

Intersectionality in practice? Anti-discrimination reforms in Norway.

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Introduction

Norway has recently introduced significant changes to its anti-discrimination and equality machinery. As of January 2006, a joint Equality and anti-discrimination Ombud, accompanied by an adjudicating Equality Tribunal, have been responsible for combating discrimination and promoting equality on a range of protected grounds. ‘Anti-discrimination’ constitutes a fast expanding policy field, marked by strong processes of judicialization as well as institutional reforms. Main sources of influence on these processes of formalizing and expanding equality policies are also international; developments within the UN and European human rights regime, and the new anti-discrimination policies of the EU. Norway is not a member of the EU, but bound to EU policies through a comprehensive cooperation treaty; The Agreement on the European Economic Area – the EEA Agreement. ¹

At present, the Ombud and Equality Tribunal monitor two comprehensive laws – the Gender Equality Act (1978) and the Discrimination Act (2005), which cover discrimination on the basis of ethnicity, national origin, ancestry, skin color, language and religion; the anti-discrimination chapter in the Work Environment Act, which covers sexual orientation, age, disability, political views, and membership in trade unions; anti discrimination articles in the housing legislation; and furthermore, two UN conventions which are incorporated into this legislation. These are the Convention on the Elimination of All Forms of Discrimination

¹ This agreement is the cornerstone of the relations between Norway and the European Union. The EEA extends the Internal Market, with its so-called four freedoms (free movement of goods, capital, services and persons), to Norway and the two other EEA EFTA countries; Iceland and Liechtenstein.

against Women (CEDAW) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which are incorporated, respectively, into the Gender Equality Act and the Discrimination Act. As of January 2009, this institution will also monitor the new act relating to prohibition against discrimination on the basis of disability (The Discrimination and Accessibility Act).

Otherwise, the Norwegian implementation of the international human rights regime is foremost through the Human Rights Act (1999) which incorporates four conventions directly into Norwegian legislation, with precedence granted to the incorporated conventions in cases of conflict between these and other statutory provisions. These conventions have been given what is often referred to as ‘semi-constitutional’ status.² The Norwegian legal system thus combines a series of closed lists of discrimination ground prohibitions with the frequently open lists of human rights instruments (cf. Kantola and Nousinainen, this issue).

The integrated institution is the first of its kind among the Nordic countries, all of which, however, at present are initiating processes of reorganization and/or legal reform. Whereas gender used to provide the dominant frame regarding equality in the Nordic countries, equality and anti-discrimination policies are now increasingly formulated within a multidimensional framework (cf. Schiek and Chege 2008) that incorporates the dimensions of ethnicity, nationality, language, religion, sexual orientation, disability and age. The issue of further integrative legal reform is currently addressed by a governmental advisory committee on a mandate to evaluate and/ or propose a joint and harmonised anti discrimination legislation.³ At the same time, the current monitoring agencies are being evaluated by an independent research institution. Both legislation and institution building are thus in flux.

These ongoing large scale reform processes are the topic of this article, where we analyze the new political ambitions towards legal and institutional equality integration. The point of departure is – as in the whole of the present thematic issue on ‘institutionalising

²The Human Rights Act (HRA) incorporates the European Convention on Human Rights, the UN covenants on civil, political, economic, social and cultural rights, and the Convention on the Rights of the Child. The government has finally decided (as of June 2008) to proceed with the plans to incorporate CEDAW in the HRA (on this controversy over national implementation of international human rights, cf. Skjeie 2007).

³Included in the mandate is also a recommendation on Norwegian ratification of protocol no. 12 to the European Convention on Human Rights, and the possible adoption of a formal constitutional guarantee against discrimination. <http://www.regjeringen.no/nb/dep/bld/kampanjer/diskrimineringslovutvalget.html?id=476264>. Accessed September 21, 2008

intersectionality’ - judicial and political negotiations over the new key concepts in anti-discrimination work: Multiple and intersectional discrimination. For the purposes of this article, a crude distinction between these two key concepts suffices: While multiple discrimination describes a situation where discrimination takes place on the basis of several grounds at the same time/simultaneously, intersectional discrimination refers to a situation where several grounds operate and interact with each other at the same time in such a way that they are inseparable.⁴

