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Toward the Implementation of Intersectionality in the European Multilevel Legal Praxis: *B. S. v. Spain*

MariaCaterina La Barbera Marta Cruells López

This article identifies the factors that contribute to the successful implementation of intersectionality in European multilevel legal praxis through the analysis of the case *B.S. v. Spain*. Combining critical legal analysis of the main judicial documents with qualitative methodology from political science based on in-depth interviews with key actors involved in the case, we uncover the obstacles and opportunities existing at the national and supra-national levels for the implementation of intersectionality. We decipher the factors contributing to the exceptional success of this case through the conjoint analysis of macro, meso, and micro levels. Our analysis shows that a combination of the legal provisions, paradigms and structures, the roles of the different actors involved, and the applicant's subjective position made it possible to put intersectionality in practice. This study provides novel empirical evidence that contributes to advancing the theoretical debate about intersectionality implementation in the multilevel European context.

1. Introduction

Within feminist scholarship and activism, the debate on how multiple and interlocking systems of power shape gender discrimination has been a contentious and an intense one that dates back to the late 1970s (Combahee River Collective 1981; Lorde 1982; Spelman 1988). Introduced by Black Feminism during the 1980s, the debate was revitalized in 1989, when the African-American legal scholar Kimberlé Crenshaw coined the term "intersectionality" (Crenshaw 1989). She pointed at the intersection of race and gender structures, policies, and representations to refer to the distinctive structural inequalities that shape African-American women's lives. Crenshaw argued that by

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Please direct all correspondence to MariaCaterina La Barbera, Nebrija University, Madrid, Spain; e-mail: mlabarbera@nebrija.es.

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segmenting the dimensions of discrimination, both feminist and antiracist policies paradoxically ended up reinforcing the subordination of African-American women (Crenshaw 1991: 1252). Although Crenshaw proposed the concept as a specifically legal tool—as an interpretative criterion to be used in courts (Columbia Law School 2018)—thanks to the work of sociologist Hill Collins (1990), the concept of intersectionality traveled from law to sociology and across all disciplines in the social sciences. Intersectionality entails "a way of thinking about identity and its relationship to power" (Crenshaw 2015) that has continuously gained currency within the English-speaking social sciences (Davis 2008). Today, it is considered a specific field of research (Cho et al. 2013).

The legal debate over intersectionality draws on broader discussions on equality, nondiscrimination, and the legal tools needed to overcome structural vulnerabilities. Intersectionality highlights the substantive dimension of equality. It considers discrimination as a structural issue, rather than a collection of individual behaviors, requiring a systematic response to social inequalities (Hannett 2003; Radacic 2008; Young 2009; Barrère & Morondo 2011). Understanding inequality in its structural dimension has always been a fundamental strand of feminist legal theory. Feminist legal theorists tirelessly warned about the need to overcome the systems of subordination that systematically expose members of historically disadvantaged groups, such as women, to discrimination (Bartlett et al. 2002; Chamallas 2003; Fineman 2008; Hunter 2013; Bonthuys 2013). Canadian feminist legal scholars famously criticized the prevailing ideology in antidiscrimination law that leads law practitioners to interpret discrimination as a problem of unequal treatment and to reduce inequality to its formal dimension (Iyer 1993; Razack 1998; McIntyre 2009; Young 2010).

With the adoption of the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW) in 1979, it has become evident that gender equality could not be reached by simply recognizing equality before the law (art. 7 of the Universal Declaration of Human Rights) and by removing formal obstacles to enjoying equal opportunities. Gender equality requires overcoming the substantive dimension of discrimination and addressing the social structures that impair equality. This requires imposing positive institutional obligations to transform society (arts. 4 and 5 of the CEDAW). The dismantling of the structures that systematically produce discrimination entails the recognition of equality in its substantive dimension as a transformative project (Cook & Cusack 2011). Substantive equality entails "a commitment to redistributive justice and radical inclusion […] opening space for difference" (Lessard 2010: 243). Paying attention to the substantive dimension of inequalities requires recognizing power relations, analyzing the lived effects of the law, and

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contextualizing individual circumstances within group-based social structures (Young 2010: 195–196). Considering the intersectional feature of discrimination "is part of such a contextualization of the claim to equality" (Young 2010: 196).

The intersectional perspective adds a further layer by emphasizing that the causes of subordination do not stand alone, instead they are intermeshed and mutually constituted. In pursuing a broader project of social justice, intersectionality calls for addressing inequality vis-à-vis the multiple social structures that articulate power relations (Iyer 1993). In this sense, the implementation of intersectionality to legal praxis requires a radical transformation of the dominant ideology in antidiscrimination law (Barrère & Morondo 2011).

Despite great scholarly interest, this revolution in legal praxis is still waiting to happen. The implementation of intersectionality in legally binding documents remains weak or nonexistent (Fredman 2016). While references to multiple forms of discrimination have been progressively incorporated in international and European Union (EU) legal instruments, the majority of European countries segregate the grounds of discrimination and ignore the intersections among different axes of inequalities in their political and legislative agendas (Hannett 2003; Hancock 2007; Grabham et al. 2009; Lombardo & Verloo 2009; Schiek & Lawson 2011; Cruells & Coll-Planas 2013; Fredman 2016).

This trend has been reproduced in the fragmented interpretation of discrimination in judicial decisions at the European level. Crenshaw showed "the violence that this narrow frame imposed upon the aspirations of […] plaintiffs. […] Even as law sought to provide narrowly framed interventions on behalf of some plaintiffs, it did so at the cost of re-inscribing the system for others who could not fit the laws narrow requirements of pleading" (Crenshaw 2011: 229). The cases brought before the European Court of Human Rights (ECtHR) and the Court of Justice of the EU have mainly addressed one ground of discrimination at time (Nielsen 2009; Arnardóttir 2009; Schiek & Mulder 2011; Fredman 2016). The intersection between the different grounds of discrimination has not even been considered in those few cases in which several grounds of discrimination have been alleged (Vakulenko 2007; Radacic 2008; Schiek & Mulder 2011). Few studies have analyzed the factors facilitating the implementation of intersectionality in political and legal praxis (Verloo et al. 2012; Cruells & Ruíz García 2013). No consensus exists on the most efficient strategies to be deployed to advance intersectionality in practice, or on the specificities of each context (Hankivsky & Cormier 2011). Burri and Schiek (2009) asserted that empirical evidence is required to better formulate strategies that can enhance the implementation of intersectionality in Europe.

By analyzing an exceptional case of successful implementation of intersectionality in the European multilevel legal context, our study contributes to filling this gap. It was in 2012 that the ECtHR introduced for the first time an intersectional interpretation of discrimination in the case of *B.S. v. Spain* (Yoshida, 2013). Here, the court referred to the "particular vulnerability inherent in [*the applicant's*] position as an African woman working as a prostitute" (*B.S. v. Spain*, §62). Although it still stands as an isolated case, it constitutes an opportunity to provide novel and needed empirical-based analysis.

This article is divided into four main parts. In the first part, we analyze and discuss the existing literature on the conditions that can facilitate the implementation of intersectionality in legal praxis. In this section, we provide systematization based on three levels of analysis: macro, meso, and micro. The second part explains the materials used and methods deployed to conduct this study. In the third part, we analyze in detail the case of *B.S. v. Spain* by focusing on the factors that facilitated the activation of the judicial litigation, the obstacles encountered at the national level, and the factors favoring the recognition of human rights violation before the ECtHR. In the analysis of the ECtHR decision, we unravel the linkages between the concept of intersectionality proposed by the applicant and third-party interveners, and the status of "particular vulnerability" recognized by the court. In the fourth part, the results are discussed with the aim of advancing the theoretical debate regarding how to implement intersectionality in the European context. In the conclusion, we move beyond the judicial case analyzed to identify what can be learned from *B.S. v. Spain* for the implementation of EU equality and antidiscrimination law. Our main argument is that although a combination of macro, meso, and micro levels is needed for the successful implementation of an intersectional approach, both the meso and micro factors can play an important role in case of weak or null institutionalization of intersectionality. The importance of key actors and their political alliances emerges as a result of this study.

2. Implementing Intersectionality: Theoretical Framework

The concept of intersectionality allows for the recognition of the complex processes that generate social inequality because it understands individual "positionality" (Alcoff 1988: 433) as the inextricable result of many social structures (Anthias 2002 & 2009; Brah & Phoenix 2004; Yuval-Davis 2006; Nash 2008; La Barbera 2012 and 2017). Social inequalities are produced by the interaction of gender, class, race, national origin, sexual

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orientation, age, and disability. These social structures dynamically constitute each other over time and across space in different "institutional domains," such as economy, politics, or civil society (Walby 2007: 460). In other words, gender discrimination suffered by a black migrant woman with disability is different from that suffered by lesbian old middle-class woman. Although this is an intuitive concept, social sciences and law still follows, as shown below, an approach built on separated social and legal categories.

By considering that each type of social inequality is constituted by interaction with the others (Crenshaw 1991), intersectionality moves away from unitary or additive models (Hancock 2007) and recognizes that gender is differently constructed across class, race and geo-political locations (Iyer 1993; Anthias 2002; La Barbera 2012 and 2017). Great effort has been deployed recently to develop the theoretical and normative corpus of intersectionality. This includes identifying the intersectional inequalities that affect different social groups, and revealing how current political agendas and legal practices make invisible or even increase intersectional inequalities (Cho et al. 2013).

Rich scholarly work exists on the concepts of intersectionality, multiple discrimination, and interconnected structural inequalities (Hannet 2003; Weldon 2006; Hancock 2007; Bowleg 2008; Solanke 2009; Nash 2013). The idea of intersectionality is straightforward and intuitive.[1] Yet, many authors considers it a grand theory. The complex nature of the academic debate on intersectionality have made it difficult to implement an intersectional perspective in legal praxis in Europe. The interactions and co-constitutive effects of multiple grounds of discrimination (Lugones 2007) remain scarcely addressed in public policies and largely ignored in legal documents. For instance, although international human rights treaties, such as the *International Convention on the Elimination of All Forms of Racial Discrimination* (CERD) and the CEDAW, were originally designed to address isolated grounds of discrimination, important advancements toward intersectionality have unquestionably been achieved. Multiple discrimination has been addressed in nonbinding recommendations for more than a decade now (Makkonen 2002; Uccellari 2008; Barrère 2010; Degener 2011). However, too often international instruments opt for making a mere reference to simultaneous multiple dimensions of discrimination. Only recently, the CEDAW Committee started to use intersectionality in its General

[1] As Crenshaw explained, "If someone is trying to think about how to explain to the courts why they should not dismiss a case made by black women, just because the employer did hire blacks who were men and women who were white, well, that's what the tool was designed to do" (Columbia Law School 2018).

