

Implementing intersectionality in Spain: challenges and contradictions in the legal framing of equality

Giulia Arena, Spanish National Research Council (CSIC)

giulia.arena@cchs.csic.es

Maria Caterina La Barbera, Spanish National Research Council (CSIC)

mc.labarbera@csic.es

Intersectionality: a tool for what and for who?



Barkley L. Hendricks, *Lawdy Mama*, 1969

- Our definition: **an analytical tool for understanding how the interplay of power relations and social identities shapes individual and collective conditions of discrimination, with the goal of social justice**
- Emerging from Black feminist critiques of white women as the archetypal subject of discrimination (Crenshaw; Hull et al. 1982)
- I argue there is a **tension** at the core of intersectionality: as a theory, it contests the idea that gender is the only relevant axis of discrimination or that women constitute a homogeneous group, yet as a legal tool, it was created precisely to make visible and protect women's specific experience of discrimination. In other words, it deconstructs "woman" as a category while simultaneously re-deploying it as a tool *for* women

Challenges in EU adoption and conceptual ambiguities

- Predominance of gender in the EU's reception, paradoxically reinforcing gender as the *primary axis*
- Confusion with "multiple discrimination" (Makkonen 2002)
- Inconsistent use in EU law and policies and no judicial recognition by the CJEU, despite mentions in some Directives
- Member states are therefore free to legislate on multiple grounds nationally, as Spain did





Implementing intersectionality: key obstacles

Lack of consensus: one of the main challenges in integrating intersectionality into policymaking lies in the **lack of consensus on its meaning and practical implications and the preconceptions of technical staff**

Previous studies (La Barbera et al. 2022; La Barbera et al. 2023) have shown a strong link between discursive factors and three material factors:

- legal vacuum and lack of enforcement mechanisms
- compartmentalized institutional culture and organizational structure of public administration
- lack of disaggregated data and underuse of existing data

Intersectionality in Spain: the RELIEF Project (REsearching Legal Implementation of an Intersectional Framework)



Funded by the MSCA-PF, it explores the implementation of intersectionality as an anti-discrimination framework in Spain to understand how the legal implementation can effectively address complex discrimination **from a "law-in-action" perspective** that's not only case-based:

- Focus on a Southern European context, distinct from Anglo-American ones
- Spain as a lab: the project analyzes the implementation of a **legislative provision** that explicitly introduces intersectionality as a transversal principle (Ley 15/22), the key question is IF the legal praxis changed after the 2022 law
- Focuses on **legal actors' discourses** to understand how interpretive frameworks interact with material conditions + focus on institutional actors, academic experts, civil society

Spain's Law 15/2022: an innovative regulatory framework

- Adopted in July 2022 after a long legislative process, it is the first law in the EU to explicitly recognize intersectional discrimination
- Law's objectives: to provide Spain with a comprehensive, cross-cutting legal framework for equality and non-discrimination, applicable to all sectors, with a wide understanding of discrimination and protected grounds
- Beyond banning individual discrimination, the law puts a proactive duty on public authorities: not just to sanction and repair discrimination, but to build an institutional environment that can detect and prevent it before it happens (Arts. 25-39, 46-52), treating discrimination as a **structural harm to social cohesion, not just an individual wrong**
- Formally defines both multiple discrimination (two or more grounds simultaneously or consecutively) and intersectional discrimination (resulting from the interaction of several grounds)



Gender as a core concept of intersectionality

- **Prominent role of gender:** the preamble clarifies that women are particularly vulnerable as victims of intersectional discrimination, which by its very, compounded nature represents "a more serious attack on the right to equal treatment and non-discrimination" (art. 34, c. 3)
- **"Intersectionality for whom?":** the gender perspective is deemed fundamental in shaping anti-discrimination policies, the education system should pay special attention to female students while ensuring their right to education, and social services should give priority attention to "particularly vulnerable groups, with special attention to the situation of women and girls" (art. 16)

The legal narrative of intersectionality: the parliamentary debate

- **Collision between different political views:** intersectionality was both contested and framed as a necessary legal innovation (far vs right debate).
- Vox opposed the Law through a "partisan use of constitutional rhetoric" defending Art. 14 as protecting equality solely in its formal sense
- **Conceptual ambiguity:** between an individual-based understanding of intersectionality and a collective, historically grounded view (e.g. Roma)
- **Intersectionality is not enough:** critiques related to anti-migrant racism, anti-gypsyism and structural racism ("In short, it does not question structural racism")



Some preliminary findings from the parliamentary debate

- Discrimination is understood as systemic, rooted in historical power imbalances and perpetuated by norms and stereotypes
- For example: “rights and dignity of people, especially those who are part of social groups that have historically been discriminated against in our country”, “protect historically oppressed and vulnerable groups”
- Migrant women and gipsy population are also mentioned: “it is the historical trajectory of the Roma people itself that has led us to a historical discrimination”
- Inclusion of anti-Roma discrimination as an aggravating circumstance (Art. 22) and as a standalone hate crime (Art. 510) in the Criminal Code
- Linguistic discrimination and autonomy problems

Preliminary insights from the Spanish case: a persistent tension between the group and the individual

- The law identifies both **individuals and social groups as subjects of discrimination**: political parties, trade unions and civil society can take legal action in administrative, civil and labour courts (art. 29)
- Institutional role of civil society: formalized collective advocacy in pushing the legal agenda and promotion of **judicial activism and strategic litigation**
- Focusing on the discriminated individual makes power asymmetries harder to grasp, limiting transformative impact, focusing on the group can create victimizing narratives
- Risk of relapsing into additive or "gender + something" discrimination
- Lack of clear framework definition: essential to avoid ambiguous outcomes in judicial settings, where procedural and interpretive challenges limit the transformative potential of intersectionality
- Open questions?

The Observatory on Intersectionality



<https://observatorio-sobre-interseccionalidad.csic.es/>

Thank you!

giulia.arena@cchs.csic.es