In this article, we focus on pragmatics. While some tend to praise the fact that debate about intersectionality has managed to ‘move beyond the narrow scope provided by the discrimination discourse’ (Kantola and Nousiainen, this issue), it is the very ‘discrimination discourse’ that interests us here. We start by outlining, in brief, the legislative reform process on anti-discrimination since the adoption of the Gender Equality Act in the late 1970s. We then analyze the dominant policy frames of legislative activities concentrating on the parallel processes of legislating the Discrimination Act and integrating the monitoring agencies. Finally, we assess the judicial practices of the Ombud and the Equality Tribunal in handling multiple and intersectional discrimination cases, from 2006 to present.⁵ By this, we aim to interrogate the possibility of constructing intersectional framings of, mainly, gender equality, ethnic and/or religious discrimination through policy making and judicial practice respectively. Empirical examples are drawn from recent legislation and monitoring. The question we address is open ended: What can be seen as the main (national) political motivations for the recent legislative and institutional reforms? Furthermore, and in spite of the field’s characteristic of being in flux; can we state with any degree of certainty that such aims are being achieved through the enforcement of anti-discrimination laws?

⁴ As outlined also by Kantola and Nousiainen, these concepts are by no means singularly understood. It is for instance unclear whether common usages of multiple discrimination would refer to one or rather a series of situations. While all scholarly work on these topics refer to Kimberle Crenshaw’s original formulations on intersectionality (see Crenshaw 1989), another example might illustrate the range of options - the way Makkonen (2002) distinguishes between respectively multiple, compound and intersectional discrimination. Multiple discrimination then refers to a situation, or phenomenon, where a person is discriminated against on several different grounds at different times. Compound discrimination refers to more specific situations in which several grounds of discrimination add to each other at one particular instance. Intersectional discrimination refers to a situation in which several grounds of discrimination interact concurrently (Makkonen 2002: 10-11). For another example, see Bamforth, Malik and O’Cinneide 2008.

⁵ In this respect it should be noted that one of the authors, Hege Skjeie, is a government appointed member of the Equality Tribunal for the period 2006-2010.

Institutional framework: From single to multiple grounds

The Norwegian Gender Equality Act was adopted by parliament, the Storting, in 1978. In the Nordic context, this law represented the first attempt to provide a comprehensive protection against gender based discrimination. The Gender Equality Act prohibits discrimination in ‘all areas of society’. Notably, however, it also contains a general exemption clause covering the ‘internal affairs of religious communities’. While family life and personal relationships in principle are included, religious life is correspondingly, and principally, excluded from the scope of the law. ⁶

The Act is purposed to promote gender equality and aims in particular at improving the position of women. Exempted from the general prohibition against direct and indirect discrimination is thus ‘differential treatment which aims to promote gender equality’. This general acceptance of positive measures was included from the start. In 2002 a positive duty was sharpened as the law was amended to oblige both public authorities and enterprises to ‘make active, targeted and systematic efforts to promote gender equality in all sectors of society’. ⁷

A Gender Equality Ombud – the first of its kind in the world – was set up in order to secure compliance with the law. The Ombud’s task was both to handle individual complaints and to work in furtherance of gender equality. Her evaluations of complaints could be appealed to an independent appeals board, with the possibility of further appeal through the regular court system. Generally, the Ombud agency was intended to offer a low threshold agency, free of cost, with both proactive, advisory and complaints handling tasks. Some of the tasks thus overlapped with the mandate of the independent, but state appointed and state financed, Gender Equality Council, a corporatist arrangement first set up to oversee labor market and pay issues (1967), and later provided with an extended ‘gender equality’ mandate (1972). Over time, the corporatist representation was phased out, and the ‘council’ changed to a ‘centre’.

⁶ The law applies to family life but without sanctions - the inclusion is thus symbolic. The parallel exclusion of religious life however applies in a very strict sense, as the internal affairs of religious communities are placed outside the scope of the law. This exclusion is increasingly contested, and is presently on the government’s agenda for revision. Similarly is the formal exemption for religious communities from the prohibition of discrimination in the Work Environment Act, which applies to persons in ‘homosexual cohabitation’ (NOU 2008:1, cf. Skjeie 2007).

