



**Academy of European Law (ERA, Trier)
Strasbourg – 16 April 2026**

EU gender equality law

Legal framework

Definition of fundamental concepts

Michel Miné, *Drôit des discriminations dans l'emploi et le travail*, 2016, 852 p., Éditions Larcier (Brussels).
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LEGAL FRAMEWORK



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International Labour Organisation


- **Treaty of Versailles (1919)**
‘The principle of equal pay, without distinction as to sex, for work of equal value.’
- **Declaration of Philadelphia (1944)**
- **Declaration on Fundamental Rights (1998)**

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- **Convention No. 100 (1951) concerning Equal Remuneration for Men and Women Workers for *Work of Equal Value***
- **Convention concerning Discrimination (Employment and Occupation) (No. 111)**
- **Convention concerning Workers with Family Responsibilities (No. 156)**
- **Part-Time Work Convention (No. 175)**
- **Maternity Protection Convention (No. 183)**
- **Convention concerning violence and harassment (No. 190) of 2019**

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United Nations

- International Covenant on Economic, Social and Cultural Rights – ICESCR (1966) + Reports of the Committee
- **Convention on the Elimination of All Forms of Discrimination against Women** (1979)
<https://www.ohchr.org/fr/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women> + Reports of the Committee
- Convention on the Elimination of Racial Discrimination (1965) + Committee reports
- United Nations Convention on the Rights of Persons with Disabilities (2006) + Committee reports⁵


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Council of Europe

- **European Social Charter** (1961, Turin; revised – 1996, Strasbourg) + Decisions of the European Committee of Social Rights
- **European Convention for the Protection of Human Rights and Fundamental Freedoms** (1950, Rome) + Case law of the European Court of Human Rights
- **Istanbul Convention on preventing and combating violence against women and domestic violence** (2011)


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- **European Social Charter**

Preamble (I, 20): The right of workers to equal opportunities and treatment in matters of employment and work, without discrimination on grounds of sex.

Article 4(3): the right of male and female workers to equal pay for work of equal value;


Article 8: the right of female employees to maternity protection;

Article 20: the right to equal opportunities and treatment in employment, without discrimination on grounds of sex;

Article E: non-discrimination, in particular on grounds of sex;

- **Committee Decisions**


- Collective complaints



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Case law of the ECHR
Discrimination on grounds of sex (Art. 14 + others)


- *Zarb Adami v. Malta* (17209/02; 2006); *Carvalho Pinto de Sousa Morais v. Portugal* (17484/15; 2017); *Talpis v. Italy* (41237/14; 2017); etc.
- **Right to a fair trial** (Failure to appoint to a senior judicial post; Reasoning in support of a judgment based on gender)
- **Right to respect for private and family life** (Amount of compensation awarded for medical negligence; Choice of surname and transmission of parents' surnames to their children; Calculation of a disability allowance; Determination of children's residence; Dismissal from civil service employment on grounds of sex; Family benefits; Immigration rules; Ineligibility for a stay of execution of a prison sentence and the right to respect for private and family life; Parental leave and parental leave allowances;
- **Freedom of thought, conscience and religion** (religious clothing)
- **Protection of property** (Entitlement to social security benefits, Employment-related health insurance cover; Housing benefits; Obligation to pay social security contributions; etc.)
- https://www.echr.coe.int/documents/d/echr/Fs_gender_Equality_ENg



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Community/European law (EEC/EU)


- Treaty (Rome, 1957): Art. 119 – *equal pay for men and women for work of equal value*
- Directive of 10 February 1975 – *equal pay for work of equal value*
- Directive of 9 February 1976 – *equal treatment in employment*

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- Case law: *Gabrielle Defrenne v Sabena*
 - ECJ 25 May 1971, I: direct application
 - ECJ 8 April 1976, II: the principle of *equal pay* for female and male workers forms part of **the foundations of the Community**
 - ECJ 15 June 1978, III, C-149/77: in the Court's view, '*respect for fundamental human rights forms part of the general principles of Community law which it is the Court's duty to ensure are observed; the elimination of discrimination on grounds of sex forms part of those fundamental rights;*' (§ 26–27)

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Treaty on European Union (TEU)

“**The Union is founded on the values** of respect for human dignity, freedom, democracy, equality, the rule of law, and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society characterised by... non-discrimination,... and ***equality between women and men.***” (Art. 2)