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Recommendations to explain that "the discrimination of women based on sex and gender is inextricably linked with other factors that affect women."[2]

Similarly, EU binding legal instruments historically have addressed each ground of discrimination separately, with greater development of instruments aimed to combat gender-based discrimination (e.g., 2006/54/EC Recast Directive; 2000/78/EC Employment Equality Framework Directive; 97/80/EC Burden of Proof Directive; 76/207/EEC Equal Treatment Directive). Important advancements toward the recognition of multiple discrimination have been marked by the EU Racial Equality Directive (2000/43/EC) and Framework Equality Directive (2000/78/EC). However, these directives mention multiple discrimination only occasionally when recalling that the EU aims to eliminate inequalities and promote equality between men and women: "especially since women are often the victims of multiple discrimination" (Racial Equality Directive 2000/43/EC).

An additive, rather than an intersectional, approach remains dominant in international and European discourse. Recognizing the coexistence of different grounds of discrimination has not led to addressing the effects of their interaction in legal praxis (Makkonen 2002; Uccellari 2008; Barrère 2010; Degener 2011; Fredman 2016). Although institutions such as the Committee on the Elimination of Racial Discrimination (2000), the European Commission (2007) and the EU Agency for Fundamental Rights (2011) have been vocal about multiple discrimination, no significant changes have yet been introduced in implementation processes, that is, how adopted policies have been put in practice through legal praxis (Mazur 2017).

The factors that might facilitate the implementation of intersectionality in European legal praxis remain largely unexplored. Some studies have already noted the potential impact of laws and existing legal paradigms (Hannett 2003; Radacic 2008; Burri & Schiek 2009), the roles of actors and law practitioners (Satterthwaite 2005; Goldberg 2009; Jubany et al. 2011), and the

[2] See, for instance, the General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/2010/47/GC.2, §18: "Intersectionality is a basic concept for understanding the scope of the general obligations of States parties contained in article 2. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways than men. States parties must legally recognize and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned" (United Nations 2010).

subjective experiences of those who have suffered discrimination (Jubany et al. 2011).

Drawing on McCall (2005) and Jubany et al. (2011), we categorize the previous literature based on three levels of analysis: macro, meso, and micro. For the purposes of our research, we classify legal provisions, paradigms, and structures, and the doctrinal and judicial conflicts with regard to their meaning as macro factors (Hannett 2003; Walby et al. 2007; Verloo et al. 2012). The factors that relate to the roles and strategies of all actors that interpret and apply the legal norms, as well as the dynamics and relationship between them (Goldberg 2009; Alonso 2012; Lombardo & Bustelo 2012; Rolandsen 2013), are referred to as meso factors. Finally, the factors that involve the subjective experiences (Jubany et al. 2011), social positioning, and agency of the victims of discrimination are categorized as micro.

As for the macro factors, political scientists are divided on the need to mention explicitly the notion of intersectionality in legal texts (Lombardo & Rolandsen 2012). According to some studies conducted in the United Kingdom (Hannet 2003; Moon 2011), Belgium, and the Netherlands (Verloo et al. 2012), the institutionalization of intersectionality is neither necessary nor sufficient. Some legal scholars have shown that in contexts in which intersectionality is specifically mentioned, legal implementation seemed to be more feasible (Moon 2011). Other authors have argued that the lack of a specific mention or definition of multiple intersecting discriminations in the legislation is not always an obstacle in protecting victims (Burri & Schiek 2009). While specific legal texts that address intersecting inequalities—such as the UN Migrant Workers' Convention—should be welcomed, international antidiscrimination law is a corpus that already contains all of the elements needed to require law practitioners to opt for an intersectional approach (Satterthwaite 2005).

The lack of systematized legislation and the segregated protection against different grounds of discrimination have been identified as major obstacles in implementing intersectionality in legal praxis. Providing integral protection for cases of multiple intersecting discriminations was impossible where discrimination claims could be filed alleging only one ground of discrimination (Crenshaw 1991; Iyer 1993). In the EU and in the majority of its Member States, fragmented legislation and uneven coverage for each ground of discrimination reduce the possibility of adequately addressing the cases in which the claimants can allege multiple intersecting discriminations (Bell 2002; European Commission 2007; Schiek 2012). In absence of a remedy that includes simultaneously multiple grounds of discrimination, the claimants opt for

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the ground that ensures the greatest protection (Hannett 2003; Jubany et al. 2011; Best et al. 2011).

With regard to the meso factors, which focus on contested interpretations of legal norms and the role and strategies of the law practitioners, the literature considers them as an important element for successful implementation of intersectionality. However, the extent to which they are relevant remains controversial. While some authors trust the ability of law practitioners to be both flexible in identifying cases of multiple intersecting discriminations and creative in the use of existing legislation and jurisprudence (Satterthwaite 2005: 63), others are more skeptical because of law practitioners' racial, classist, and gender prejudices. These prejudices can even nullify the efficacy of legal reforms incorporating intersectionality (Williams 2009).

Along with law practitioners, the role of collective social actors, such as organized civil society must also be considered in the analysis of the meso factors. It has been shown that a strong political presence of social movements, legal advocacy groups, and nongovernment organizations (NGOs) working to reduce inequalities are required at the transnational, national, and regional levels (Williams 2003; Bond 2003; Goldberg 2009; Lombardo & Bustelo 2012; Cichowski 2016). The public presence of organized civil society, its human and financial resources, the channels of political participation and the strategies of social impact are all critical. Moreover, it has been demonstrated that organized civil society is more effective in adopting an intersectional perspective when diverse social actors work in alliance (Jakobsen 1998; Cole 2008). It is particularly the case when they create coalitions through legal instruments like *amicus curiae* (Goldberg 2009).

Finally, the victims' subjective experiences affecting access to justice must be considered as micro factors. Although the subjective dimension has been less explored in the literature, Carles and Jubany (2010) showed the importance of obstacles and resistances at the micro level. They identified three main subjective obstacles in accessing justice: the vulnerability of the victims of discrimination, many of whom are undocumented migrants; the naturalization and normalization of their own experience of discrimination; and their incapacity to recognize the intersections between the different forms of discrimination that they suffer. In addition, the European Commission against Racism and Intolerance of the Council of Europe (ECRI 2005, 2011) has also referred to the fear of possible counterclaims or threats from police as an obstacle.

The literature on the implementation of intersectionality has shown a great number of obstacles and forms of resistance at the macro, meso and micro levels and has identified some possible favoring conditions. Indeed, very few success stories have

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emerged so far. By identifying *B.S. v. Spain* as a case of implementation of intersectionality in the European legal praxis, we argue that its analysis offers important keys to understanding how to overcome obstacles and resistances.

3. Materials and Methods

This study explores the obstacles to and opportunities for the implementation of intersectionality in European legal praxis at the macro, meso and micro levels. It identifies the obstacles that hinder the recognition of the multi-layered discrimination suffered by the applicant at the national level, and the opportunities that allowed for the judicial implementation of intersectionality as a means to recognize substantive equality at the supra-national level. Here we focus on the judicial implementation of intersectionality and applicants' resort to courts, "whose judicial interpretation can at times change the scope of rights" (Cichowski 2016: 893). The analysis of judicial implementation sheds light on how courts alter or maintain the dynamics through which the law constrains or empowers individuals and groups (Cichowski 2016).

We selected *B.S. v. Spain* for the purpose of our study because the recognition of multiple discrimination by the ECtHR reflects an understanding that the discrimination experienced by the applicant is the result of the interaction among different grounds of inequality. Our study relies on Hancock's (2007: 64) categorization of unitary, multiple, and intersectional approaches to discrimination, distinguishing between those that account for one axis of inequality, those that account for two or more axes of discrimination, and those that account for the interaction between the different axes of inequalities and seek to explore the relationships among them as an open empirical question related to the specific context.

Following Hancock (2007), we distinguish the approach adopted in *B.S. v. Spain* from both an additive interpretation, which considers various discriminations as juxtaposed, and a segmented interpretation, which picks only one ground and ignore the others. To this end, we refer to "multiple intersecting discriminations" to overcome the additive sense conveyed by the term "multiple discrimination" and to emphasize the relevance of interaction among the different grounds in shaping the specific situation of discrimination under consideration in the judicial case.

We align with Kimberlé Crenshaw who focused her attention "on using intersectional analysis to advance an argument *within* law while at the same time interrogating certain dynamics *about* law and its relation to social power" (Crenshaw 2011: 231).

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Although our study addresses the broad issue of intersectionality implementation, we particularly aim to advance the understanding of what it means for legal praxis. We attempt to further develop the definition of intersectionality as a legal tool for judges (Columbia Law School 2018) by analyzing what facilitated the use of intersectionality as an interpretative criterion in *B.S. v. Spain*, moving beyond the additive or segmented approaches usually adopted in judicial decisions. In our analysis, dynamics of law and social power come to the fore.

In line with the European Commission's call to combine social sciences and legal approaches to tackle multiple intersecting discriminations in EU law (Burri & Schiek 2009), we engage in a novel interdisciplinary collaboration that combines critical legal analysis of judicial proceedings with qualitative methodology from political science. In particular, we have used semi-structured interviews with key actors involved in the case, relevant public bodies, and legal experts.

Our analysis focuses on legal provisions, paradigms, institutions, and the contestations over their content through the examination of the interpretations put forward by the different actors. Considering that legal texts become law through law practitioners' interpretations (Binder 1996), we explore how national and international judicial interpretations conflict regarding the alleged intersectional discrimination, and how contestations over the content of equality, nondiscrimination, and intersectionality shape the law in practice. We analyzed the following judicial documents: the decisions issued by the Spanish courts (court of first instance, court of appeal, and Constitutional Court) and the ECtHR; the applicant's demands before both the Spanish Constitutional Court and the ECtHR; and the third-party interventions before the ECtHR. To understand the legal reasoning beyond the particularities of the case, the judicial documents have been discussed within the framework of the legal doctrine of substantive equality and the related ECtHR case law, especially its jurisprudence regarding vulnerable groups.

Conflicting interpretations reflects different understandings of the principle of equality and nondiscrimination and "function in some ways like magnetic resolution images, revealing the architecture of antidiscrimination law and the various preferences that are attendant to it" (Crenshaw 2011: 228). Since courts do not make explicit the assumptions underlying their decisions, following Feteris and Kloosterhuis (2009), we identify the main arguments advanced by the parties, disclose the explicit and implicit reasoning, and assess the impact of such interpretations on the case. Such a critical approach allows us to view less visible norms and interpretations and their effects.

