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The Invisible Ground of Equality: Physical Appearance, Body Size, and the Limits of Protected Characteristics in Comparative Anti-Discrimination Law

Giorgos Konstantakis

Abstract

Anti-discrimination law singles out protected personal characteristics, making disadvantages legally relevant when they fall under established grounds. Appearance exposes the limitations of this architecture. It may affect access to employment and social goods and intersect with sex, race, disability, age, religion, and socio-economic class. Yet neither physical appearance nor body size is an autonomous protected ground under the dominant European Union employment equality regime. This article compares the EU's ground-based architecture, France's explicit protection of physical appearance, and New York City's targeted protection of height and weight. It argues that the EU approach creates a derivative protection trap: appearance-related harm receives protection only when reframed through a recognised ground. France and New York City offer different alternatives. Drawing on comparative anti-discrimination theory, the article proposes an appearance-relevance test addressing disadvantage, stereotyping, functional relevance, and proportional justification. Its purpose is to distinguish private preferences from appearance-based exclusion from significant social opportunities.

Keywords: Lookism, physical appearance, body size, anti-discrimination law, comparative law.

Introduction

Appearance discrimination may result in denial of employment because someone is considered too fat, too small, unattractive, visibly tattooed, improperly dressed, or inconsistent with an employer's preferred image. It is common and immediate, yet difficult to articulate in law. Anti-discrimination discourse identifies disadvantages based on race, sex, religious beliefs, disability, age, and sexual orientation. However, not all manifestations of the human body fit these terms. Appearance may explain exclusion without supplying a recognised legal ground.

This is a substantive social issue. Employment studies identify attractiveness and weight penalties in hiring and earnings (Giel et al., 2010; Hamermesh & Biddle, 1994; Puhl & Brownell, 2001). Philosophical and legal scholarship therefore asks why lookism remains less regulated than other arbitrary discrimination (Mason, 2021, 2023; Minerva, 2017; Rhode, 2010; Widdows, 2026). The problem is structural as well as evidentiary: discrimination law determines which characteristics warrant protection and which distinctions remain matters of private preference, organisational choice, or convention.

This problem takes special significance from a comparative perspective. Physical appearance is explicitly enumerated in French law as a prohibited ground of discrimination in employment and criminal areas (*Code du travail*, art. L1132-1; *Code pénal*, art. 225-1). The Défenseur des droits has interpreted the concept in a very broad sense as comprising morphology, height, weight, facial features, clothing, hair, tattoos, piercings, and other attributes of appearance and stressing intersection with sex, origin, religion, disability, age, and economic vulnerability (Défenseur des droits, 2019). New York City has opted for a narrower but more direct approach by passing Local Law 61 of 2023, which included height and weight in the list of protected characteristics of the New York City Human Rights Law in employment, housing, and public accommodation cases (Local Law 61 of 2023, 2023). Meanwhile, the European Union's employment equality laws work by enumeration. In the *Kaltoft* case, the Court of Justice of the European Union stated that EU law does not provide a general prohibition of discrimination on grounds of obesity as such, but obesity may be considered a disability if all criteria are met (*Fag og Arbejde (FOA) v. Kommunernes Landsforening (KL)*, 2014).

Thus, the following question arises: if appearance is the ground of adverse treatment, shall we require that the claimant prove that it is really something else? This article refers to that problem as the derivative protection trap. It defines situations

in which appearance discrimination receives legal recognition only through the process of translating the ground into a recognised category, such as disability, sex, race or ethnic origin, religion, or age. Translation may be important, as appearance can be considered a visible representation of these grounds. However, it is misleading. A person who is discriminated against on grounds of obesity has to prove disability, although the core of the problem is in the stereotype about body size. Also, a rule relating to hair, clothes, facial features or grooming is seen through another identity characteristic, although the appearance norm itself is discriminatory.

The paper uses functional and contextual comparative methodology. EU, French, and New York City law are institutionally different but address common problems of protected grounds, stereotyping, occupational relevance, and intersectionality. Employment provides the main field of comparison; wider New York City regulation is illustrative. The resulting appearance-relevance test asks whether appearance legitimately affects a decision, rather than whether the body or presentation triggering exclusion can be altered.