⁷ The act has been revised a number of times. At present, it thus represents an ad hoc mix of formal prohibitions and obligations, generally stated positive duties, and a series of area-specific regulations.

For a period of close to twenty years, ‘gender’ remained the only comprehensively covered discrimination ground in national legislation. Increasingly, Norway faced criticism from civil society organizations, UN agencies and Council of Europe fora for not having provided ethnic and national minorities with a comprehensive protection against discrimination⁸. In 1997, the Storting approved of the establishment of The Norwegian Centre for Combating Ethnic Discrimination (SMED). Partly modeled on the Gender Equality Centre, SMED was a politically independent state-run office, with information and awareness-raising tasks. But SMED’s mandate also provided for giving free legal assistance to individuals who experienced discrimination by private or public institutions. The discrimination grounds covered by SMED’s work were religion or belief, race, color or ethnic origin, national origin and language.

In 2005, the Storting adopted the Act on Prohibition of Discrimination on the basis of ethnicity, national origin, descent, skin color, language, religion or belief (The Discrimination Act), subsequent to a government appointed commission having proposed a law targeting ethnic discrimination. The Discrimination Act is largely modeled on the general ‘rights and obligations’ frame of the Gender Equality Act; its purpose is to promote equality, ensure equal opportunities and rights and prevent discrimination based on the above mentioned grounds. Family life and personal relationships are however here exempted from the scope of the law notably, the Discrimination Act contains no statute that obliges public authorities or enterprises to promote equality.

Parallel to the drafting of this law, another governmental committee was preparing an extension of the discrimination clauses in the Work Environment Act, to cover several new grounds⁹. Yet another committee prepared anti discrimination legislation on the basis of disability¹⁰. The revised Work Environment Act came into force in 2006, as did the Discrimination Act, and the new anti-discrimination clauses in the housing legislation. Over a

⁸ The Equality and Anti-Discrimination Ombud (<http://ldo.no/no/TopMenu/Om-ombudet2/Historien-bak-Likestilings--og-diskrimineringsombudet>). Implementation of indigenous rights following from international human rights obligations has, however, been a governmental priority since the early 1980s.

⁹ The Working Life Committee delivered a report specifically on integrating the Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, in 2003, *Skjerpert vern mot diskriminering i arbeidslivet NOU 2003:2*. Since 1998, the Work Environment Act (§ 55 A) has prohibited discrimination regarding employment on the grounds of race, color, national or ethnic origin, sexual orientation, and since 2001, disability.

¹⁰ The Anti-Discrimination and Accessibility Act enters into force on January 1, 2009.

mere couple of years, anti discrimination legislation were thus dramatically broadened, and the policy area of 'equality' similarly widened. Equality was no longer, in terms of public policy, to be understood as synonym to 'gender equality'. Consequently, the office of the Gender Equality Ombud was turned into the office of the Equality and Anti-discrimination Ombud, with a mandate to monitor all major anti-discrimination legislation. Both the Gender Equality Centre and SMED were incorporated into the new structure, effective as of January 2006.

Proactive tasks are included also within the scope of the new Ombud's general mandate. She is expected to engage in advisory activities, public debate, and 'awareness-raising campaigns'. Her staff numbers have been increased, and her organization is now divided into specific departments focusing, on the one hand, on legal issues, and, on the other hand, on analytic, investigative and proactive work. Enforcement and sanctions have been standardized across equality strands. The Ombud's competences are also uniformly limited within the new institution, in the sense that she cannot – as a general rule – adjudicate complaints, but only offer her evaluation as to whether laws have been violated.¹¹ Her task is to attempt to reconcile opposing parties, and, if possible, to construct compromises and improved arrangements to avoid discrimination in future. But binding rulings in individual discrimination cases are made by the government-appointed Equality Tribunal.¹²

The decisions of the Tribunal may be appealed through the regular courts, as was the case with the rulings of the old Appeals Board. In addition, only the regular courts may rule on compensation to victims of discrimination. The mandate for the Tribunal particularly stresses the need to secure legal expertise on the board – if not to the exclusion of, at least to the marginalization of, other kinds of expertise. In the governmental white paper on the mandate for the new integrated institution, it is stressed that the composition of the Tribunal should 'not exclude' other expertise. Other expertise are expected to have in depth knowledge about the different discrimination strands, but are not supposed to act as protagonists, or

¹¹ Exceptions are made for urgent cases, cf § 4 in Diskrimineringsombudsloven, LOV-2005-06-10-40.