“**The Union... shall combat... discrimination,** and promote... ***equality between women and men***”
(*gender mainstreaming approach*) (Art. 3(3))

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Treaty on the Functioning of the European Union (TFEU)


- “In all its activities, the Union shall aim to eliminate inequalities and ***promote equality between men and women.***” (Art. 8)
- “In defining and implementing its policies and activities, ***the Union shall aim to combat any discrimination based on sex (...).***” (Art. 10)
- The EU has competence to “combat ***any discrimination based on sex,*** racial or ethnic origin, religion or belief, disability, age or sexual orientation” (Art. 19)
- The EU shall adopt measures to ensure the application of “***equal treatment between women and men in matters of employment and occupation,*** including the principle of ***equal pay*** for equal work or ***work of equal value***” (Art. 157)

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Charter of Fundamental Rights of the EU

Article 21 Non-discrimination

1. Any discrimination based, in particular, on **sex**, race, colour, ethnic or social origin, genetic characteristics, language, religion or belief, political or other opinions, membership of a national minority, property, birth, disability, age or sexual orientation is prohibited.


Article 23 Equality between men and women

Equality between men and women must be ensured *in all areas*, including in **matters of employment, work** and pay.


The principle of equality shall not prevent the maintenance or adoption of **measures providing for specific advantages** in favour of the under-represented sex.

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Charter of Fundamental Rights of the EU (Chapter VII)


- Same **legal status** as treaties (TEU, Art. 6)
- **Primacy**
- **Scope of application** – debate on principles/rights (51.1)
- Effect –
 - vertical (51.1)
 - sometimes direct horizontal (51.1)

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Directives on equality between women and men


- Directive 79/7 – social security
- Directive 86/378 – occupational social security schemes
- Directive 92/85 – protection of the safety and health at work of pregnant women, women who have recently given birth or are breastfeeding
- Dir. 96/34 – parental leave (European collective agreement)
- Directive 2002/73 – employment and work (including harassment)
- Directive 2004/113 of 13 December 2004 – goods and services (access and supply)
- Directive 2006/54 of 5 July 2006 – implementation of the principle of equal opportunities and equal treatment between men and women in matters of employment and occupation (recast directive)**
- Directive 2010/41/EU of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity
- Directive No 2019/1158 of 20 June 2019 on work-life balance for parents and carers
- Directive 2023/970 of 10 May 2023 – strengthening the application of the principle of equal pay for women and for the same work or work of equal value through pay transparency and enforcement mechanisms**

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KEY CONCEPTS

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Issues surrounding the definition of discrimination


- **Speaking the same language** (the language of law helps to objectify and analyse discrimination)

'To name things badly adds to the misfortunes of this world'
Albert Camus


- **Avoiding confusion** (distinction, injustice, inequality, discrimination, etc.)
 - **distinction** (some distinctions are lawful...)
 - **unfavourable treatment** (unfavourable treatment is justified...)
 - **injustice** (unjustified unfavourable treatment and injustices are not discrimination...)
- **Harnessing the resources of the law to**
 - **identify discrimination** (classify acts as discrimination),
 - **apply the relevant legal framework and take action to eliminate it**

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Objective of EU law


the absence of gender discrimination

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equal treatment of women and men

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General definition

Discrimination may involve:


- the application of *different rules to comparable situations*
- applying *the same rule to different situations*

(ECJ 30 June 1998, Mary Brown)

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General definition – discrimination manifests itself through:

unfair treatment (any form of management decision: access to employment, during employment – working and employment conditions, including pay, promotion and training, etc.)

unjustified

unlawful, linked to a criterion that must not be used to make an unfavourable decision – **gender**, nationality, race/ethnicity, religion, age, disability, **sexual orientation**

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***Any form of discrimination is in itself
a violation of human rights***

Discrimination can be:

I. - Direct


II. - Indirect

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- ECJ 1971, 1976, 1978, Gabrielle Defrenne,
- ECJ 1^{er} July 1986, Rummler v Dato-Druck,
- ECJ 17 October 1989, Danfoss,
- ECJ 27 October 1993, Pamela Enderby,
- ECJ 9 February 1999, Regina v Seymour-Smith,
- ECJ 10 February 2000, Deutsche Post,
- ECJ 26 June 2001, Susan Brunnhofer,
- ECJ 4 October 2001, Tele Danmark,
- ECJ, 27 April 2006, *Richards*, C-423/04,
- CJEU 21 July 2011, Kelly,
- CJEU 28 February 2013, Kenny,
- CJEU 20 June 2013, Riežniece,
- CJEU 3 September 2014, X,
- CJEU 14 April 2015, Cachaldora Fernández;
- CJEU 16 July 2015, Maïstrellis;
- CJEU 17 December 2015, Arjona Camacho;