Protected Grounds and the Problem of Appearance

Why Anti-Discrimination Law Selects Grounds

Anti-discrimination legislation does not prohibit every irrational decision, insult, or preference. It connects disadvantage with characteristics of special social and normative significance. Protected grounds therefore determine which distinctions require justification beyond ordinary decision-making.

There exist several theoretical models explaining the selection of such characteristics. Formal equality requires consistency: similarly situated people need to be treated the same. Substantive equality goes further and asks whether the rules of law reproduce disadvantage, stereotypes, exclusion, or unequal participation (Deliyanni-Dimitrakou & Konsta, 2025; Fredman, 2011). Moreau (2020) defines wrongful discrimination as certain inequalities, including subordination and failure to treat people as equal. Khaitan (2015) stresses the disadvantage of groups and normative irrelevance, saying that, according to his approach, a protected ground will be one that describes a personal characteristic of groups that have a big advantage gap and are either immutable or related to a fundamental choice.

Comparative law reveals no universal criterion for selecting protected grounds. Deliyanni-Dimitrakou & Konsta (2025) identify immutability, political powerlessness,

dignity, and histories of oppression. Protection thus reflects normative evaluation rather than taxonomy. Religion involves belief and choice; disability may be episodic or socially constructed; age is continuous; sex and race have distinct histories. What unites these grounds is the normative assessment of their discriminatory use in particular fields.

Appearance illustrates this difficulty. Height, facial features, skin colour, scars, and morphology may be difficult or impossible to change. Hair, clothing, weight, tattoos, make-up, and grooming may be alterable at personal, economic, cultural, religious, or psychological cost. Calling them choices overlooks their social meaning and conformity pressures. Immutability alone would inadequately explain protection of religion or gender expression and could imply that discrimination should be remedied by changing oneself.

Normative irrelevance offers a stronger criterion. An accountant's qualifications, experience, and capacity relate to the job; preferred body types or facial features generally do not. The problem intensifies where stereotypes create cumulative disadvantage or compel conformity unrelated to occupational functions. The issue is whether irrelevant appearance restrictions on access to employment and social goods are permissible, rather than whether individuals have a right to be considered beautiful.

Appearance as an Autonomous and Transversal Ground

'Lookism' refers to discrimination based on appearance. Widdows (2026) includes weight, height, body shape, disfigurement, hair, wrinkles, scars, and skin colour. Mason (2023) distinguishes appearance discrimination from cases where appearance represents another protected characteristic. Although analytically useful, these categories often intertwine.

One needs to consider the concept of physical appearance in two senses. On the one hand, the term can be used autonomously to refer to the situation in which someone becomes a victim of discrimination due to body size, attractiveness, height, facial features, or style without requiring the existence of any other protected criterion. On the other hand, physical appearance can be transversal since race, sex, religion, age, disability, social class, or gender expression are perceived through visible markers. In this way, hair texture is racialised, dress reveals a person's religion or socio-economic background, and body weight interacts with gender stereotypes. Differences and scars may become disabilities. A demand for a certain image of a

corporation may be neutral at first glance, yet reward conforming to a certain pattern of gender, race, class, or ability.

This transversal nature of the phenomenon becomes particularly explicit in French equality law. As the Défenseur des droits (2019) defines it, physical appearance includes bodily traits as well as visible expression of personality and character. In addition, the ground is defined as intersectional in relation to sex, age, origin, religion, gender identity, disability, and economic vulnerability. This definition is crucial since it manages to avoid a false dichotomy between identifying physical appearance as a distinct ground and accepting that it may bear other identities at the same time. The two ideas may coexist.

Conceptual overextension remains a risk. Protecting every observable choice could turn equality law into an aesthetic code of civility. Appearance may be essential in casting, modelling, or artistic performance; safety, hygiene, uniforms, and identification can also justify requirements. Private intimacy and preferences differ from institutional control over employment and housing. Strong protection is warranted where access to significant goods depends on appearance unrelated to the relevant function.