¹² The commission which prepared the Discrimination Act originally proposed a strict two-level system which allocated decision making competence within the Ombud agency, with appeals channeled to a separate appeals board (NOU 2002:2).

‘representatives’, in this respect.¹³ But the framing of the Tribunal’s tasks is strictly legalistic: It is limited to the legal interpretation of the package of anti-discrimination legislation, and to the handling of cases which have been investigated and evaluated by the Ombud. In this respect, ‘the law’ is seen to secure equality’s claim to objectivity: The institutional mandates envisage a division of roles where the Ombud is the ‘protagonist’ whilst the Tribunal secures and legitimizes the ‘neutrality’ of the joint institution.

As of today, the regulations for the Ombud explicitly state that the agency shall develop interdisciplinary competence and abilities to handle multiple discrimination and discrimination in the intersection of gender and other discrimination grounds. Critics still point to potential dangers and shortcomings of this integrated approach to discrimination. Established women’s organizations, and various gender equality agencies and activists, have worried that integration primarily will result in a weakening of the Ombud’s ability to protect this strand, in the sense of reduced attention and resources, or a neglect of the specific circumstances and characteristics relating to this field of responsibility (cf. NIKK report 2008).

Clearly, the degree of protection enjoyed by individuals is not uniform across all equality strands. But it is in general more comprehensive for gender-based discrimination than for other protected grounds. Protection varies across equality strands with regard to the societal fields covered by the legislation, that is between those which apply to ‘all areas of society’ – such as the Gender Equality Act and the Discrimination Act, and those which apply only to specific areas; such as the Work Environment Act, or the housing legislation. Variation also occurs with regard to positive duties. But, again, these are formulated the clearest in the context of gender equality. In terms of the legal protection offered, a fear that gender equality will ‘loose out’ through integration thus seems to be somewhat overstated. This line of critique is nevertheless a very familiar one, as it resonates from conflicts over the development of EU directives as well as other national legislative and institutional reforms.¹⁴

¹³ Ot prp nr 34 (2004–2005), Om lov om Ligestillings- og diskrimineringsombudet og Ligestillings- og diskrimineringsnemnda (-diskrimineringsombudsloven), 43.

¹⁴ Cf. for instance Squires, this issue, on the responses of the Commission for Racial Equality in Britain to institutional reforms, also Squires 2007.

Yet there is little doubt that differences in the legal protection across grounds open claims that legislation should be harmonized. The mechanism of ‘oppression Olympics’ is described by Hancock (2007, cf. Kantola and Nousinainen, this issue) as creating situations where groups are forced to compete for attention by and through additive modeling of the discrimination problematic. Oppression olympics might still depart from reasonable considerations about fairness. In the Norwegian context, a new governmental committee is now considering legislative harmonization. In our mind, there is little doubt that also this work will activate questions about group bound gains and losses through the establishment of common protection standards.

Motivating integration: The parliamentary debates

The Norwegian parliament’s decision to create a joint equality and anti-discrimination enforcement agency was motivated mainly in efficiency terms. That is to say, pro arguments centered on the increased ‘influence’ for the institution concerned, the potential for ‘learning’ across the different discrimination grounds, and also the potential for ‘user-friendliness’. To some degree, arguments that focus on effectiveness, efficiency and user-friendliness in the institutional redesign process echo larger reform trends inspired by New Public Management thinking. One important feature of NPM is the transferring of principles associated with the market to the public sector. In NPM, state agencies and public bureaucracies should be run more like private enterprises – cost efficient and responsive to the needs of their users or customers. From the perspective of public ‘user-friendliness’ it is then argued that one single institution is more easy to relate to; that one joint Ombud is more likely to prove efficient than separate enforcement on different discrimination grounds. ‘Intersectionality’ became a catch phrase in favor of reorganization only in the latter stages of the institutionalization debate. By ‘catch phrase’ we mean that in this debate, no actual substance was provided to the term.