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As a case decided by a supra-national court, the analysis of *B.S. v. Spain* is particularly relevant for exploring the variety of interpretations regarding equality and nondiscrimination enacted in national and international judicial scenarios (La Barbera & Lombardo 2019). It is crucial to acknowledge that contestations and negotiations throughout the implementation process are formulated by actors with different goals and interests (Bardach 1977). This is particularly important for judicial implementation because the interpretative nature of judicial system allows each actor to advance a different interpretation of the law in the different stages of the litigation. We explore the roles played and the strategies employed by law practitioners, as well as the dynamics operating in multilevel legal contexts thanks to semi-structured interviews with key actors involved in the case, as well as with relevant national public bodies and legal experts. Our interviewees includes (1) the attorney responsible for the case; (2) the Director of Women's Link Worldwide (WLWW), the organization that litigated the case from the first instance in Spain to Strasbourg; the third party interveners, (3) Advice on Individual Rights in Europe Centre (AIRE);[3] and (4) the European Social Research Unit (ESRU) of the University of Barcelona[4]; (5) the Spanish state attorney who represented Spain before the ECtHR; (6) a law clerk at the ECtHR; (7) a law clerk working at the time of the decision at the ECtHR; (8) a law clerk at the Spanish Constitutional Court; and (9) a volunteer at *Médicos del Mundo* (MDM, translation: Doctors of the World), the NGO based in Mallorca (Spain) that provided the initial legal aid to the applicant; (10) the President of the Spanish Council for the elimination of racial or ethnic discrimination[5]; (11) the head of the national antidiscrimination prosecutor's office[6]; and (12) two national legal experts on antidiscrimination law.[7] A total of 13 interviews have been carried out.

[3] See the webpage of the AIRE Centre at http://www.airecentre.org/ (accessed October 21, 2016).

[4] See the webpage of the European Social Research Unit of the University of Barcelona at http://www.ub.edu/ESRU/ (accessed October 21, 2016).

[5] The institution of the Council for the elimination of racial or ethnic discrimination (*Consejo para la Eliminación de la Discriminación Racial o Étnica*) was foreseen by L. 62/2003 transposing Directive 43/2000/EC. Royal Decree 1262/2007 later regulated its goal, composition and functions. Yet, it was not until 2013 that its first President was finally appointed. Yet, 1 year later he resigned and has not been replaced so far. Lacking of leadership, this body practically had no significant activity (ECRI 2018).

[6] The national antidiscrimination prosecutor's office (*Fiscal delegado para la tutela penal de la igualdad y contra la discriminación*) was created in 2011.

[7] All of the interviews were conducted in 2014. When consent was given, they were digitally recorded and transcribed. They were conducted either as face-to-face meetings in Madrid or through phone and video calls. The approximate duration of each interview was 1 hour and 30 minutes. Consent to include the information related to the institution, body, or organization was explicitly provided by the interviewees.

In our interviews, we asked three sets of questions. The first set of questions focused on the use of the notion of multiple intersecting discrimination, and considerations on the effectiveness of existing antidiscrimination law in Spain.

Through the second set of questions we inquired into potential factors leading to conflicting interpretations of national and international courts. We specifically asked about the impact of the third-party interventions in the ECtHR's deliberations, and about the need to reform the current national antidiscrimination law or to use other legal tools to uphold the substantive dimension of equality.

Finally, through the third set of questions we sought to gather actors' perceptions regarding the impact of *B.S v. Spain* on other member states of the Council of Europe, and the potential of the case to become a leading case, particularly within the Spanish legal framework. We also asked our interviewees about the execution of the ECtHR judgment and about the measure that should be adopted by Spain to avoid similar violations of the Convention in the future.

The interviews with key actors involved in the case provided us with material to analyze the roles, dynamics, and strategies deployed from the beginning of the case until the ECtHR's final decision. It also provided us with material for analyzing the different interpretations of multiple intersecting discriminations embedded in the proceedings. Additionally, interviews with experts and national antidiscrimination bodies generated information helpful for understanding the local discourse on multiple discrimination, and for better understanding the Spanish legal framework. The latter includes mechanisms for submitting a case before Spanish courts, the channels of protection against discrimination in Spain, and the execution of ECtHR decisions at the national level.

Finally, our analysis focuses on the subjective experience, social positioning, and agency of the victim of discrimination. Because it was impossible to interview the applicant, her role was analyzed through the information contained in the proceedings and provided by WLWW and MDM. These pieces of information were used to reconstruct the applicant's position, and to understand the individual motivations that functioned as key factors favoring the implementation of intersectionality.

Our methods allowed us to explore the discursive and material obstacles hindering the implementation of intersectionality in multilevel European legal praxis. They also allowed us exploring the limitations of the ECtHR ruling, along with the opportunities it opened for future cases.

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4. A Story of Successful Strategic Litigation

4.1 The Factors Facilitating the Activation of the Case

The applicant, Ms. Beauty Solomon, represented throughout the process by WLWW, is a Nigerian woman legally residing in Spain at the time of the events. She practiced street sex work for a living. Despite sex work being legal in Spain, police repeatedly stopped her for alleged identification purposes. She was identified and compelled to leave the area on several occasions and verbally and physically abused by the police agents. After attending the health center of MDM, where she had also received legal aid, Beauty Solomon decided to lodge a criminal complaint. Her complaint included medical reports along with a request to interview identified witnesses. She alleged discrimination based on her race, gender, and social status since the police had not stopped women with a "European phenotype." The complaint stated that she was subjected to repeated police checks, physical abuse, and racist and sexist insults (e.g., the police called her *puta negra* or black whore). She claimed that her position as a black woman practicing street sex work rendered her particularly vulnerable to ill-treatment and police abuse. She argued that the factors that shape her social position cannot be considered separately, but rather should be considered in their mutual and constitutive interaction. She claimed that the consideration of such an interaction was essential for the examination of the case.

We identify five main micro and meso factors facilitating the initiation of the case and its framing: (1) the applicant's legal status; (2) her personal motivation; (3) the initial legal aid received; (4) the alliances among social and legal actors; and (5 these actors' theoretical knowledge about the phenomenon of multiple intersecting discriminations.

The first factor is located at the micro level because it is connected to the applicant's legal status and social position. The fact that she held a valid residence permit, allowed her to access justice as a right guaranteed to foreigners residing legally in Spain. The majority of victims of racial discrimination in Spain are undocumented migrants, who are not entitled to judicial protection within the Spanish territory and are exposed to deportation upon lodging a complaint. Indeed, Beauty Solomon's personal circumstances were quite exceptional. According to NGO databases, an estimated 4000 cases of racial abuse occur in Spain on a yearly basis, but very few of them are reported (ECRI 2011).[8]

[8] Spain released the first official data on registered racially motivated complaints in 2014. In 2013, they numbered 381 (Spanish Ministry of the Interior, 2013). However, according to the *Movimiento contra la Intolerancia* (2015), more than 80% of victims of intolerance do not lodge complaints in Spain.

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The lack of reporting is related to structural obstacles at the micro level, such as the undocumented status of the victim, the normalization of discrimination on behalf of the victims, the fear of possible counterclaims or threats from the security forces, and weak legal protection against racial discrimination (Carles & Jubany 2010; ECRI 2005, 2011).

The second factor, located at the micro level too, is related to the special motivation and courage that the applicant showed despite being repeatedly stopped by the police following her first criminal complaint, possibly as a form of retaliation.[9] When she was compelled to go to the police station without having committed any criminal act, she refused to sign any form, revealing full awareness of her rights as a sex worker and a member of an ethnic minority.[10] The applicant's defiance of unjust orders reveals her agency and willingness to challenge the abusive power of the police. Beauty Solomon also showed a strong political commitment to women's rights during the whole judicial process. She intended not only to seek justice for the abuse that she endured but also to promote the rights of other women who might experience similar abuses.[11]

The third facilitating factor is found at the meso level being connected with the existence of locally based nongovernmental organizations that receive public and private funding to provide, inter alia, legal aid to victims of discrimination and abuse. Since the mechanisms of judicial litigation are technical and complex, victims who rely on legal aid provided by locally based NGOs or public institutions are often more capable of bringing their claims before the courts (Jubany et al. 2011). Solomon sought legal aid from the nearby MDM because the latter was well known in Mallorca for its assistance to sex workers and other disadvantaged social groups over the last decade.

The fourth facilitating meso factor is the alliances among social and legal actors. When MDM offered the medical and initial legal aid to Beauty Solomon, it also transmitted information on her case to WLWW, an advocacy group based in Madrid that specializes in women's rights from an intersectional perspective. This link was facilitated by the existence of a network created by WLWW in 2004 to monitor access to justice for victims of discrimination.[12] The network was constituted by several organizations and human rights experts, such as WLWW, MDM, Amnesty

[9] Interview with the attorney responsible for the case at WLWW (April 15, 2014).

[10] Interview with the attorney responsible for the case at WLWW (April 15, 2014).

[11] Interview with Director of WLWW (April 28, 2014).

[12] Interview with Director of WLWW (April 28, 2014).

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International, Gazkalo, SOS Racismo and Open Society Justice Initiative (Women's Link Worldwide 2007). The network triggered and facilitated dialogue among social and legal actors in Spain to foster an effective judicial defense for victims of human rights violations. Upon receiving the information from MDM, WLWW identified the case of Beauty Solomon as a suitable test case for strategic human rights litigation. The goal was not only to establish a legal precedent, but also to trigger changes in legislation, policies, and legal practices. Above all, WLWW wanted to influence public opinion by publicly exposing police misconduct; it also wanted to raise awareness, and to generate broader societal change through social and political mobilization. Relying on funding from several private foundations and donors,[13] WLWW was able to fully bear the costs of a long process and to offer Beauty Solomon's free legal representation throughout the entire legal proceeding. To this end, WLWW used this system of alliances to make the case known among civil society and academic experts, some of who eventually decided to participate in the process as third-party interveners before the ECtHR. In line with Cichowski (2016), we find that such alliances are different from traditional networks of legal experts, being rather closer to political ones,[14] because their specific aim is to promote public debate about human rights and intersectional inequalities.