The question for comparative purposes then is not about whether all appearance discrimination is illegal, but rather how the law must define appearance distinctions that require a justification. European Union, French, and New York City models offer different approaches to the problem.

European Union Law: Protection by Translation

The Structural Gap

Article 21 of the Charter of Fundamental Rights of the European Union prohibits discrimination on the grounds of "any ground such as" an open-ended list including sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, property, disability, age, and sexual orientation (*Charter of Fundamental Rights of the European Union, 2016*, Art. 21). However, the Charter itself does not represent an equality code covering all aspects of private life. It operates in the realm of EU law, and the system of protections in the area of employment relies on specific grounds of discrimination. For example, Directive 2000/78/EC provides a framework of measures to combat discrimination based on religion or belief, disability, age, and sexual orientation (Directive 2000/78/EC, Art. 1). Other directives

concern racial or ethnic origin and sex discrimination. Physical appearance and body size do not comprise autonomous EU employment grounds.

This distinction is important because the concept of direct discrimination is based on the specific ground that is asserted. A claimant has to connect less favourable treatment with a protected ground. The concept of indirect discrimination provides greater flexibility in assessing the structural effects of a provision, but it still focuses on protected groups. When an employer rejects job seekers based on body mass, tattoos, aesthetic fit, or height, EU equality law does not check if physical appearance is an irrelevant ground for employment decisions. First, it tries to establish whether there was any connection between appearance and a protected ground.

Existing grounds can provide effective protection. Unequal dress-code burdens may constitute sex discrimination; religious attire may engage religion or belief; hair, skin, or facial requirements may concern racial or ethnic origin. Disability discrimination and reasonable accommodation may also constrain appearance standards. These protections should not be underestimated.

The problem arises where translation is unavailable or alters the claim. A short applicant rejected because employers prefer tall men may lack a protected ground. Body-mass criteria may constitute sex discrimination where applied differently or where disparate impact is established. A scar deemed 'unprofessional' may fall outside disability protection. Pure lookism can therefore create equality harms without a corresponding doctrinal ground.

Kaltoft and the Disability Route

In this regard, *Kaltoft* stands out as an obvious example of the derivative protection trap in employment discrimination jurisprudence. The case involved a child minder who claimed that he was discriminated against for being obese. According to the CJEU ruling, European law does not recognise a general principle of non-discrimination based on obesity in matters of employment and occupation. However, the Court went further to state that obesity can be considered as a disability in relation to Directive 2000/78 if it results in a long-term impairment which impacts one's participation in the work environment on an equal basis with others (*Fag og Arbejde (FOA) v. Kommunernes Landsforening (KL)*, 2014).

From the doctrinal perspective, the ruling is logically consistent with the architecture of Directive 2000/78. The CJEU did not introduce a new discrimination ground into the directive, and it correctly avoided classifying all people above a

certain weight as being disabled. Nevertheless, it demonstrates a clash between the classification of the claimant and the classification of the wrongdoing. Prejudice related to weight can exist even when it does not affect the functioning of a person's body. The employer might believe that a larger worker is lazy, undisciplined, unattractive, unhealthy, or unsuitable for dealing with customers. The empirical research has proved such stereotypes multiple times (Giel et al., 2010; Puhl & Heuer, 2010). Thus, in this case, the legal injury arises from the employer's perception of negative attributes connected to the body rather than from the worker's inability to participate in work.

Requiring disability can exclude weight-discrimination claims that fail its criteria and suggest that only medically or functionally pathologised body sizes deserve protection. Puhl and Brownell (2001) identified this difficulty in disability-based weight litigation before *Kaltoft*. An autonomous body-size ground would shift scrutiny from disability status to the legitimacy of weight-based differential treatment.