The establishment of the joint Ombud constitutes one important part of the new anti-discrimination framework in Norway. Another important part is, of course, the process of legislative reform. Parallel to the institutional integration scheme, the Storting adopted the Act on Prohibition of Discrimination on the basis of ethnicity, national origin, descent, skin color, language, religion or belief (the Discrimination Act). The main purpose of the act was to strengthen the legal protection against ethnic discrimination, but interestingly, when the Parliament debated the law proposal, most of the political parties also requested a thorough

review of the anti-discrimination framework - in order to provide all grounds with equal protection. A large part of the parliamentary debate over this specific piece of legislation thus turned into a debate on how legal protections in general should be devised to combat discrimination. This particular focus in turn explains why anti-discrimination legislation is in flux, and a new governmental commission appointed to propose a joint and harmonized anti-discrimination law.

The main opposition parties, the Labour Party, the Socialist Left Party and the Centre Party, all urged the government to start preparing an overall discrimination law. According to these parties it is particularly problematic that disabled people, lesbians, homosexuals and transsexual persons, are provided with a weaker protection against discrimination than other groups. The Conservative Party, at this time in a coalition cabinet with the Christian Democratic Party and the Liberal Party, similarly stated that it was necessary to investigate the current laws, as discrimination may occur on other grounds than the 'clearly defined and delimited discrimination grounds, such as racism, sex or religious belonging' that Norwegian legal framework on discrimination relates to.¹⁵ According to the Conservative Party, discrimination should be banned on general ground, as general rules may prove more adaptable to changing perceptions among people of what a ban on discrimination should comprise. Both the Conservatives and the opposition parties made it clear however, that general rules should not weaken the particular protection that already exists on certain grounds.

The main motive behind these initiatives is clearly to create a legal framework that is 'fair', which here translates into claims that more groups should be provided with protection against discrimination, and that legal hierarchies should be removed. This ambition to expand anti-discrimination law is however largely sought ground-by-ground within a dominant frame of 'vulnerable groups' thinking. Multidimensional perspectives do not inform these proposals. The only alternative to the group based framing seems to be the general ground preference of the Conservative Party. But neither is this alternative consistently sought.

The same general observation can be made on both the white paper and the governmental law proposal that preceded the adoption of the Discrimination Act. Terms like 'multiple

¹⁵ Innstilling O. nr. 69 (2004-2005).

discrimination', 'double discrimination', 'intersectionality' and other related terms appear only twice in all documents. These are references to 'immigrant women', who constitute a group that may be vulnerable to double discrimination on the grounds of sex as well as ethnicity. Such statements mirror statements regularly made in policy documents on multiple discrimination on for instance the EU level. More curiously, gays and disabled persons who belong to ethnic minorities also figure as 'groups' that may risk double or multiple discrimination. But these group references also function mainly as political proclamations. They are not explicated any further – we learn nothing about the nature of such double or multiple discrimination, or about strategies to combat them.

The main conclusion is thus that intersectional perspectives on discrimination inform neither the white paper nor the governmental law proposal in any substantive way. The documents still contain a couple of references to multiple discrimination problematic. When justifying the need for a law that combats ethnic and religious discrimination, the government states that legal protections in this area should be seen in connection with the already established protection against discrimination on other grounds. The government also argues in favor of a joint Ombud, as described above, because irrespective of discrimination ground all forms of discrimination and methods to combat these share common features'. **Trude, ref. her**

Intersectionality in judicial practice

A major argument in favor of integrating equality legislation and enforcement is that such an approach is necessary to take account of multiple grounds and situations of discrimination. The regulations for the Norwegian Equality and anti-discrimination Ombud explicitly state that the agency shall develop interdisciplinary competence and ability to handle multiple discrimination and discrimination in the intersection of gender and other discrimination grounds. As already mentioned, an evaluation of the reorganized institution is currently under way, and this evaluation also seeks to investigate whether, and how, new intersectional approaches to discrimination are developed through the pro active part of the Ombud's mandate. Such an investigation could then contribute to an assessment of the claim that intersectionality becomes more visible through positive duties to promote equality than under a complaints led approach, as those responsible for instituting change are required to identify group inequalities and draft solutions, rather than reacting to self-identified complaints (Fredman 2008:73, as cited by Kantola and Nousinainen, this issue).

