



**Legal seminar 6 October 2009
on the implementation of EU law on equal opportunities and anti-discrimination**

**SUMMARY WORKSHOP PROCEEDINGS
DISCRIMINATION ON GROUNDS OF GENDER AND RELIGION: A CASE OF CONFLICT BETWEEN
GROUNDS?**

Panel Members

Chair: Prof. Rikki Hiltmaat, expert non-discrimination Network / expert gender Network
Panellists: Prof. Eva Brems, Ghent University
Prof. Hege Skjeie, University of Oslo
Rapporteur: Sylvaine Laulom, expert gender Network

When speaking about conflicts between gender and religion, it is possible to distinguish two types of conflict, as illustrated by the following examples:

- Women and men can claim that they cannot freely express their religious beliefs;
- Religious beliefs can violate women's rights.

During the workshop two different issues were discussed:

- How can the conflict be resolved?
- Who resolves the conflict?

1. How can the conflict be resolved?

- The discussions stressed that sometimes there is in fact no conflict, for example, when international human rights standards apply to protect the right to life. When possible, it is better to avoid the conflict or to find a compromise. For example, framing differently what appears to be at the first sight a conflict can avoid the conflict. As Eva Brems has written, in some cases, the conflict between fundamental rights is not a necessary feature of the issue concerned, but rather results from a particular approach to that issue.

- Sometimes it could also be useful not to conceive the problem as a conflict of rights but to see it from the perspective of multiple discrimination and intersectionality, where discrimination grounds are not (only) conceived as separate grounds but intertwined. An intersectional approach recognises that identities are shaped by more than one factor. One problem is to make the theory of intersectionality a legal tool. How can the issue of intersectionality be addressed?

- However, it is not always possible to avoid the conflict. It is also vital to address the conflict when fundamental issues are at stake.

- When trying to resolve conflict, the discussions stressed that it is essential to take into account the complexity of each situation, the cultural context, the national context (for example, in some countries the principle of secularism could play a role in the resolution of the conflict). It is also necessary to take into account the point of view of the insiders and to avoid paternalism. It is important to leave freedom of choice and not to impose our point of view. Gender emancipation is a free choice.

- It may also be possible to introduce a hierarchy between these two fundamental rights, even if for some participants to the workshop it is precisely not possible to establish such a hierarchy.

If this is not possible, a better solution could be to consider the core content of each right. The importance of policy measures (education for example) was highlighted. They appear to be better than prohibitive measures.

- Sometimes it is also possible to approach the conflict as a conflict of collective v. individual rights. The role of the State in protecting individual rights within a community is important.

2. Who should resolve the conflict?

A question raised was the role that judges and courts should play in the resolution of conflicts. On the one hand, they can take an individual approach to the conflict and consider the characteristics of each case, including the point of view of insiders. The resolution of conflict by judges therefore encourages a case-by-case approach. However, sometimes the resolution of the conflict could or should be a political matter and the State can play a role in the defining the conditions for the conflict to be resolved. It also seems difficult for judges to define the "core" of each right.