However, the problem is broader than the issue of body size. If appearance discrimination is protected through another category, the legislation acknowledges the claimant but incorrectly describes the process of social discrimination. The translational approach can provide a remedy but does not recognise the independent significance of appearance standards. In the intersectional context, the problem is exacerbated: a person may suffer discrimination not because of race, gender, and body size individually, but because of their perception together. A legal framework that requires separating the visible body in terms of pre-existing grounds may ignore the stereotype that was behind the decision.

It does not mean that the EU should introduce an unlimited appearance ground into every equality directive indiscriminately. Instead, it shows that the current structure suffers from an identifiable blind spot. The French and NYC examples show that the blind spot can be mitigated without losing justification and occupation relevance.

France: The Broad Appearance Model

Statutory Recognition

The French example represents a case in Europe in which appearance discrimination is explicitly prohibited. In accordance with Article L1132-1 of the *Code du travail*, discrimination in recruitment and employment is explicitly prohibited based

on various grounds, including physical appearance (*Code du travail*, art. L1132-1). At the same time, physical appearance is also included in the definition of discriminatory differences according to Article 225-1 of the *Code pénal* (*Code pénal*, art. 225-1). It has been stated by the Défenseur des droits that the explicit inclusion of appearance discrimination was a result of the 2001 anti-discrimination reform (Défenseur des droits, 2019).

The French model does more than add an item to a statutory list. A claimant need not prove that height, weight, hairstyle, dress, or tattoos matter because they express another protected identity. Appearance can constitute an independent ground while intersecting with other grounds.

In this case, an important role was played by the Défenseur des droits, which defined the ground in its 2019 framework decision. Physical appearance is defined as the set of corporeal features (morphology, height, weight, facial features, phenotype, bodily marks) and the self-presentation of an individual (clothing, hairstyle, beard, piercings, tattoos, make-up) (Défenseur des droits, 2019). Such a definition of the category rejects the opposition of the body one has and the appearance one creates. From the equality perspective, both may become grounds for the imposition of social conformity on employees.

In 2018, there was a dispute about the recruitment of hosts and hostesses in which the recruitment process demanded information about an applicant's height, weight, tattoos, piercings, clothing size, eye colour, hair colour, and hair length (Défenseur des droits, 2018). The Défenseur des droits has identified it as a possible case of appearance discrimination (Défenseur des droits, 2018). Some traits that are difficult to understand as identities become evident when appearance is defined as an independent legal ground.

From Formal Prohibition to Contextual Assessment

An appearance so broad appears incompatible with formal presentation standards for the workplace environment. However, French practice does not follow an absolutist position here. The 2019 framework decision recognises that limitations can be justified on hygienic, safety, occupational function, identification or neutrality grounds in the public service, or even, to some degree, image concerns of the employer. Key standards are legality, necessity, suitability, and proportionality (Défenseur des droits, 2019).

Proportionality requires an employer to explain how a visual criterion relates to the job. Invoking an organisational 'image' does not transform a stereotype into a qualification. The 2019 decision scrutinises gender stereotypes, sexualisation of female employees, Eurocentric hairstyle norms, and obesity policies. Scrutiny shifts from individual deviation to justification of conformity demands.

Second, this model recognises that norms of appearance change over time. Beards, tattoos, hairstyles, or fashion of a particular period are understood differently in terms of their professional appropriateness. Treatment of the inherited code as an obvious one leads to freezing of past social preferences in the employment regulations. While allowing for legitimate organisational interests, proportionality requires proving them rather than assuming them.

The model nevertheless requires discipline. A racialised hairstyle and a provocative slogan on clothing raise different normative questions. Justification provisions and cumulative analysis with other grounds help distinguish equality harms from legitimate presentation regulation. Breadth alone cannot resolve that distinction.

In this respect, the model provides a useful lesson for New York City rather than serves as its inspiration. Its advantage lies in its legal visibility, but the disadvantage is that the visibility itself does not guarantee that appearance must carry the same weight as traditionally protected characteristics. In contrast to this, New York City opts for a narrower approach.