But how might intersectional sensitive judicial practices actually develop within integrated institutions? The realization of such practices is, of course, dependent not only on the institutional design of legislation and enforcement, but also on basic judicial reasoning about discrimination. In this section of the article, we concentrate on the judicial approaches to cases which raise questions about multiple discrimination. In the Norwegian context, very few attempts have so far been made to analyze this problematic (but see Skjeie 2008).

The base line concerns the dominant framing of anti-discrimination legislation - that legal protection against discrimination is contingent on 'membership' in a specific protected category. Timo Makkonen has described this as 'the underlying idea, though largely unarticulated' of human rights reasoning; that people are, or can be discriminated against mainly on the grounds of one factor at the time, and that these grounds can be treated separately in legal instruments as well as in political action' (Makkonen 2002:1).

Effects of this dominant frame are also clear from a recent report from the European Commission on multiple discrimination (EC 2007), which indicates that it is indeed a common practice for legal advisors handling cases involving more than one discrimination ground to apply a tactical approach, where a strategic decision is made to 'choose the strongest ground' and to leave out other grounds of discrimination because they are difficult to prove, either vertically ground by ground, or in combination. Furthermore, in cases which clearly involve several grounds at the same time, for instance both race and gender, the tendency is still to consider the allegation of race discrimination separately from the allegation of gender discrimination, and not as inextricably linked with the gender discrimination.

How then, are issues of multiple and intersectional discrimination addressed in specific discrimination cases within the new monitoring agencies in Norway? The Ombud's yearly reports provide a presentation of complaint cases which can be regarded as guides to the practice of the agency. In the first yearly report, from 2006, cases are all addressed on single ground basis. Complaints are registered respectively by 'gender', by 'age', by 'ethnicity', by 'religion' etc. Multiple discrimination is not a theme in the report as such. The complaints statistics further demonstrate that very few cases are either claimed, or handled by the Ombud, as involving several grounds at the same time. All in all, such cases constitute a meager 3 percent of all complaints handled in 2006. Gender discrimination cases clearly

dominate the total case load. But none of these cases are approached as raising issues also of intersectional discrimination.

The 2007 complaints statistics, however, show an increase in multiple grounds complaints. Although the vast majority of complaints still concerns single ground discrimination, several grounds are registered in app. 15 percent of the total complaints handled. Similarly, while only one of the cases decided by the Equality Tribunal in 2007 involved several grounds, the tribunal now receives an increasing number of such cases. Of the 8 cases treated pr. June 2008, five involved complaints of discrimination on several grounds.

Banforth, Malik and O’Cinneide (2008:533) present intersectional discrimination as ‘a common problem in harassment cases involving both sex and race’. One case decided by the Equality Tribunal is built on this exact combination, where gender and ethnic background activate stereotype based intersectional discrimination. This case is presented in some detail below.

Two women of Asian background tried to check in at a hotel in central Oslo. Their home addresses were in the vicinity of the city; the hotel had written guidelines which made refusals on this ground possible, and the women were told that they could not check in. The women asked for an explanation and were informed about the guidelines - but also, that the reasoning behind these were that hotel guests from the Oslo area could turn out to be ‘prostitutes or drug addicts out to make trouble’ for the hotel. The hotel was found in violation of the protections against discrimination in the Gender Equality Act and in the Discrimination Act combined. The hotel receptionist had acted on the basis of a stereotypical notion about ‘foreign prostitutes’, in which the women’s Asian background was integral to the refusal. In the hotel case, the stereotype of the prostitute was activated by the very interwovenness of gender and ethnic background, and no attempt was made by the Equality Tribunal to distinguish between grounds. This, however, does not represent a dominant approach in multiple discrimination cases. These have more commonly relied on ‘serialization’ of single grounds. Each ground is treated separately, rather than combined. An illustrative case could be the following:

A 41 year female constable on a part time contract in a municipal fire department applied for an announced full time position. She was the only woman in an otherwise all-male work

environment. A 27 year male colleague was hired. The announcement for the position stated that ‘applicants should be from minimum 22 years to maximum 35 years old’. The announcement was found in violation of the protection against discrimination on the basis of age in the Work Environment Act. The Equality Tribunal also concluded that the woman had been discriminated against on the ground of gender. She was equally qualified for the position, but her qualifications had not been considered. Both employee organizations consulted in the hiring process had protested, and pointed to general agreement clauses on preferential treatment which had not been followed in this case. The tribunal criticized the municipality for neglecting the positive duty obligation laid down in the Gender Equality Act.

The fire department example shows that there is a scale of possible conceptualizations of the ‘discrimination problem’ at hand. The scale is open in the sense that cases of multiple discrimination could move into an area of intersectional problematic. In the fire department case, the Equality Tribunal concluded that the woman was discriminated against both on grounds of gender and of age. However, choosing a serial single ground approach, the tribunal concluded that it was the very announcement of an age limitation that constituted a violation of the Work Environment Act, while it was the larger hiring process that represented a case of gender discrimination. This was in line with the complainant’s own presentation of the case. But it is still a relevant question whether and how the exact combination of gender and age made the woman vulnerable to discrimination in the first place. The municipal leadership could of course have been guided by notions that ‘old women’ don’t belong in a fire department. Building a case on this interconnectedness, however, would pose greater difficulties than proving age discrimination through documentation of the announcement of the position.

The paradigm symbol of intersectional discrimination in legal discourse currently seems to be policies that aim to ban the Muslim headscarf (cf. Schiek and Chege 2008, Bamforth, Malik and O’Cinneide 2008). The Norwegian Ombud receives many complaints about hijab bans in various settings. Actual cases of hijab discrimination in Norway have also been approached in somewhat different ways, dependent on the scope of legal prohibitions against discrimination. These variations further illustrate the gliding scale built into legal approaches, as assessments of multiple and intersectional forms of discrimination respectively. But they also illustrate how intersectional approaches are possible within the context of single ground legislation.

As already noted, only gender equality was comprehensively addressed in Norwegian anti-discrimination law prior to 2006. In 2004, the Gender Equality Ombud received a series of examples of different employers' prohibition on wearing the religious headscarf in the work place. From this compilation of examples, the Ombud chose one specific case, and treated this complaint as raising issues of indirect sex discrimination. A large hotel in the Oslo area operated an employee uniform code which hotel management claimed was irreconcilable with the wearing of hijab. The Ombud found this prohibition to have negative consequences predominantly for women employees. The uniform code – although gender neutral in its wording – could thus be seen as producing gender-specific discriminatory effects. In this assessment, the Ombud also contrasted the operation of those rules with uniform regulations in the armed forces which accommodate the wearing of headgear such as turbans. Furthermore, she reasoned that for women who wear headscarves on religious grounds, the hijab constitutes an element of their personal integrity. Many would find it difficult to seek employment if they could not wear the headscarf. Thus, a prohibition would entail significant disadvantages for these women. (Mile 2004) The hijab ban is, in this sense, treated as a case of intersectional discrimination.

The new Equality and Anti-discrimination Ombud has also evaluated several workplace hijab bans. In the first case she handled, a woman had been fired from work as a shop assistant because she refused to remove the headscarf at work. The Ombud split the case into, first, an assessment on indirect gender discrimination, and, second, an assessment on direct discrimination on religious grounds. The employer was found to have violated both prohibitions. In our opinion, this case could as well have been approached as a situation of intersectional discrimination, largely in line with the reasoning applied by the former Gender Equality Ombud. An assessment of violation would then adopt the formula of the Equality Tribunal's Hotel case from 2008: The ban would be in violation of the prohibitions of discrimination in the Gender Equality Act and the Discrimination Act combined. In this formula, the often repeated 'technical difficulties' related to combined discrimination claims (cf. Squires, also Kantola and Nousinainen, this issue) simply dissolve.