The fifth facilitating factor at the meso level is the expertise of the legal representative of the victim. WLWW's deep knowledge of the notion of multiple intersecting discriminations resulted in consistent and persistent argumentation about a more sophisticated understanding of discrimination during all stages of the process, which resulted eventually in the recognition of such discrimination by the ECtHR and with the provision of suitable remedies.[15]

4.2 The Factors Determining the Misrecognition of the Constitutional Relevance of the Case at the National Level

Our analysis also shows that the case faced obstacles at the meso and macro levels. The first meso obstacle lay in the gender and racial stereotypes that hindered an effective judicial investigation of the case. Indeed, after the dismissal of the case by the court of first instance, the court of appeal admitted as evidence only report by the superior of the police officers. The applicant's

[13] The information about WLWW's donors is available through their webpage at http://www.womenslinkworldwide.org/interna.php?esec=1%24%24-1%24%24-GBVvgB20ZyLnNBVvgB&idi=_en (accessed November 10, 2016).

[14] Interview with the Director of WLWW (April 28, 2014). See also Cichowski (2016).

[15] Interview with a law clerk of the ECtHR (July 22, 2014).

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requests to identify implicated police officers through one-way mirror and to call witness testimony were denied. The court dismissed the allegations stating that Beauty Solomon was criminally liable for disobeying police orders. The court stated that "in the applicant's claim, there is no objective corroboration of the facts. On the contrary, facts reveal her behavior of repeated disobedience to the police's orders in the exercise of their functions, which had no other aim than preventing the spectacle of prostitution on the public highway."[16] Being unable to recognize gender and racial discrimination, the court attributed to the applicant the responsibility for conduct that did not constitute a crime in Spain.

The dismissal of the allegation by Spanish Constitutional Court is the second obstacle at the meso level to implementing intersectionality. When Beauty Solomon finally submitted an application to the Spanish Constitutional Court, she alleged violation of the right to effective judicial protection (art. 24 of the Spanish Constitution, hereinafter SP), the right not to be discriminated against on the basis of race, gender or any other personal circumstance or social condition (art. 14 of the SP), the right to the intrinsic dignity of the person (art. 10 of the SP), the right to physical and moral integrity and the right to live a life free from torture and inhumane or degrading treatment (art. 15 of the SP).[17] The Constitutional Court did not find any manifest violation of the Spanish Constitution and dismissed the case for lack of constitutional basis.[18] The failure to identify the violation of relevant constitutional guarantees can be attributed to the lack of training of law clerks and judges of the Constitutional Court. This explains their inability to identify multiple discrimination.[19]

Such a failure also reveals obstacles at the macro level, more specifically the underdeveloped Spanish jurisprudence on multiple intersecting discriminations.[20] Although constitutional jurisprudence exists regarding gender discrimination in workplaces, jurisprudence on racial discrimination is underdeveloped. Racially biased jurisprudence established that police identifications based on racial profiling do not violate any constitutional right because skin color can be evidence of an undocumented migrant who is

[16] Decision of June 10, 2007, Primera Instancia Penal, Juzgado n. 9, Palma de Mallorca (*authors' translation*).

[17] Appeal (*Recurso de amparo*) to the Spanish Constitutional Court of April 3, 2007.

[18] Spanish Constitutional Court, Decision of inadmissibility to proceed of December 22, 2009.

[19] Interview with a law clerk of the Spanish Constitutional Court (June 4, 2014), a legal expert (July 23, 2014) and the Council for Equality and Nondiscrimination (April 10, 2014).

[20] Interview with a law clerk of the Spanish Constitutional Court (June 4, 2014).

illegally residing in Spain (STC 13/2001).[21] Such a jurisprudential failure must be understood as a part of a weak legal and institutional framework that is built upon insufficient legal framework,[22] and the absence of independent antidiscrimination public bodies.[23] Spain has neither an independent equality and nondiscrimination body nor mechanisms for independent police investigations, both of which are required under EU law (ECRI 2011).

4.3 The Factors Facilitating the Proliferation of the Case at the Supra-National Level

Confronted with the repeated dismissal of her case, and being aware of the significance of her grievances for other women in similar situations, Beauty Solomon decided to continue fighting and lodged an application before the ECtHR. This supra-national court is based in Strasbourg (France), and its mission is to enforce the rights enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter the Convention) adopted under the auspices of the Council of Europe.[24] The ECtHR is comprised of 47 judges, elected for nonrenewable terms of 9 years, and hears applications alleging that a contracting state has breached human rights provisions set forth in the Convention and its Protocols. Individuals, groups or contracting states can lodge applications before the court after exhausting all domestic remedies. A judgment finding a breach "imposes on the respondent state a legal obligation not just to pay those concerned the sum awarded by way of just satisfaction but also to choose, subject to supervision by the committee of ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the court and to redress

[21] The case was later brought before the UN Human Rights Committee, and Spain was found responsible of racial discrimination (*Williams Lecraft v. Spain*, 2009). Although Rosalind Williams Lecraft did not receive compensation because Spain considers UN Human Rights Committee decisions nonbinding, a subsequent administrative memo of the Police General Direction (no. 2/2012) prohibited setting quotas in the identification and stopping of foreigners (ECRI 2011; Añon et al. 2013).

[22] In Spain, racial discrimination receives insufficient protection. The European Commission against Racism and Intolerance repeatedly denounced it, and also revealed that the mechanisms to prevent it are underdeveloped (ECRI 2018). Yet, the ECRI recommendations are systematically disregarded.

[23] Interview with the Council for Equality and Nondiscrimination (April 10, 2014).

[24] The Convention is an international treaty signed in 1950 by the Members of the Council of Europe. All of its 47 member states, 28 of which are also members of the European Union, are contracting parties of the Convention. They include Turkey and Russia.

so far as possible the effects" (*Scozzari and Giunta v. Italy* 2000: §249).[25]

Despite the declaratory nature of its judgments, the ECtHR can provide specific indications of the flaws of the domestic legal framework.[26] However, specific indications of this sort challenge the sovereignty of member states, which are reluctant to accept such interference (Gyorfi 2019).[27]

Alleging violations of the Convention, Beauty Solomon claimed before the ECtHR that the Spanish judicial authorities had not properly investigated her complaints of police abuse. She also argued that, in violation of the prohibition of discrimination, she had been a victim of discrimination on the basis of gender, race,[28] and social status. The complaint stated that

> although not every difference in treatment amounts to a violation of Article 14, in the present case, the actions of the police officers amounts to discrimination as there is no objective or reasonable justification for the differential treatment. The ill treatment clearly aimed to debase and humiliate Ms. Beauty Solomon. This non justifiable gendered form of racial and social status discrimination is evident from the facts of the case. Ms. was stopped while other women in the same area with a "European phenotype" were not. Similarly, the police officers treated Ms. in a humiliating and degrading manner, including uttering a racist and sexist slur while subjecting her to the physical ill treatment. The police officers discriminatory ill treatment was based on the assumption that she was soliciting prostitution—which is not illegal in Spain; an assumption made based on her race and sex.[29]

[25] See also, more recently, *Scordino v. Italy* 2006: §233; *Johansson v. Finland* 2007: §64.

[26] See, for instance, *Huvig v. France* (1990: §34–35).

[27] To avoid conflicts, for enforcement of judgments, cases go back to politics through the intervention of the Committee of Ministers of the Council of Europe, which is composed of Ministry of Foreign Affairs of each contracting state, and it supervises the execution. By virtue of Article 46 of the Convention, as amended by Protocols nos 11 and 14, the Committee of Ministers supervises the enforcement of judgments of the ECtHR. However, because of the workload of the Committee of Ministers, delays in the execution are the norm rather than the exception (Lambert 2008: 65).

[28] Although "there is no conceptual basis for race except racism" (Hirschman 2004: 407), and we would prefer to refer to racialization to consider the processes of social construction, hierarchization, and domination (e.g., Britton 1999), for the limited purposes of this study, we use the term "race" as a legal category referring to the ground of discrimination foreseen in Article 14 of the Convention.

[29] Complaint presented before the ECtHR by Beauty Solomon that was assisted and represented by WLWW (§8); it is available on the webpage of WLWW at http://www2.womenslinkworldwide.org/wlw/new.php?modo=detalle_proyectos&dc=26&lang=en (accessed May 3, 2017).

After exhaustion of domestic legal remedies, macro and meso factors facilitated litigating the case before a supra-national institution, where multiple intersecting discriminations were finally recognized. The determinant factor at the macro level was undoubtedly the legal framework of the ECtHR regarding violations perpetrated by states after the exhaustion of domestic remedies. At the meso level, the expertise of the domestic legal representative in the field of multiple intersecting discriminations is a factor that allowed correct identification of the case as a good test case for strategic litigation, and hence pushed forward the implementation of an intersectionality approach through litigation.

In July 2012, the ECtHR acknowledged the duty of Spanish judges to properly and efficiently investigate the alleged ill-treatment of the victim, and found a violation of the right to an effective and rigorous investigation in relation to ill-treatment (art. 3 of the Convention), in conjunction with the prohibition on discrimination (art. 14 of the Convention). Spanish authorities were found guilty of not investigating with due diligence the possible link between racial profiling and the abuses suffered by the applicant. The court set compensation at 30,000 EUR for nonpecuniary damages, which was one of the highest compensations granted by the court in a case of police abuse and discrimination (*B.S. v. Spain* 2012).

4.4 The Intersectional Discrimination Alleged by the Legal Representative and Third-Party Interveners

The legal representative, WLWW, is an international organization specialized in litigating cases of gender discrimination with the goal of introducing an intersectional perspective in the legal reasoning. In light of its specific mission, WLWW consistently and persistently referenced in all the stages of the process the notion of intersectional discrimination. In particular, before the ECtHR, WLWW explained that

> intersectional discrimination is when several grounds operate simultaneously and interact in a manner that is impossible to separate them. If the multiple layers of discrimination are not taken into account, the real effect of the discriminatory acts may not be adequately evaluated. It is essential to consider the different grounds of discrimination and the ways in which these grounds interact because those experiencing these complex forms of discrimination are too often among those in the most vulnerable, marginalized and disadvantaged situations, and thus are

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> more prone to suffer violation of their rights, including the ability to have access to justice.[30]

Additionally, the two third-party interveners—a UK-based advocacy group (AIRE) and a Spanish academic research group (ESRU)—both made strong arguments in favor of intersectionality as an interpretative criterion. Third parties (also known as *amici curiae*) increasingly intervene in some domestic jurisdictions—such as in the United States and in international courts[31] (Cichowski 2016)—in case of public importance with possible impact on law reform. However, most European domestic jurisdictions do not have mechanism foreseeing third-party intervention. Amici curiae can be public bodies or institutions, legal experts, NGOs, or even private entities. Although they are not parties to the case, they can submit a brief containing studies of legislation or jurisprudence, comparative analyses, or legal expert opinions (Goldberg 2009; Van Den Eynde 2014; Cichowski 2016). Our analysis shows the special role that these two organizations played in *B.S. v. Spain*. The ESRU forms part of the Department of Social Anthropology of the University of Barcelona, and it has carried out several research projects on multiple discrimination and intersectionality. The brief presented by ESRU was based on the findings of the EU research project GENDERACE[32] that contributed to advancing "the knowledge of the combined effects of racial/ethnic and gender discrimination in order to reveal the various forms of specific discrimination experienced by women."[33] The ESRU brief provided a definition of the concept of intersectional discrimination:

> [it] occurs when two or more grounds of discrimination interact concurrently. The grounds in this instance are inseparable and the discrimination taking place cannot be captured wholly by examining discrimination solely on one ground […]. For example, […] minority ethnic women might be subject to particular types of racial prejudice and stereotypes and may face specific types of racial discrimination not experienced by ethnic minority men. So, a person might not in general discriminate against women or immigrants, but the combination of these two factors may trigger discriminatory behavior.[34]

[30] Complaint presented before the ECtHR by WLWW on behalf of Beauty Solomon: 10, §4.