New York City: Targeted Body-Size Protection

Local Law 61 of 2023

Local Law 61 of 2023 amended the New York City Human Rights Law to introduce the prohibition of discrimination on the ground of height and weight in employment, housing, and in public accommodations (*Local Law 61 of 2023*, 2023). The statutory provisions entered into force on 26 November 2023. The New York City Commission on Human Rights notes that body size means height or weight and can be used as a basis for invoking the protection provided by the relevant legislation (New York City Commission on Human Rights, n.d.).

In particular, it is significant that no characterisation of the physical parameter as a disability is required under the amendment. It is explicitly stated that neither height nor weight, per se, qualifies as a disability in terms of the relevant legislation, though it is possible for such discrimination to also constitute a violation of

disability-related rights in case the conditions allow so (New York City Commission on Human Rights, n.d.). Hence, the two legal grounds may be applicable in parallel.

Unlike France, the reform protects two specific features rather than appearance generally. This gives employers clearer notice and avoids treating every aesthetic preference as a protected ground. It also directly addresses discrimination traditionally pursued through disability doctrine (Cavico et al., 2013; Rhode, 2010).

At the same time, narrowing the scope has certain consequences. In particular, a claimant who is refused because of facial appearance, scarring, hair, teeth, or unattractiveness will not be protected against discrimination by virtue of the body size provision if the refusal would be equally invalid in the case of discrimination on the ground of weight. Thus, the model addresses an issue rather than the underlying problem.

The Anti-Stereotype Logic and Exceptions

Specific methodological value can be seen in the explicit distinction made by the New York City framework between legitimate functional criteria and stereotyping. According to the Commission, body-size criteria may be used only in certain limited situations: where required by law, where body size prevents the performance of core functions of the job, and there is no practicable alternative allowing the individual to perform those functions, or if the criterion is necessary to the normal operations (New York City Commission on Human Rights, n.d.).

The framework requires individual assessment of ability. Employers should identify essential functions and requirements rather than assume incapacity from body size. Height may matter for technical or safety reasons; preferring tall employees because they supposedly convey authority is stereotyping.

Explicit body-size protection thus coexists with legitimate decision-making. Once height or weight explains differential treatment, the decision-maker must identify a narrowly defined justification rather than rely on stereotypes about professionalism, health, discipline, beauty, or ability.

France subjects appearance generally to proportionality; New York City protects specific body-size grounds with limited exceptions. EU employment equality law ordinarily requires translation into an existing ground before justification is examined. The difference concerns whether appearance-based discrimination becomes legally cognisable in its own right.

Comparative Evaluation: The Derivative Protection Trap

Three Models of Recognition

Three models arise from the comparative analysis of EU, French, and NYC frameworks. The EU framework may be defined as derivative or translational in character. Appearance-related treatment is protected insofar as it is sufficiently linked to an existing ground. This model has the advantage of doctrinal continuity and precludes the unlimited extension of categories of protected treatment, but under-inclusion is a serious deficiency of the model because some appearance-related harms will go unprotected while others are only recognised via recategorisation.

The French model is autonomous and transversal. Appearance is recognised as an independent ground, and at the same time, it is possible to analyse interactions between appearance and race, sex, religion, disability, age, etc. Its strength is faithfulness to the rationale behind the treatment. Since the criterion is appearance, it is possible to analyse it directly. Its problem is breadth and the necessity to distinguish between serious equality harms and legitimate appearance regulation.

The model of New York City is targeted and additive. Height and weight are protected independently from disability or another status, but the model does not include appearance as a ground for protection. Its strength is precision, since it directly targets body size stigma. But it is limited by fragmentation: protection of weight while ignoring other socially consequential visible characteristics is questionable from a consistency perspective.

The derivative protection trap is clearly visible upon comparing these three models. If qualified applicants are rejected because of their excessive weight, unusual height, or facial differences due to a disability, then a ground-limited approach would protect them only if the visible characteristics could be translated into disability, sex, and any other grounds. But the decision-making process is the same: aesthetic criteria replace professional competence. In *Kaltoft*, only a disability path is provided for a chance to protect them if disability criteria are met (*Fag og Arbejde (FOA) v. Kommunernes Landsforening (KL)*, 2014). Translation transforms the protection of appearance discrimination into protection dependent on secondary legal categorisation.