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- CJEU 16 June 2016, Estrella Rodríguez Sánchez, C-351/14;
- CJEU 14 July 2016, Maria Cristina Elisabetta Ornano, C-335/15;
- CJEU 28 July 2016, Nils-Johannes Kratzer, C-423/15;
- CJEU 13 July 2017, Kleinsteuber, C-354/16;
- CJEU 7 September 2017, H, C-174/16;
- CJEU 18 October 2017, Kalliri, C-409/16;
- CJEU 19 October 2017, Otero Ramos, C-531/15;
- CJEU 7 February 2018, Maturi, C-142/17
- CJEU 19 September 2018, Gonzalez Castro, C-41/17
- CJEU 20 June 2019, Hakelbracht, C-404/18
- CJEU 7 October 2019, Safeway Ltd, C-171/18
- CJEU 15 October 2019, AEAT, C-439/18 and C-472/18
- CJEU 5 November 2019, European Commission v Republic of Poland, C-192/18
- CJEU 4 June 2020, Fetico, C-588/18
- CJEU 24 September 2020, YS v NK AG, C-223/19
- CJEU 18 November 2020, CFTC Trade Union (C-463/19)
- CJEU 3 June 2021, Tesco Stores (C-624/19)
- CJEU 5 May 2022, BVAEB (C-405/20)
- CJEU 16 May 2024, INSS (C-673/22)
- CJEU 29 July 2024 (C-184/22)
- CJEU 4 October 2024, Air Nostrum (C-314/23)
- CJEU 19 December 2024, LOREDAS (C-531/23)

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I. – Direct discrimination

a person (a woman) is treated ***less favourably***

in a ***comparable*** situation,

than another (a man):

- ***is*** (current specific situation)
- ***was*** (subsequent concrete situation)
- ***would be*** (hypothetical comparison)

‘Given the current situation (...), Member States should aim above all to improve the situation of women in working life.’ (Dir., recital 22)

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A person *is* treated less favourably than another

- ECJ 1 July 1986, **Rummler v Dato-Druck** (237/85) (paragraphs 17, 25 and obiter): **pay scale** (requirement for multiple criteria)
- ECJ 3 October 2006, **Cadman** (C-17/05) (§§ 38–40 and obiter): seniority – classification system – performance appraisal




- ECJ 17 October 1989, **Danfoss** (C-109/88): wages (non-transparent system)
- ECJ 27 October 1993, **Enderby v Frenchay Health Authority and Secretary of State for Health** (C-127/92) (§§ 13–14, 17–19, 22–25, 29, ob.j.): **implications of collective bargaining and the labour market for the setting of remuneration**
- Riom Court of Appeal, Labour Division, 16 January 1995, USA/Champignons*
- ECJ 31 May 1995, **Specialarbejderforbundet i Danmark v Dansk Industri** (C-400/93) (§§ 38–43, 47, para. 4): assessment of the **value of work** – contractually fixed pay
- ECJ 26 June 2001, **Brunnhofer** (C-381/99) (§ 80 and para.): remuneration – **assessment of work of equal value**



- ECJ 12 July 1984, **Hofmann** v Barmer Ersatzkasse (184/83) (paragraphs 24–28): **protection of pregnant women and maternity**
- ECJ 4 October 2001, **Tele Danmark** (C-109/00) (§§ 34, 39 and operative part): **protection of the employment of pregnant women on fixed-term contracts**
- ECJ 30 March 2004, **Alabaster** (C-147/02) (§ 50, para. 1): **pay rise during maternity leave**
- CJEU 14 July 2016, **Ornano** (C-335/15) (§§ 30–34 and 40–44): maternity leave and its impact on remuneration
- CJEU 6 March 2014, **Napoli** (C-595/12) (§§ 33–39): access to vocational training, necessary for appointment, in relation to maternity leave and the Member State's liability (§43)