[31] Third parties can intervene before the ECtHR by virtue of article 36 of the Convention.

[32] See the webpage of the project GENDERACE at http://genderace.ulb.ac.be/ (accessed May 3, 2017).

[33] ESRU, third-party intervention, §2.

[34] ESRU, third-party intervention, §9.

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ESRU also referred to EU legislative developments aimed at combatting multiple discrimination, such as Directive 2000/78/EC on equal treatment in employment and occupation, Directive 2000/43/EC on equal treatment between persons irrespective of racial or ethnic origin, and Council of Europe Resolution 1478(2006) on the integration of migrant women in Europe. The brief also provided an overview of academic research that showed how analyses considering only one of the grounds at stake fail to reflect the real depth and complexity of discrimination.

For its part, the AIRE Centre, in collaboration with the Sexuality and Gender Law Clinic of Columbia Law School,[35] provided a synopsis of jurisprudential developments in the field of multiple intersecting discriminations in the United Kingdom, the United States, and Canada.[36] The AIRE Centre had litigated a large number of cases before the ECtHR (Cichowski 2016). In this case, the brief referred to judicial decisions acknowledging that discrimination can occur at the intersection of race, gender, and/or other protected grounds. It referred to the famous dissenting opinion of justice Claire L'Heureux-Dube of the Supreme Court of Canada where she argued that

> categorizing […] discrimination as primarily racially oriented, or primarily gender-oriented, misconceives the reality of discrimination as it is experienced by individuals. Discrimination may be experienced on many grounds, and where this is the case, it is not really meaningful to assert that it is one or the other. It may be more realistic to recognize that both forms of discrimination may be present and intersect (*Canada v. Mossop* 1993: 645–646, L'Heureux-Dube's dissenting opinion).

The AIRE brief shows how some judicial decisions, such as the U.K. Employment Appeal Tribunal decision *Ministry of Defence v. Tilern De Bique* (2010), have recognized that "the nature of discrimination is such that it cannot always be sensibly compartmentalized into discrete categories."[37] Thus, the brief argued that some courts recognized long ago that

[35] See the webpage of the Sexuality and Gender Law Clinic of Columbia Law School at http://www.law.columbia.edu/media_inquiries/news_events/2010/October2010/discriminationechr (accessed October 21, 2016).

[36] The text of the third-party intervention is published on the webpage of the Sexuality and Gender Law Clinic of Columbia Law School, http://www.law.columbia.edu/null/download?&exclusive=filemgr.download&file_id=55620 (accessed October 21, 2016).

[37] AIRE Centre, third-party intervention, §16.

> where two bases for discrimination exist, they cannot be neatly reduced to distinct components […] The attempt to bisect a person's identity at the intersection of race and gender often distorts or ignores the particular nature of their experiences (*Lam v. Univ. of Hawaii* 1994).[38]

Through case law analysis, the AIRE brief shows that viewing discrimination with an intersectional perspective allows for recognizing discrimination as a "whole [that] is more than the sum of its parts," and hence provides protection to vulnerable subjects whose rights would not otherwise be recognized.[39]

Although a general pattern has not yet been identified (Van Den Eynde 2014), the recognition of a violation by the ECtHR is generally positively related to the presence of third-party interventions. But intersectional discrimination makes an exception in this respect. In spite of the recommendations of third-party interveners, in recent cases involving multiple intersecting discriminations the ECtHR ruled that neither the interaction between the different grounds of discrimination nor the particular situation of discrimination require specific protection (*Kostantin Markin v. Russia* 2012; *S.A.S. v. France* 2014). Only in *B.S. v. Spain*, the rigorous arguments presented to the court, the high level of theoretical knowledge, and the legal competence of third parties positively impressed the ECtHR so to include an intersectional perspective in its reasoning.[40]

The importance of *B.S. v. Spain* lies in its adoption of an intersectional interpretation of multiple discrimination. The court argued that the situation of specific vulnerability suffered by the applicant was the result of the intersection of her race, gender, and employment status, defining her position as an African woman working as a street sex worker in Spain. In its ruling, the ECtHR stated that

> in the light of the evidence submitted in the present case, the Court considers that the decisions made by the domestic courts failed to take account of the applicant's particular vulnerability inherent in her position as an African woman working as a prostitute. The authorities thus failed to comply with their duty

[38] The Spanish state attorney argued that the case law referred by AIRE was related to multiple discrimination in workplaces: although "voluntary prostitution is not illegal in Spain, we consider this case law is not applicable to the present case," he said (Spanish state attorney, observations submitted to the ECtHR answering the third-party interventions (§6).

[39] AIRE Centre, third-party intervention, §18.

[40] Interview with a law clerk working at the time of the decision at the ECtHR (June 21, 2014).

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under Article 14 of the Convention taken in conjunction with Article 3 to take all possible steps to ascertain whether or not a discriminatory attitude might have played a role in the events (*B.S. v. Spain* 2012: §62).

4.5 The ECtHR Recognition of the Particular Vulnerability of the Applicant

In *B.S. v. Spain*, the ECtHR aligned with previous case law on positive obligations under Article 3 of the Convention. In cases of credible allegations of ill-treatment at the hands of the police or other institutional agents, the state holds a positive duty to provide a remedy. This includes the duty to conduct an effective investigation and to undertake all measures to secure the evidence (*Jasar v. Macedonia* 2007: §55; *Opuz v. Turkey* 2009: §199). In its decision, the court also followed established jurisprudence that shifted the burden of proof to the state in cases of racist (*Turan Cakir v. Belgium* 2009: §54; *Nachova and others v. Bulgaria* 2005: §145; *Sonkaya v. Turquey* 2003: §25) or sexist discrimination (*Opuz v. Turkey* 2009: §183). The court ruled that Spanish authorities had violated Article 3 of the Convention by failing to conduct an effective investigation in relation to the "possible causal link between the alleged racist attitudes and the violent acts allegedly perpetrated by the police against the applicant" (*B.S. v. Spain* 2012: §60). Thus, the decision confirms a positive obligation on the state to prevent ill-treatment as a requirement inferred from the prohibition of torture and inhuman or degrading treatment or punishment (art. 3 of the Convention).

In addition, *B.S. v. Spain* also links such a positive obligation with the responsibility to guarantee the right to nondiscrimination (art. 14 of the Convention). By defining the discrimination suffered by the applicant in violation of Article 14 from an intersectional perspective (*B.S. v. Spain* 2012: §62), *B.S. v. Spain* serves as precedent to reverse the burden of proof in case of multiple intersecting discriminations, not only in case of racial or gender discrimination separately considered. This outcome is very important. It is often impossible to prove how different treatment based on multiple intersecting discriminatory grounds disadvantages the claimant (Hannett 2003; Uccellari 2008; Crenshaw 2011; Schiek & Lawson 2011).[41] By shifting the burden to the

[41] In famous cases of alleged wrongful termination of the employment of black women, for instance, multiple discrimination was impossible to prove since white women and black men had been hired at the same company; therefore, neither gender discrimination nor racial discrimination could be proved separately (*DeGraffenreid v. General Motors Assembly Division* 1976 and *Symes v. Canada* 1993).

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state, the court relieves the complaint of a significant hurdle to advancing her claim.

Thus, by adopting the legal representative's and third-party interveners' reasoning about intersectionality, the court accepted that racism by itself could not explain the discrimination suffered by the applicant. Nevertheless, the Court opted for using the term "particular vulnerability" instead of "intersectional discrimination." Intersectionality as a legal category was new to the ECtHR. The adoption of the notion of intersectional discrimination was uncharted territory engaging with new issues related to complex multi-causality of inequality. The concept of vulnerability, on the other hand, relies on increasingly consolidated ECtHR case law (*Chapman v. the United Kingdom* 2001; *Opuz v. Turkey* 2009; *M.S.S. v. Belgium and Greece* 2011; *Yordanova v. Bulgaria* 2012; *Horváth and Kiss v. Hungary* 2013). Referring to the more familiar terminology of "vulnerability" advanced "the purpose of adopting less technically oriented terminology, which appeals to people's common sense while at the same time, intuitively informing about the phenomenon of multiple discrimination."[42]

The ECtHR has originally used the concept of vulnerability in relation to Roma people and subsequently further extended the scope of the notion to people with mental disabilities, to asylum seekers, and to people with HIV. The use of this term has been received as a positive development in the court's case law. It has been understood as enhancing antidiscrimination jurisprudence (Timmer 2013; Peroni & Timmer 2013). According to feminist legal theorist Martha Fineman, the vulnerability approach

> concentrates on the structures our society has and will establish to manage our common vulnerabilities. This approach has the potential to move us beyond the stifling confines of current discrimination-based models toward a more substantive vision of equality (Fineman 2008: 1).

The concept of vulnerability allowed the ECtHR to address inequality more substantively by recognizing that historically disadvantaged groups suffer from a greater exposure to ill-treatment because of social prejudices and institutions related to gender, race, economic disadvantages, and physical limitations (Fineman 2008; Fineman 2011; Timmer 2013; Peroni & Timmer 2013). However, the jurisprudence of the ECtHR uses vulnerability as a fixed and segmented label. According to Lourdes Peroni and Alexandra Timmer, the ECtHR ended up delivering stigmatizing

[42] Interview with a law clerk of the ECtHR (July 22, 2014).

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and quasi essentialist decisions[43] that sustained the very exclusion and inequality that it aims to redress (Fineman 2008; Luna 2009; Peroni & Timmer 2013). We argue that *B.S. v. Spain* constitutes a novelty in this respect.