The derivative protection trap applies to intersectional cases as well. Intersectionality is not the mere addition of grounds; it is about the unique experiences created by the interaction of those grounds (Deliyanni-Dimitrakou & Konsta, 2025).

Often, appearance is a medium of such interactions. For example, the hairstyle of a Black woman, the clothing of a Muslim woman, the signs of ageing of an older employee, or the bodily differences of a disabled person may become reasons for treatment that of a disabled person may become reasons for treatment which cannot be comprehended in isolation from appearance. If the law approaches appearance as evidence of other grounds, it may ignore the institutional norm of what is considered professional, respectable, healthy, female, male, modern, or any other body.

An Appearance-Relevance Test

A useful approach should avoid two polar extremes. The first is legal invisibility, where appearance matters only if it can be reduced to another ground. The other is limitless aesthetic constitutionalisation, which makes all preferences regarding the manner of dressing, grooming, and presenting oneself unlawful. A more practical approach would emphasise the relevance of appearance within the decision-making process.

In this article, an appearance-relevance test based on four questions is proposed. First, was the decision made relying substantially on the visible bodily or presentation characteristic? There should be evidence both direct and inferential, indicating the presence of a link between the relevant appearance and the discriminatory treatment. Second, is the characteristic socially disadvantaged, stereotyped, used as an identity indicator, or creating barriers to access the opportunity? Such traits as obesity, racial hair, scars, religious appearance, ageing signs, or beauty standards of a certain sex may carry equality connotations, operating within the framework of a wider social symbolism. The inquiry is informed by the notion of substantive equality and group disadvantage and does not consider immutability necessary (Fredman, 2011; Khaitan, 2015; Moreau, 2020).

Third, is the characteristic of the appearance relevant to the legitimate function assigned? It should be the key inquiry in the test. When it comes to employment, the question is whether there is a demonstrable connection between the trait and the essential job function, safety, hygiene, some legal requirement, or other legitimate purpose. Preferences related to customer taste, aesthetics of the brand, or notions about health and professionalism should not be taken on trust. The French approach to proportionality and the position of New York City in relation to speculative body size stereotypes provide useful examples (Défenseur des droits, 2019; New York City Commission on Human Rights, n.d.).

Finally, if a legitimate purpose is present, is the restriction reasonable and proportionate, and is there a less exclusionary measure that can accomplish the purpose? A safety concern might be legitimate but could be solved without the necessity of adapting equipment or individual testing. Identification of the employees could serve as the reason for the introduction of uniforms, not the differentiated ones by sex or body size. Physical characteristics might be relevant to the performance of an artistic role but not to performance in an office. The principle of proportionality ensures that the authority to take appearance into account is restricted and its necessity should be justified.

The appearance-relevance test deliberately refrains from treating immutability as decisive. Many socially loaded appearance characteristics are theoretically mutable but practically expensive to change. Any equality regime should be careful not to make people lose their weight, straighten hair, cover scars, strip religious clothing, undergo plastic surgeries, or adopt stereotypical appearance standards of genders as the condition of access. The opportunity to make oneself look differently does not make discrimination normatively legitimate.

The test also refrains from making attractiveness a legal right. Anti-discrimination laws do not imply that employers or any institution have to guarantee universal beauty. They imply that in those areas protected by equality laws opportunities shall not be distributed on the basis of irrelevant appearance characteristics without proper justification. This distinction is crucial. The object of equality law is not aesthetic judgement itself but its transformation into social disadvantage.

Intersectionality Without Legal Disappearance

Considering appearance, a transversal issue improves intersectional examination. There is no intention to replace one protected characteristic with another, namely appearance instead of race, sex, disability, religion, or age, each having a unique history and legal role that should not be undermined. However, appearance is useful in examining how protected groups become identifiable and how institutional norms function concerning embodied people.