- CJEU 20 June 2013, **Riežniece** (C-7/12) (paragraphs 36–56): assessment of the work of a woman on **parental leave** and redundancy
- CJEU 16 July 2015, **K. Maistrellis** (C-222/14) (§§ 41-53): right to **parental leave** for a male civil servant;
- CJEU 17 December 2015, **Arjona Camacho** (C-407/14) (§§ 34–45): **compensation for damage** (nature and amount of compensation)
- CJEU 7 Feb. 2018, **Maturi et al.** (C-142/17 and C-143/17), temporary provision allowing entertainment industry workers who have reached **retirement age** to continue working until the age previously set by the earlier regulations for pension entitlement (setting the age at different levels, depending on gender)



A person *is* treated less favourably than another

Health and safety at work (occupational risk assessment, etc.) & gender equality


- CJEU 19 Oct. 2017, **Otero Ramos** (C-531/15) (paras. 55–76 and operative part): any less favourable treatment of a female worker on the grounds that she is breastfeeding constitutes direct discrimination on the grounds of sex.
- CJEU 19 Sept. 2018, **Isabel González Castro v Mutua Umivale** (C-41/17) – Shift work carried out partly during night hours

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A person is treated less favourably than another person **was**


ECJ 27 March 1980, **Wendy Smith**, C-129/79

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A person is treated less favourably
than another **would be**

ECJ 30 April 1998, **Caisse nationale d'assurance
vieillesse des travailleurs salariés – CNAVTS v
Évelyne Thibault** (C-136/95) (paras. 32–33 and ob.j.):

National statutory provisions depriving an employee of the
right to have their work assessed (and to obtain a pay
rise or promotion) due to their absence from the
workplace.


A woman absent in particular due to maternity leave?

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Direct discrimination (continued)

by court **order**

by **harassment**

by **association**

by **remarks**


through **multiple forms of discrimination**

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Direct discrimination *by instruction*

Any conduct involving instructing anyone to discriminate on grounds such as sex

- requests
 - from customers (ECJ 10 July 2008, Feryn Firma, ...),
 - from employees (ECHR 3 October 2013, I.B. v. Greece, etc.),
 - other persons,
 addressed to the employer (to a company manager, etc.)
- **such requests constitute discrimination**
- **such requests cannot justify discrimination**

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Direct discrimination *through harassment*


- **Sexist harassment:** unwanted ***behaviour related to*** a person's ***gender, the purpose or effect*** of which is to undermine a person's dignity and create an intimidating, hostile, degrading, humiliating or offensive ***environment***.
- **Sexual harassment:** unwanted ***behaviour*** (physical or verbal) ***of a sexual nature*** that occurs ***with the purpose or effect*** of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment.

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Direct discrimination **through remarks** having **discriminatory effects**

ECJ 10 July 2008, Feryn Firma NV – Public statements by a company director indicating that he does not hire people of a certain racial or ethnic origin (due to his customers' reservations)

The statements constitute **a presumption of direct discrimination (deterrent effect of the statements)**

Situations in which the company makes it known that people falling within a particular category (gender, etc.) will not be:


- hired
- assigned to certain jobs,
- promoted to certain positions, etc.

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Direct discrimination **by association**

Where a person is treated less favourably because of their association with a person falling within a protected ground

ECJ 17 July 2008, **S. Coleman v Attridge Law**, C-303/06 – female employee discriminated against on account of her child's disability

'the prohibition of direct discrimination (...) is **not limited solely to persons who are themselves disabled.**'

The principle of equal treatment applies not to a specific category of persons, but on the basis of the grounds set out in Article 1 of the Directive (§ 38).

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Multiple – cumulative – intersectional discrimination
(direct – indirect)

A person is subject to
“multiple discrimination”
based on several criteria

in particular women:
Directive 2000/43, Recital 14
Directive 2000/78, Recital 3

CJEU 19 April 2012, *Galina Meister*, C-415/10
discrimination on grounds of sex, age and ethnic origin
during a recruitment process₇

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Direct discrimination – exceptions

In principle: not permitted – ECJ 8 November 1990, *Dekker* (C-177/88)


- **By way of exception** (strict interpretation): a difference in treatment is permissible where, due to the specific nature of the professional activities or the professional context, a gender-related characteristic constitutes a **‘genuine and determining occupational requirement’**
 - if the Member State has provided for it
 - +
 - for access to employment (in ‘specific activities’)
 - +
 - if the objective is legitimate and the requirement proportionate

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Direct discrimination – *exceptions*

- ***In a transparent manner, under the supervision***
- ***of the Commission***
- ***and the Court***