By introducing for the first time an intersectional perspective, *B.S. v. Spain* resulted in a significant turn in the vulnerability jurisprudence of the ECtHR. Not only has the court referred to the particular vulnerability of the applicant as it did in previous cases such as *Opuz v. Turkey* (§157), but it linked the applicant's specific disadvantage to her subordinate position relevant to more than one axis of social disadvantage, namely her race, gender, and employment status. This compares well to other decisions. For example, in *Opuz*, the ECtHR based its reasoning on an Amnesty International report on domestic violence in Turkey, arguing that the "culture of domestic violence has placed women in double jeopardy, both as victims of violence and because they are denied effective access to justice" (*Opuz v. Turkey* §99). Amnesty had asserted in its report that "women from vulnerable groups, such as those from low-income families or who are fleeing conflict or natural disasters, are particularly at risk" (*Opuz v. Turkey* §99). In contrast to *Opuz*, in *B.S. v. Spain* the court developed its reasoning on the basis of the legislative developments, case law, and social research brought before it by the legal representative and third-party interveners, showing that "a multiple ground approach in law and in the courts is necessary because otherwise cases of discrimination will be left without any legal remedy."[44] By adopting intersectionality as an interpretative criterion, the court avoided essentializing the applicant vulnerability. *B.S. v. Spain* thus points out that vulnerability should not be considered a permanent and categorical condition but a layered and dynamic one.

B.S. v. Spain constitutes an important precedent for the use of an intersectional approach in the ECtHR judicial implementation. Its intersectional interpretation provides nuance to the concept of vulnerability in a nonessentializing manner and constitutes an important precedent for member states' antidiscrimination law. Indeed, the ECtHR's role is not only to provide a remedy for individuals but also to establish standards for the protection of human rights in states that have ratified the Convention (*Konstantin Markin v. Russia* 2012: §89).

However, there are three main limitations of the ECtHR decision, all of which exemplify contestations over how to implement intersectionality in legal praxis. The first limitation is related to the use of the terminology of "particular vulnerability" of the

[43] See, for instance, *D. H. a*nd others *v. Czech Republic* 2007; *Oršuš and others v. Croatia* 2010; *Horváth and Kiss v. Hungary* 2013.

[44] ESRU, third-party intervention, §33.

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applicant, instead of "intersectional discrimination." Although implementing intersectionality in legal praxis is not merely a matter of terminology, an explicit mention of intersectionality could have helped to conceptually link this decision to existing legal doctrine, legislation, and case law addressing multiple intersecting discriminations.[45] Undoubtedly, a clear reference to "intersectionality" would have helped to deepen the understanding of intersectional inequalities in ECtHR jurisprudence.

The second limitation of *B.S. v. Spain* is related to the underdevelopment of the novel perspective adopted. The allusion to the intersectional dimension of discrimination is laconic and minimal, and it fails to establish a clear line of reasoning that could guide future judgments. The court focused its decision on the violation of Article 3 by Spain for failing to investigate the applicant's complaint of discrimination, but it did not elaborate on the intersectional interpretation of discrimination, nor did it offer a revision of vulnerability jurisprudence through the concept of "particular vulnerability".[46] Thus, not only the explicit terminology is missing, but also the line of reasoning around the concept is underdeveloped. We await further developments in ECtHR jurisprudence that could elucidate the future direction. Currently, *B.S. v. Spain* still stands as an exceptionally successful case of judicial implementation of intersectionality in the European context but it does not fully forge the path ahead.

The third limitation is the following: although the decision considers the position of social disadvantage of the applicant, it fails to address the structural problems underlying such individual vulnerability, and it does not require Spain to undertake any reform to avoid future similar violations of the Convention. The applicant sought "measures to dismantle discriminatory systematic ethnic and sex profiling regarding the presence of black women in public spaces in Spain and the endemic racism of the national court system."[47] Although her claim was supported by the 2005 and 2011 ECRI reports asserting that Roma and black migrants

[45] In the Spanish nonofficial translation of the judicial decision, which is available through the webpage of the ECtHR (http://hudoc.echr.coe.int/eng?i=001-148104, accessed November 10, 2016) the term "intersectional discrimination" used by the legal representative and third-party interveners has been translated as *discriminación multifactorial* (or multifactorial discrimination), thus erasing the opportunity to relate the ECtHR decision to the intersectionality approach and its development in legal doctrine and international law.

[46] A possible reason that led the court to make such a succinct reference to intersectional discrimination could be related to the fact that sex work is a sensitive issue that is differently regulated in the different countries that ratified the Convention (interview with the Spanish state attorney, April 14, 2014).

[47] Complaint presented before the ECtHR by Beauty Solomon that was assisted and represented by WLWW (§19).

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in Spain are disproportionately subjected to stops, identifications, and searches, the ECtHR did not recognize racial profiling as a structural problem in Spanish praxis.[48] For this reason, the court did not indicate the type of measure that should be adopted by Spain to end such systemic discrimination. On the contrary, the court explicitly stated that, apart from exceptional cases, its decisions are essentially declaratory. In other words, it is up to the state (under the supervision of the Committee of Ministers during the process of execution of the sentence) to choose the means to be adopted within each domestic legal order. By failing to incorporate any reference to the structural element of the discrimination against black migrant women in Spain, the ECtHR heavily restricted possible transformative effects of *B.S. v. Spain*.

5. Discussion: Obstacles and Opportunities for Implementing Intersectionality

This study contributes to the theoretical debate on how to address equality more substantively through intersectional legal analysis. It does so by providing evidence from a rare successful case on the factors that facilitate and those that hindered implementing intersectionality in the European multilevel context. Before drawing our conclusions in the next section, we discuss here such evidence against the existing literature on obstacles and opportunities to implement intersectionality at the macro, meso and micro levels.

An analysis of the macro level reveals that the Convention includes an open-ended list of grounds of prohibited discrimination and provides equal coverage for them. Article 14 is not exhaustive; further grounds can be identified through judicial interpretation. This is a favorable factor, especially when compared with the CJEU consolidated doctrine (*Chacón Navas v. Eurest Colectividades SA* 2006: §55 and §56; *Coleman v. Attridge Law* 2008: §46; *Fag og Arbejde v. Kommunernes Landsforening* 2014: §36 and §37) that considers the list of protected grounds of discrimination included in the EU Treaty and directives as exhaustive, indicating that the CJEU cannot add further protected grounds on a case-by-case basis. Although the Convention does not explicitly mention multiple intersecting discriminations, such an open framework is a crucial factor at the macro level that, in combination with meso and micro factors, allowed implementing intersectionality in *B.S. v. Spain*. In line with Burri and Schiek

[48] Racial discrimination has been further denounced as a structural problem in Spain by the Open Society Justice Society Initiative (2011), the ECRI (2011), and the United Nations (2013).

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(2009), we argue that, in presence of such an open legal framework, explicit legislative prevision of intersectionality is not an essential condition to guarantee judicial protection against multiple intersecting discriminations.

Although introducing intersectionality in legal texts could facilitate its successful implementation, antidiscrimination law already contains the elements that can allow law practitioners to adopt an intersectional interpretation of multiple discrimination (Satterthwaite 2005). It is the prevailing ideology of equality based on isolated categories of nondiscrimination, not the law per se, that prevents law practitioners from adequately addressing complex situations of discrimination suffered by victims (Iyer 1993: 206).

Because high level of unawareness among law practitioners is one of the main obstacles to hindering an effective protection against multiple intersecting discriminations, legal reforms can help to achieve such a goal by pushing "for change on all available fronts" (Iyer 1993: 204). Although trying to foreseen in general and abstract terms all the possible intersection among protected grounds through legislation would certainly limit the scope of intersectionality, we argue that introducing intersectionality as a legal category or interpretative principle through legislative reforms could facilitate its judicial implementation (Uccellari 2008; Moon 2011). In any case, legal reforms and adequate training should go hand in hand. When law practitioners lack the training to address the structural dimension of discrimination, they are unable to interpret the specific situations of discrimination as intertwined. Indeed, legislating intersectionality without adequate training of law practitioners can produce perverse effects (Williams 2009).

Our analysis also suggests that the meso conditions are essential for implementing intersectionality through litigation, especially in contexts of weak institutionalization, such as in Spain. We distinguish between three factors: the training of law practitioners (Satterthwaite 2005; Jubany et al. 2011), the roles of third-party interveners (Van Den Eynde 2014; Cichowski 2016), and the strategies of alliance among social actors (Williams 2003; Goldberg 2009; Lombardo & Rolandsen 2012; Alonso 2012). First, training law practitioners in the field of multiple intersecting discriminations—which is currently absent from the law school curricula in most of European countries[49]—is vital for the implementation of intersectionality. Moreover, allowing for third-party interventions at the national level would allow experts, NGOs, universities and public bodies to help domestic courts to familiarize with the intersectional perspective. By providing

[49] Interview with Director of WLWW (April 28, 2014).

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material and knowledge on the phenomenon of multiple intersecting discriminations, third-party interveners could counterbalance the impact of lack of training, from which too many legal practitioners currently suffers. Finally, the power of the alliances created by WLWW lies in the triangle of actors involved, namely, academia, NGOs, and legal advocacy groups. The success of B.S. v. Spain was due to the simultaneous presence of these three meso factors, in combination with macro and micro ones.

In line with Gotell (2002) and MacDonald et al. (2005) and contrary to more skeptical views about the possibilities of transforming law to promote greater social justice (Smart 1989; Conaghan 2008), we argue that alliances involving law practitioners and diverse social actors can forge powerful tools that can bring about social transformation through the law.

Finally, microlevel analysis reveals the personal conditions that facilitated the activation of the legal process. Although micro factors have received less attention in previous literature, we concur with Jubany et al. (2011) on the importance of incorporating them into research on multiple intersecting discriminations. Our analysis reveals the complexity of the relationship between oppression and power, and how individual privilege and resources, such as legal status and political awareness, can strengthen agency, resist oppression, and enable access to justice. Litigation requires a claimant triggering judicial mechanisms. It requires awareness of one's own rights, recognition of the suffered discrimination, the political will to pursue not only personal satisfaction but also justice for others in similar situations, and receiving competent legal aid. Our focus on the interaction of micro and meso conditions discloses the importance of the relationship of the claimant with advocacy groups. Moreover, litigation requires substantial monetary resources and long waiting periods. For this reason, we argue that providing funds to entities dedicated to assisting and representing victims of multiple intersecting discriminations is crucial to overcome one of the major obstacles to strategic litigation: its high costs. Thus, securing funding toward this end could work as a means to empower victims of multiple intersecting discriminations, and to foster the implementation of intersectionality in legal praxis with the goal of protecting equality more substantively.

