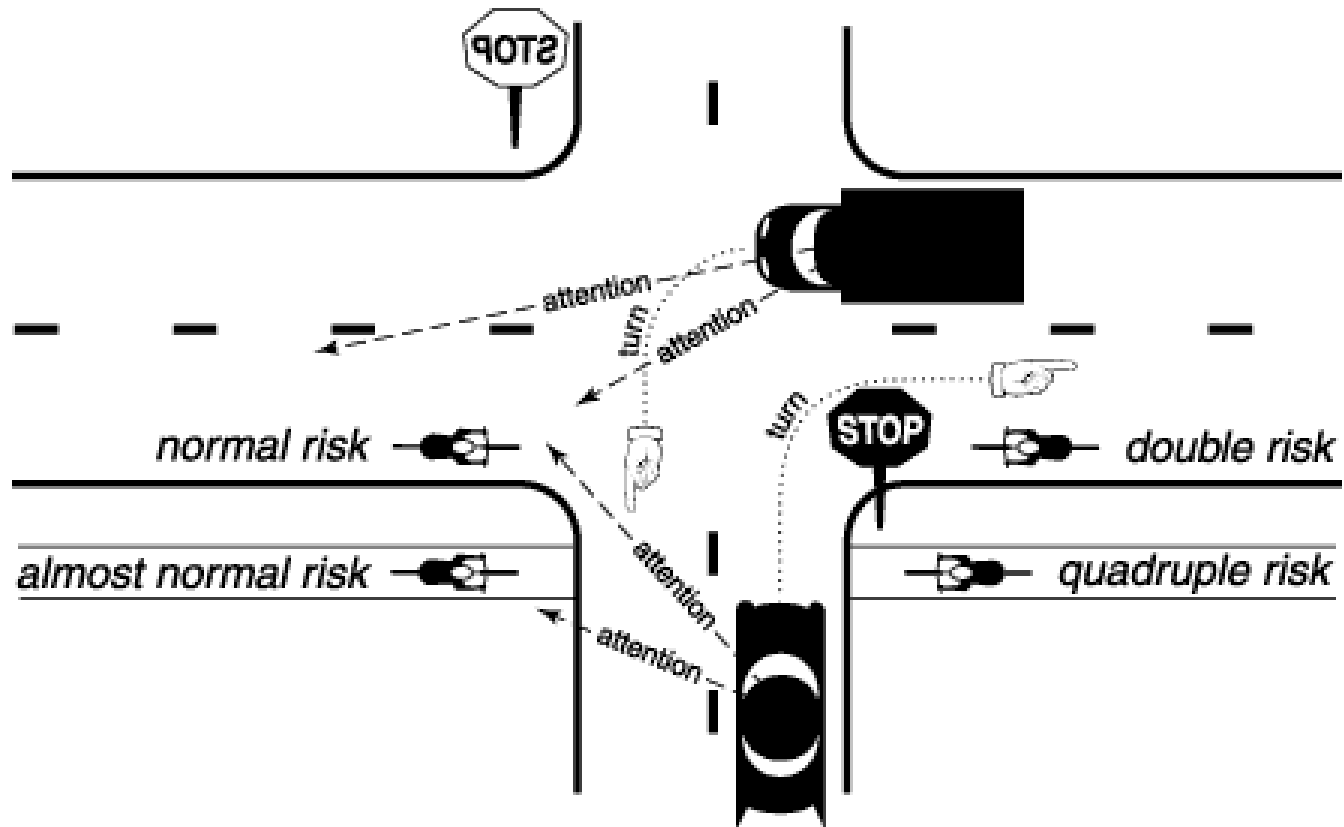
Indirect Discrimination

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

Discriminations

- Single-axis Discrimination
 - On the basis of one ground
- Multiple Discrimination
 - On the basis of several grounds
- Intersectional Discrimination
 - On the basis of a combination of grounds

The concept of the intersection



Twisted Arguments



- A tendency to hold *no* “driver” responsible:
- We do not discriminate against **you**
 - as a black person, because we do employ **blacks** (i.e. black males)
 - as a women, because we do employ **women** (i.e. white women)
 - „**black women**“ is not a relevant category.

The Example: The Headscarf

- In the street
- At work in general
- At school and in court in particular

Ground	Direct Discr.	Indirect Discr.
Religion		
Ethnicity		
Gender		