ECJ 30 June 1988, Commission v France (C-318/86, §§ 24-27)
 ECJ, 26 October 1999, Angela Maria Sirdar v The Army Board and Secretary of State for Defence (C-273/97, paras 15–16, 29–31, operative part)
 ECJ, 11 January 2000, Kreil (C-285/98, paras. 26–29)

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II. – Indirect discrimination


- ***a policy or practice***, implemented (by the company, etc.),
- ***which appears to be neutral*** (without reference to gender – or any other criterion)
- ***would particularly disadvantage people of one sex*** (compared to people of the other sex) (***effect***)
- ***unless*** the author (the company, etc.) proves that
 - this provision or practice is objectively ***justified*** by a legitimate aim (relevance)
 - and that the means employed to achieve this objective are necessary and appropriate (***proportionality***)

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Indirect discrimination: a concept and a method


- The method makes it possible to examine the **effects** of a rule or practice (**objective concept** of discrimination)
- If the company can demonstrate that the provision or practice in question is relevant and proportionate, **the unequal treatment is not discriminatory**
- Case law sets high standards for accepting a **justification**

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Indirect discrimination: a concept and a method in use


ECJ 31 March 1981, **Jenkins v Kingsgate** (96/80) (paras. 11–15, 17–18, ob.j.): part-time employees, hourly wage rate (lower)

ECJ 13 May 1986, **Bilka v Weber von Hartz** (170/84) (§§ 20–22, 31–37, 43, ob. p.): part-time female employees, company pension scheme (no access)


ECJ 7 February 1991, **Nimz v Freie und Hansestadt Hamburg** (C-184/89) (§§ 9-10, 15, disp.): part-time female employees, career progression (slowed down)

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Indirect discrimination: a concept and a method applied

ECJ 9 February 1999, **Seymour-Smith and Perez** (C-167/97) (paras. 50, 65, 76–77, points 3–5): assessment of national legislation (dismissal)


ECJ 20 March 2003, **Kutz-Bauer** (C-187/00) (§§ 50–63, para. 1): budgetary considerations cannot justify a difference in treatment

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Indirect discrimination: a concept and a method applied

ECJ 10 March 2005, **Nikoloudi** (C-196/02) (para. 57, operative part 2): contractual exclusion of part-time employees from permanent appointment


ECJ 6 December 2007, **Ursula Voß** (C-300/06) (para. 44 and operative part): part-time employees, rate of increase for hours worked in excess of the contract duration (lower)

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Indirect discrimination: a concept and a method applied

- CJEU 18 Oct. 2017, ***Maria-Eleni Kalliri*** (C-409/16),
 - requirement of a minimum height of 1.70 m for the admission of candidates to the police academy entrance examination;
 - this rule disadvantages a much larger number of women and does not appear to be appropriate or necessary for the achievement of the legitimate objective it pursues
- CJEU 9 Nov. 2017, ***María Begoña Espadas Recio v. Servicio Público de Empleo Estatal (SPEE)*** (C-98/15), unemployment benefits for part-time workers

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Positive action

- Discrimination, particularly indirect discrimination, *calls* for the adoption and implementation of positive action measures
- Member States *may* maintain or adopt 'positive measures' **'to ensure full equality between men and women in working life'** (TFEU, Art. 157(4); Directive, Recital 22 and Art. 3)
- **Actions:**
 - **remedial measures** (recruitment, pay, training, promotion, etc.)
 - **preventive measures** (training, etc.),
for the benefit of persons who have been discriminated against or belong to a group that has been discriminated against on the basis of a particular criterion (in particular women)

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Affirmative action


Affirmative action measures subject to CJEU oversight

'opening clause' for persons falling under another criterion

- ECJ 17 October 1995, **Kalanke v Freie Hansestadt Bremen** (C-450/93) (§§ 18–19, 21–24 and obiter)
- ECJ 11 November 1997, **Marschall v Land Nordrhein-Westfalen** (C-409/95) (§ 35 and obiter)
- ECJ 28 March 2000, **Badeck and others** (C-158/97) (§§ 38, 44, 55, 63, 66 and obiter)
- ECJ 6 July 2000, **Abrahamsson and Anderson** (C-407/98) (§§ 53–62, para. 3)

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To access the relevant documents

Texts <http://eur-lex.europa.eu>

Case law <http://curia.europa.eu>

- **Case law from 1954 to 2009:**
 - B. European Community (EEC/EC)
 - B-15 Social policy
- **Case law since 2010:**
 - 4. EU Internal Policy
 - 4.14 Social policy

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