As noted by Bamforth, Malik and O'Conneide (2008), treating hijab bans merely as cases of religious discrimination misrepresents and distorts the 'nature' of the discrimination experienced – as hijab cases clearly address both gender and religion (2008:537). In a critique

of the European Court of Human Rights' decision in *Sahin vs. Turkey*¹⁶, they regard the judgement as twice biased - not only in the court's failure to properly include the question of gender based discrimination, but also in its reversal of the gender issue. The court's statement, that the use of hijab seems imposed on women by a religious prescript that is hard to square with the principle of gender equality, actually constructs a conflict of rights in this situation – it poses a case of gender equality vs. religious freedom. The same point has been made in analyses of the Norwegian Gender Equality Ombud's approach to hijab bans (Skjeie 2007, 2008). The interpretation of such bans as a case of indirect gender discrimination thus represents an instructive alternative to the conflict oriented gender equality approach taken by the European Court of Human Rights.

Conclusion

The new political concerns with multiple discriminations and multidimensional equality challenge the established gender equality regimes in Norway. As in most other Nordic countries, there was a strong institutionalization of gender equality legislation and virtually no other comprehensive protection against discrimination until the field suddenly 'exploded' shortly before the advent of the new millennium. Developments encompass three interconnected trends (cf. Strand 2007). First, new grounds are included in the legal protection against discrimination. Second, as legislation proliferates, an argument is being advanced on the need for various laws to be harmonized. The strength of the individual protection against discrimination varies across strands. Such differences imply that there are different justice regimes applying to different grounds. Consequently, new political initiatives are taken to harmonize legislation. Third, and connected to the two previous trends, new initiatives pursue integration of institutions to monitor the law(s) and promote equality.

This article has shown that while legislative reforms largely are motivated by aspirations to create a fair legal framework where vulnerable groups are provided with protection against discrimination and legal hierarchies reduced, the expansion of anti-discrimination law has until now mainly been sought 'ground-by-ground' within a dominant frame of an expanded single strand thinking. Drawing on the distinction between multiple and intersectional forms

¹⁶ The case is widely cited; it concerns a university student who objected to the dress regulations of a Turkish state university which prohibited religious attire being worn in the university. The ban was held to be compatible with the rights enshrined in the European Convention of Human Rights, confirmed by a Grand Chamber decision in 2005 (see Loenen 2008).

of discrimination, it also seems clear that judicial practice more easily develops to manage multiple than intersectional forms of discrimination. There are however, important exceptions, where intersectional discrimination defines the case in ways which are not reducible to a ground-by-ground-approach. There is also a marked will within enforcement agencies to build competence to improve the handling of intersectional discrimination cases.

We would argue that new concerns with multiple and intersectional forms of discrimination provide an important contrast to traditional judicial approaches to rights protection and enhancement. These build on the notion that people are, or can be, discriminated against mainly on one ground at the time, and that grounds can be treated separately in legal instruments. In such an approach, where rights are construed as one-dimensional, different rights are also often construed as being in need of balancing and prioritizing. The hijab controversy may illustrate this point: In both policy making and law enforcement across Europe, a ban on the headscarf is mainly treated as an issue of religious discrimination. One reason for allowing bans, then, could be gender equality concerns. This happens when the hijab is only construed as a symbol of women's submission in Islam. This line of reasoning is employed also by the European Court of Human Rights in *Sahin vs. Turkey*: we have – or rather – we construct - two rights in conflict, and strive to balance these, or to prioritize them. A different way of looking at this is to see the case as an issue where religious and gender equality rights intersect – a situation where women should claim equal and simultaneous individual rights both to religious expression and to education and labor market participation. In Norway, such an intersectional reasoning has been applied by the Ombud institution. In our view, this case clearly presents a 'best practice' solution to intersectional problematic in the enforcement of anti discrimination legislation.

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