Despite its costs, litigation is the unique channel that provides individuals with the powerful opportunity to articulate their own claims and to represent their situations from their points of view. Litigation allows to address the specificity of the particular vulnerability at stake. Yet, litigation does not limit its scope to just satisfaction for the individual who suffered discrimination. Competent legal experts, NGOs, academia, and courts can use strategic litigation as a practice aimed at

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promoting public awareness and promoting social change through legal reforms.

6. Conclusions

Our study of the case of *B.S. v. Spain* provides a novel integrated analysis of factors at the macro, meso and micro levels facilitating the implementation of intersectionality. It does so while assessing the impact of the abovementioned factors and their interaction in an empirical case. The analysis reveals the mechanisms and strategies that can contribute to a more coherent and solid use of an intersectional perspective in multilevel judicial praxis. Our main argument is that the successful implementation of intersectionality requires a combination of facilitating factors at different levels. The detailed analysis of *B.S. v. Spain* contributes to the broader debate over the obstacles and opportunities for implementing intersectionality in the European legal context as a means to address inequality in a more substantive manner.

While additive or segmented approaches toward multiple grounds of discrimination are increasingly adopted in policy, attention to the specific and contextual interactions among these multiple grounds of discrimination remains generally neglected in binding legal instruments and judicial decisions in Europe. Current equality and antidiscrimination law, based on fixed and segmented categories, does not appropriately protect individuals who experience discrimination on multiple intersecting grounds, especially people who are systematically excluded from our society. The situation of migrant women with visible ethnic diversity, who often have undocumented legal status and work in marginalized and unprotected sectors of the job market, demonstrates the inadequacies of the current equality and antidiscrimination paradigm in Europe. Its transformation, however, would be beneficial not only for the most marginalized subjects of European society but also for all of its members because everyone's social position is multiple, layered, and interconnected.

Implementing intersectionality in legal praxis entails uncovering the layered, dynamic, and relational configurations of individuals' societal location. An intersectional approach to multiple discrimination in judicial praxis would allow capturing discrimination resulting from complex power relations. Such dynamics are notoriously context dependent and continuously shifting, rather than fixed and isolated. Adopting intersectionality as an interpretative criterion not only enables courts to consider the social structures that shape the experience of marginalized people, it also disentangles how individual experiences vary

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according to multiple combinations of privilege, power, and vulnerability.

However, implementing intersectionality in antidiscrimination legal praxis requires abandoning the mainstream understanding that leads law practitioners to conceive equality in formal terms and disregard the intertwined social structures shaping individual and group's position. Our study shows the importance of alliances among academia, NGOs, and legal advocacy groups in using the law to pursue substantive equality and bring about societal transformation. Intersectionality points at the connection and interdependence among axes of discrimination: implementation of such a legal approach necessarily involves coalitions of actors, disciplines, and groups to achieve the goal of eradicating inequalities.

References

Alcoff, Linda (1988) "Cultural Feminism versus Post-Structuralism," 13 *Signs* 405–36.

Alonso, Alba (2012) "Intersectionality by Other Means?" 19 *Social Politics* 596–621.

Anthias, Floya (2002) "Where Do I Belong? Narrating Collective Identity and Translocational Positionality," 2 *Ethnicities* 491–515.

——— (2009) "Thinking through the Lens of Translocational Positionality," 4 *Translocations: Migration and Social Change* 5–20.

Arnardóttir, Oddný Mjöll (2009) "Multidimensional Equality from within," in Schiek, D. & V. Chege, eds., *European Union Non-Discrimination Law*. New York, NY: Routledge. 53–89.

Bardach, Eugene (1977) *The Implementation Game. What Happens after a Bill Becomes a Law*. Cambridge, MA: MIT Press.

Barrère, M. Ángeles & Dolores Morondo (2011) "Subordiscriminación y Discriminación Interseccional," 45 *Anales de la Cátedra Francisco Suárez* 15–42.

Barrère, M. Ángeles (2010) "La Interseccionalidad Como Desafío al Mainstreaming de Género en las Políticas Públicas," *Revista Vasca de Administración Pública* 225–52.

Bartlett, Katharine (2002) *Gender and Law*. New York, NY: Aspen.

Bell, Mark (2002) *Antidiscrimination Law and the European Union*. Oxford: Oxford Univ. Press.

Best, Rachel Kahn, Lauren B. Edelman, Linda Hamilton Krieger, & Scott R. Eliason (2011) "Multiple Disadvantages," 45 *Law & Society Rev.* 991–1025.

Binder, Guyora (1996) "Critical Legal Studies," in Patterson, D., ed., *A Companion to Philosophy of Law and Legal Theory*. Malden, MA: Blackwell Publishing. 280–90.

Bond, Johanna (2003) "International Intersectionality," 52 *The Emory Law Journal* 71–186.

Bonthuys, Elsje (2013) "Equality and Difference," in Davies, M. & V. Munro, eds., *The Ashgate Research Companion to Feminist Legal Theory*. Farnham, UK: Ashgate. 85–104.

Bowleg, Lisa (2008) "When Black + Lesbian + Woman ≠ Black Lesbian Woman," 59 *Sex Roles* 312–25.

Brah, Avtar & Ann Phoenix (2004) "Ain't I a Woman? Revisiting Intersectionality," 5 *J. of International Women Studies* 75–86.

Britton, Nadia Joanne (1999) "Racialized Identity and the Term Black," in Roseneil, S. & J. Seymour, eds., *Practising Identities*. London: Palgrave. 134–54.

https://doi.org/10.1111/lasr.12435 Published online by Cambridge University Press

Burri, Susanne & Dagmar Schiek, eds. (2009) *Multiple Discrimination in EU Law*. Brussels, UK: European Commission.

Carles, Isabelle & Olga Jubany-Baucells, eds. (2010) *Genderace: The Use of Racial Antidiscrimination Laws*, Available at: http://genderace.ulb.ac.be/rapports/GENDERACE%20FINAL%20REPORT%20sent.pdf.

Chamallas, Martha (2003) *Introduction to Feminist Legal Theory*. New York, NY: Aspen.

Cho, Sumi, Kimberlé Williams Crenshaw, & Leslie McCall (2013) "Toward a Field of Intersectionality Studies," 38 *Signs* 785–810.

Cichowski, Rachel (2016) "The European Court of Human Rights, Amicus Curiae, and Violence against Women," 50 *Law & Society Rev.* 890–919.

Cole, Elisabeth (2008) "Coalitions as a Model for Intersectionality," 59 *Sex Roles* 443–53.

Combahee River (1981) "A Black Feminist Statement," in Moragas, C. & G. Anzaldúa, eds., *This Bridge Called my Back*. New York, NY: Women of Color Press. 210–18.

Committee on the Elimination of Racial Discrimination (2000) General recommendation XXV on gender-related dimensions of racial discrimination, https://tbinternet.ohchr.org/Treaties/CERD/SharedDocuments/1_Global/INT_CERD_GEC_7497_E.doc.

Conaghan, Joanne (2008) "Intersectionality and the Feminist Project in Law," in Grabham, E., D. Cooper, J. Krishnadas & D. Herman, eds., *Law, Power and the Politics of Subjectivity*. London, UK: Routledge. 21–48.

Cook, Rebecca & Simone Cusack (2011) *Gender Stereotyping: Transnational Legal Perspectives*. Philadelphia, PA: Univ. of Pennsylvania Press.

Columbia Law School (2018) "*Kimberlé Crenshaw on Intersectionality, More than Two Decades Later*", Available at: http://www.law.columbia.edu/news/2017/06/kimberle-crenshaw-intersectionality (accessed 2 April 2018).

Crenshaw, Kimberlé (2015) "Why Intersectionality Can't Wait," *Washington Post* September 24.

——— (2011) "Postscript," in Lutz, H., M. T. Herrera Vivar & L. Supik, eds., *Framing Intersectionality: Debates on a Multi-Faceted Concept in Gender Studies*. Farnham, UK: Ashgate. 221–33.

——— (1991) "Mapping the Margins," 43 *Stanford Law Review* 1241–99.

——— (1989) "Demarginalizing the Intersection of Race and Sex," *Univ. of Chicago Legal Forum* 139–67.

Cruells, Marta & Sonia Ruíz García (2013) "Political Intersectionality within the *Indignados* Social Movement," 37 *Research on Social movements, Conflicts and Change* 3–25.

Cruells, Marta & Gerard Coll-Planas (2013) "Challenging Equality Policies," 20 *European J. of Women's Studies* 122–37.

Davis, Kathy (2008) "Intersectionality as a Buzzword," 9 *Feminist Theory* 67–85.

Degener, Theresia (2011) "Intersections between Disability, Race and Gender in Discrimination Law," in Schiek, D. & A. Lawson, eds., *EU Non-Discrimination Law and Intersectional Discrimination*. Farnham, UK: Ashgate. 29–46.

European Commission against Racism and Intolerance (ECRI) (2005) *Third Report on Spain*. Strasbourg, France: Directorate General of Human Rights and Legal Affairs.

——— (2011) *Fourth Report on Spain*. Strasbourg, France: Directorate General of Human Rights and Legal Affairs.

——— (2018) *Report on Spain (Fifth Monitoring Cycle)*. Strasbourg, France: Directorate General of Human Rights and Legal Affairs.

European Commission (2007) *Tackling Multiple Discrimination*. Luxembourg, Europe: Office for Official Publications of the European Communities.

European Union Agency for Fundamental Rights (2011) *European Union Minorities and Discrimination Survey*. Vienna, Austria: European Union Agency for Fundamental Rights.

Feteris, Eveline & Harm Kloosterhuis (2009) "The Analysis and Evaluation of Legal Argumentation," 16 *Studies in Logic, Grammar and Rhetoric* 307–31.

Fineman, Martha (2008) "The Vulnerable Subject," 20 *Yale J. of Law & Feminism* 8–40.

——— (2011) "Grappling with Equality," in Fineman, M., ed., *Transcending the Boundaries of Law*. New York, NY: Routledge. 161–75.

Fredman, Sandra (2016) *Intersectional Discrimination in EU Gender Equality and Non-Discrimination Law*. Brussels, UK: European Commission.

Añon, García, José, et al. (2013) *Identificación Policial Por Perfil étnico en España*. Valencia, Spain: Tirant lo Blanch.

Gyorfi, Tamas (2019) "The Legitimacy of the European Human Rights Regime. A View from the United Kingdom," 8 *Global Constitutionalism* 123–56.

Golberg, Suzanne (2009) "Intersectionality in Theory and Practice," in Grabham, E., D. Cooper, J. Krishnadas & D. Herman, eds., *Beyond Intersectionality*. New York, NY: Routledge. 124–58.

