

Social Law

Multiple discrimination

Chart 10 | 9

Topic:

A concrete case may simultaneously involve different types of discrimination.

Multiple discrimination under EU social non-discrimination law

Preamble of Directive 2000/43
(see also the preamble to Directive 2000/78)

"In implementing the principle of equal treatment irrespective of racial or ethnic origin, the [Union] should, in accordance with Article [8 TFEU], aim to eliminate inequalities, and to promote equality between men and women, *especially since women are often the victims of multiple discrimination.*" (Emphasis added)

Multiple discrimination: definition and CJEU case law

There is multiple discrimination where a case simultaneously involves more than one discrimination ground. Multiple discrimination may appear in two forms, namely:

- Cumulative discrimination, i.e. the case involves simultaneously more than one ground and
- Intersectional discrimination, i.e. the case involves the combined effect of more than one ground; e.g. only black women are disadvantaged, but not black men or white women.

There is no explicit CJEU case law on multiple discrimination yet. Examples of cases that either do or could raise this issue:

- *Cadman* (2006): length of service as a determinant for pay may lead to both indirect age discrimination (employees with a certain seniority tend to be older) and indirect sex discrimination (women tend to have less seniority due to maternity).
- *Odar* (2012): compensation for dismissal is calculated following a formula that is applied based on age and the earliest time when an old-age pension can be claimed, which is earlier for severely disabled persons than for others (allegation of discrimination on grounds of age and disability);
- *Meister* (2012): the applicant applies for a job but is not invited for an interview; she suspects that there is discrimination on grounds of sex, age and / or ethnic origin but is unable to prove it.

Some practical issues relating to cumulative discrimination

Scope of EU law

The scope of individual directives may differ, so that cumulative discrimination can only be found where both/all measures cover the issue in question.

E.g. social advantages are covered by Directive 2000/43 (racial equality) but are not covered by Directive 2006/54 (sex equality); see **Chart 10/8**.

Derogations

Different directives may provide for different derogations grounds, so that one type of discrimination may be justified, while another is not.

E.g. objective justification is possible for direct age discrimination, but not for direct racial discrimination; see **Chart 10/13**.

Sanctions

The principle that sanctions for discrimination must be effective, proportionate and dissuasive (see **Chart 12/35**) demands that sanctions for multiple discrimination are higher than for "simple" discrimination. But how much higher?.