In particular, such an examination is necessary, as lookism is not a socially neutral form of discrimination. Weight discrimination has a gender dimension; appearance standards may contain racism; grooming policies impact religious freedom; disability status may be visually manifested; economic precariousness may affect adherence to costly appearance rules. It is beneficial that the Défenseur des droits examines appearance in isolation and in connection with other grounds of

discrimination (Défenseur des droits, 2019). Such an approach ensures that a person is not forced to choose between "appearance discrimination" and "race discrimination", as the treatment involves both.

At the same time, the legal regulation of lookism should not build a hierarchy of suffering depending on beauty. Widdows (2026) suggests that lookism is under-theorised to some extent, as it is regarded as inevitable, trivial, and humiliating to state. This consideration is legally significant since a person is less likely to complain about discrimination on grounds of unattractiveness since this kind of allegation appears vain or difficult to prove. However, discrimination law acknowledges that normal practices may produce significant inequities precisely because they seem natural. The visibility of the characteristic does not mean that no scrutiny of such exclusion is required.

Thus, the strongest argument for law reform is not in the recognition of appearance as a universal protected ground, but rather in equality law establishing the means of direct scrutiny if appearance works as an allocation mechanism for highly valued positions. The targeted EU initiative may start with employment and vocational access, where functional relevance can be assessed and where equality doctrine has established the notions of direct discrimination, indirect discrimination, occupational requirements, and proportionality. Alternatively, Member States may include appearance or certain body-size grounds into their national legislation, as France does, and develop the principles of dealing with intersectional appearance issues under EU law in equality directives.

However, comparative law shows that it would be misleading to assume that one model is fully transferable. France's wide ground appeared in the context of the national statutory system with a tradition of comprehensive enumeration of protected characteristics. Body-size discrimination reform in New York City is a part of its municipal human rights code. EU law has to address treaty competence, multiple equality directives, and the relationship between the Charter and secondary legislation. Still, legal forms need not be identical for the insight to travel: a stereotype should not get legal legitimacy if its appearance is irrelevant to the legitimate objective of the institutional decision.

Conclusion

Appearance is paradoxical in its nature when it comes to anti-discrimination legislation. On the one hand, it is easily recognisable in social life, but, on the other hand, it is frequently indirectly recognisable in terms of equality law. This contradiction

may serve as one of the explanations why lookism is common and difficult to claim at the same time. A comparison between the EU, French and NYC legal frameworks illustrates that this phenomenon is not inherent in equality law per se but stems from the way legal systems organise their protected grounds.

In EU law, appearance-related discrimination is well-covered by the existing protected grounds; that is an important protection on its own. Religious appearance, racially related appearance, gender appearance and disabilities are included in this category, while *Kaltoft* states that weight discrimination may be recognised as a disability case where obesity becomes a long-term condition of the claimant. However, even if the protection via translation has been effective for certain kinds of discrimination cases, it excludes pure appearance discrimination and may force a claimant to seek protection in terms of identity that does not describe the situation.

The French system exemplifies how protection through naming is beneficial for the case. It includes both physical features of the body and modes of personal presentation, which allows examining discrimination in terms of other grounds. NYC, in turn, is more focused on the problem of providing specific protection for height and weight while still having narrow functions-based exemptions. Nevertheless, despite these differences, both systems direct the legal inquiry not on the possibility of translating appearance into another ground but to the relevance of the appearance criterion to the decision-making.

The translation problem concerns both the availability of a claim and equality law's ability to characterise the wrong. When a qualified candidate is excluded because of body size, visible difference, or an institution's preferred image, the inquiry should not always depend on translating appearance into another protected ground. The proposed appearance-relevance test asks whether appearance affected the decision, implicated disadvantage or stereotyping, related to a legitimate function, and was restricted necessarily and proportionately. It preserves legitimate occupational and safety requirements while subjecting conventional aesthetic preferences to scrutiny.

Equality law has always had the task to define which differences should be the basis for social opportunities' distribution. Appearance shows the limitations of this process. The next step cannot consist in the unlimited consolidation of the new right to aesthetic neutrality but requires the new principle: in employment and other spheres, a visible difference should not become a legally unlawful disadvantage just because the law does not recognise it yet.

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