Gotell, Lise (2002) "Towards a Democratic Practice of Feminist Litigation?" in Jhappan, R., ed., *Women's Legal Strategies in Canada*. Toronto, Canada: University of Toronto Press. 135–74.

Grabham, Emily, Davina Cooper, Jane Krishnadas & Didi Herman (eds.). (2009) *Beyond Intersectionality*. New York, NY: Routledge.

Hancock, Ange-Marie (2007) "When Multiplication doesn't Equal Quick Addition," 5 *Perspectives on Politics* 63–79.

Hankivsky, Olena & Renee Cormier (2011) "Intersectionality and Public Policy," 64 *Political Research Quarterly* 217–29.

Hannett, Sarah (2003) "Equality at the Intersections," 23 *Oxford J. of Legal Studies* 65–86.

Hill Collins, Patricia (1990) *Black Feminist Thought*. London, UK: Routledge.

Hirschman, Charles (2004) "The Origins and Demise of the Concept of Race," 30 *Population and Development Rev.* 385–415.

Hunter, Rosemary (2013) "Contesting the Dominant Paradigm," in Davies, M. & V. Munro, eds., *The Ashgate Research Companion to Feminist Legal Theory*. Farnham, UK: Ashgate. 13–30.

Iyer, Nitya (1993) "Categorical Denials," 19 *Queen's Law J.* 179–207.

Jakobsen, Janet (1998) *Working Alliances and the Politics of Difference*. Bloomington, IN: Indiana Univ. Press.

Jubany, Olga, Berta Güell, & Roisin Davis (2011) "Standing up to Intersectional Discrimination," 62 *Droit et Cultures* 197–217.

La Barbera, MariaCaterina & Emanuela Lombardo (2019) "The Long and Winding Road: A Comparative Policy Analysis of Multilevel Judicial Implementation of Work-Life Balance in Spain," 21 *J. of Comparative Policy Analysis* 9–24.

La Barbera, MariaCaterina (2012) "Intersectional-Gender and the Locationality of Women in Transit," in Bonifacio, G., ed., *Feminism and Migration*. Dordrecht, UK: Springer. 17–31.

——— (2017) "Intersectionality and its Journeys," 8 *Investigaciones Feministas* 131–49.

Lambert Abdelgawad, Elisabeth (2008) *The Execution of Judgments of the European Court of Human Rights*. Strasbourg, France: Council of Europe Publishing. Available at: www.echr.coe.int/librarydocs/dg2/hrfiles/dg2-en-hrfiles-19(2008).pdf.

Lessard, Hester (2010) "Substantive Universality: Reconceptualizing Feminist Approaches to Social Provision to Child Care," in Gavigan, S. & D. Chunn, eds., *The Legal Tender of Gender*. Oxford: Hart Publishing. 217–48.

Lombardo, Emanuela & Lise Rolandsen (2012) "Framing Gender Intersections in the European Union," 19 *Social Politics* 485–512.

Lombardo, Emanuela & María Bustelo (2012) "Political Approaches to Inequalities in Southern Europe," 19 *Social Politics* 572–95.

Lombardo, Emanuela & Mieke Verloo (2009) "Institutionalizing Intersectionality in the European Union?" 11 *International Feminist J. of Politics* 478–95.

Lorde, Audre (1982) *Zami: A New Spelling of my Name*. Watertown, MA: Persephone Press.

Lugones, María (2007) "Heterosexualism and the Colonial / Modern Gender System", 22 *Hypatia*, 186–209.

Luna, Florencia (2009) "Elucidating the Concept of Vulnerability," 2 *International J. of Feminist Approaches to Bioethics* 121–39.

MacDonald, Gayle Michelle, Rachel L. Osborne, & Charles C. Smith, eds. (2005) *Feminism, Law, Inclusion*. Toronto, Canada: Canadian Scholars' Press.

Makkonen, Timo (2002) *Multiple, Compound and Intersectional Discrimination*. Turku, Finland: Abo Akademi University.

Mazur, Amy (2017) "Towards the Systematic Study of Feminist Policy in Practice," 38 *J. of Women, Politics and Policy* 64–83.

McCall, L (2005) "The Complexity of Intersectionality," 30(3) *Signs* 1771–1800.

McIntyre, Sheila (2009) "Answering the Siren Call of Abstract Formalism with the Subjects and Verbs of Domination," in F. Faraday M. Denike, M.K. Stephenson, eds., *Making Equality Rights Real*. Toronto, Canada: Irwin Law.

Moon, Gay (2011) "Justice for the Whole Person," in Schiek, D. & A. Lawson, eds., *EU Non-Discrimination Law and Intersectional Discrimination*. Farnham, UK: Ashgate. 157–77.

Movimiento contra la Intolerancia (2015) *Informe Raxen*. Available at: http://www.movimientocontralaintolerancia.com/html/raxen/raxen.asp.

Nash, Jennifer (2008) "Re-Thinking Intersectionality," 89 *Feminist Rev.* 1–15.

——— (2013) "Theorizing Race, Theorizing Racism," in Davies, M. & V. Munro, eds., *The Ashgate Research Companion to Feminist Legal Theory*. Farnham, UK: Ashgate. 125–38.

Nielsen, Ruth (2009) "Is European Equality Law Capable of Addressing Multiple and Intersectional Discrimination Yet?" in Schiek, D. & V. Chege, eds., *European Union Non-Discrimination Law*. New York, NY: Routledge. 31–51.

Open Society Justice Initiative (2011) *Submission on the Visit to Spain of the Special Rapporteur on Contemporary Forms of Racism*. Xenophobia and Related Intolerance: Racial Discrimination. Available at: http://www.opensocietyfoundations.org/sites/default/files/submission-spain-ethnic-profiling-20130128_0.pdf.

Peroni, Lourdes & Alexandra Timmer (2013) "Vulnerable Groups: The Promise of an Emerging Concept in European Human Rights Convention Law," 11 *International J. of Constitutional Law* 1056–85.

Radacic, Ivana (2008) "Gender Equality Jurisprudence of the European Court of Human Rights," 19 *The European J. of International Law* 841–57.

Razack, Sherene (1998) *Looking White People in the Eye*. Toronto, Canada: University of Toronto Press.

Rolandsen, L (2013) *Gender equality, intersectionality, and diversity in Europe*. New York: Palgrave Macmillan.

Satterthwaite, Margaret (2005) "Women Migrants' Rights under International Human Rights Law," 77 *Feminist Rev.* 167–71.

Schiek, Dagmar & Jule Mulder (2011) "Intersectionality in EU: A Critical re-Appraisal," in Schiek, D. & A. Lawson, eds., *EU Non-Discrimination Law and Intersectional Discrimination*. Farnham, UK: Ashgate. 259–73.

Schiek, Dagmar (2012) "European Union Non-Discrimination Law," in Navas, S., ed., *Iguales y Diferentes Ante el Derecho Privado*. Valencia, Spain: Tirant lo Blanc. 61–82.

Smart, Carol (1989) *Feminism and the Power of Law*. London, UK: Routledge.

Solanke, I (2009) "Putting Race and Gender Together: A New Approach To Intersectionality," 72 *The Modern Law Review* 723–749. doi:10.1111/j.1468-2230.2009.00765.x.

Spanish Ministry of the Interior (2013) Informe sobre la evolución de losdelitos de odio en España durante el año 2013, http://gestionpolicialdiversidad.org/PDFdocumentos/InformesobrelosdelitosdeodioenEspaña2013.pdf.

Spelman, Elizabeth (1988) *Inessential Woman*. Boston, MA: Beacon.
Timmer, Alexandra (2013) "A Quiet Revolution: Vulnerability in the European Court of Human Rights," in Fineman, M. & A. Grear, eds., *Vulnerability: Reflections on a New Ethical Foundation for law and Politics*. Farnham, UK: Ashgate. 147–70.
Uccellari, Paola (2008) "Multiple Discrimination: How Law Can Reflect Reality," *Equal Rights Rev.* 24–60.
United Nations (2013) *Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance*, Available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-56-Add-2_en.pdf.
United Nation (2010) *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of all Forms of Discrimination against Women, CEDAW/C/2010/47/GC.2*.
United Nations (2000) *Report of the Committee on the Elimination of Racial Discrimination, General Assembly, Official Records Fifty-Fifth Session Supplement No. 18 (A/55/18)*.
Vakulenko, Anastasia (2007) "Islamic Headscarves and the European Convention on Human Rights: An Intersectional Perspective," 16 *Social & Legal Studies* 183–99.
Van Den Eynde, Laura (2014) "An Empirical Look at the Amicus Curiae Practice of Human Rights NGOs before the European Court of Human Rights," 31 *Netherlands Quarterly of Human Rights* 271–313.
Verloo, Mieke, P. Meier, S. Lauwers, & S. Martens (2012) "Putting Intersectionality into Practice in Different Configurations of Equality Architecture," 19 *Social Politics* 513–38.
Walby, Sylvia (2007) "Complexity Theory, Systems Theory and Multiple Intersecting Social Inequalities," 37 *Philosophy of the Social Sciences* 449–70.
Weldon, Laurel (2006) "The Structure of Intersectionality," 2 *Politics and Gender* 235–48.
Williams, Fiona (2003) "Contesting "Race" and Gender in the European Union," in Hobson, B., ed., *Recognition Struggles and Social Movements*. Cambridge: Cambridge UP. 121–44.
Williams, Toni (2009) "Intersectionality Analysis in the Sentencing of Aboriginal Women in Canada: What Difference Does it Make?" in Grabham, D. Cooper, J. Krishnadas & D. Herman, eds., *Beyond Intersectionality. Law, Power and the Politics of Location*. New York, NY: Routledge. 79–104.
Women's Link Worldwide (2007) *Acción Contra la discriminación*. Madrid, Spain: VyB Editores.
Yoshida, Keina (2013) "Towards Intersectionality in the European Court of Human Rights: The Case of *B.S. v. Spain*," 21 *Feminist Legal Studies* 195–204.
Young, Iris Marion (2009) "Structural Injustice and the Politics of Difference," in Grabham, E, D Cooper, J. Krishnadas, & D. Herman, eds., *Beyond Intersectionality*. New York, NY: Routledge. 273–99.
Young, Margot (2010) "Unequal to the Task: "Kapp"Ing the Substantive Potential of Section 15," 50 *Supreme Court Law Rev.* 183–219.
Yuval-Davis, Nira (2006) "Intersectionality and Feminist Politics," 13 *European J. of Women's Studies* 193–209.