

Discrimination on grounds of gender and religion: a case of conflict between two grounds?

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Conflicting/competing rights

- Situations abound
- Rights lose their 'trump' factor
- Religious rules restrict individual rights
- Women as focus of such rules
- What to do?
- First: make conflict explicit

3-step model for human rights optimisation

- Step 1: Eliminate fake conflicts
- Step 2: Preference for compromise
- Step 3: Criteria for prioritization

Step 1: fake conflicts

- Conflict between fundamental rights is not a necessary feature of the issue, but results from particular approach
- Frame differently to avoid conflict

Step 2: compromise

- Equilibrium: concessions from both sides for the purpose of maximum protection of both rights

Step 3: prioritization

- International law? E.g. article 4 CERD
- Core/periphery of right
- Severity of interference
- Indirect involvement of other rights
- Involvement of other weighty general interests
- Positive/negative obligations
- Direct/indirect discrimination

Additional guidelines for a feminist approach

- Insider perspective
 - Individuals
 - Heterogeneous and dynamic character of culture/religion
 - Means to identify false conflicts
- Emancipation is free choice
 - Prohibitions are anti-emancipatory
 - Bright line rules are suspect

Case of handshake refusal

- Netherlands: refusal to hire man who refuses to shake hand of women
 - Equal Treatment Commission: indirect discrimination
 - 'fake conflict': alternative ways of greeting
 - Court of Rotterdam: no discrimination
 - Preserve common form of greeting and politeness
- Underlying: disagreement over integration
 - Assimilation
 - inclusion

SGP case

- Netherlands: party discriminates against women, yet receives state subventions
 - Court of Appeal: refuse subventions because of gender discrimination
 - Council of State: grant subventions
- Use of criteria
 - Core/periphery – cores on both sides
 - Other rights – on both sides
 - General interests – both sides
 - Severity of interference: disagreement
- Both solutions can be defended
 - Cf. insider/outsider issue...
