

EQUALITY AND NON-DISCRIMINATION

Class #4

SCHEDULLE

Gender discrimination

- Legal framework
- Retrospective overview and current issues
- Case-law

LEGAL FRAMEWORK - UN

*Art. 2 (1) Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, **sex**, language, religion, political or other opinion, national or social origin, property, birth or other status.*

Art. 3 The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

International Covenant on Civil and Political Rights

LEGAL FRAMEWORK - UN

Art. 1 (...) "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Art. 2 States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women (...)

Convention on the Elimination of All Forms of Discrimination against Women

Dedicated UN body - The Committee on the Elimination of Discrimination against Women (CEDAW)

Jurisprudence database - <https://juris.ohchr.org/>

LEGAL FRAMEWORK - CoE

*Art. 14 The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as **sex**, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”*

European Convention for the Protection of Human Rights and Fundamental Freedoms

Art. 1 (1) The purposes of this Convention are to:

- a. protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence;*
- b. contribute to the elimination of all forms of discrimination against women and promote substantive equality between women and men, including by empowering women (...)*

Council of Europe Convention on preventing and combating violence against women and domestic violence

LEGAL FRAMEWORK - EU

*Art. 21 (1) Any discrimination based on any ground such as **sex**, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.*

(2). Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.

Art. 23 Equality between women and men must be ensured in all areas, including 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.

LEGAL FRAMEWORK - EU

Key EU directives in gender equality and non-discrimination:

- Directive 2006/54/EC of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation
- 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 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services

LEGAL FRAMEWORK – LEGAL DEFINITIONS

Sex refers to a person's biological status and is typically categorized as male, female, or intersex (i.e., atypical combinations of features that usually distinguish male from female). There are a number of indicators of biological sex, including sex chromosomes, gonads, internal reproductive organs, and external genitalia,

Gender refers to the attitudes, feelings, and behaviors that a given culture associates with a person's biological sex. Behavior that is compatible with cultural expectations is referred to as gender-normative; behaviors that are viewed as incompatible with these expectations constitute gender non-conformity.

Source: American Psychological Association, *Guidelines for Psychological Practice With Lesbian, Gay, and Bisexual Clients*

Gender shall mean the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men;

Art. 3 (c) Convention on preventing and combating violence against women and domestic violence

CURRENT ISSUES

- Gender pay gap
- Gender-based violence, incl. sexual harassment
- Access to education
- Pregnancy and maternity related discrimination
- Women's political participation
- Gender-inclusive language

CURRENT ISSUES

The Global Gender Gap Index 2020

Rank	Country	Score	Rank change	Score change	
		0-1	2018	2018	2006
1	Iceland	0.877	-	+0.018	+0.095
2	Norway	0.842	-	+0.007	+0.043
3	Finland	0.832	1	+0.012	+0.036
4	Sweden	0.820	-1	-0.002	+0.007
5	Nicaragua	0.804	-	-0.005	+0.147
6	New Zealand	0.799	1	-0.002	+0.048
7	Ireland	0.798	2	+0.002	+0.065
8	Spain	0.795	21	+0.049	+0.063
9	Rwanda	0.791	-3	-0.013	n/a
10	Germany	0.787	4	+0.011	+0.034
11	Latvia	0.785	6	+0.027	+0.076
12	Namibia	0.784	-2	-0.005	+0.098
13	Costa Rica	0.782	9	+0.033	+0.089
14	Denmark	0.782	-1	+0.004	+0.036
15	France	0.781	-3	+0.002	+0.129
16	Philippines	0.781	-8	-0.018	+0.029
17	South Africa	0.780	2	+0.025	+0.068
18	Switzerland	0.779	2	+0.024	+0.079
19	Canada	0.772	-3	+0.001	+0.055
20	Albania	0.769	14	+0.035	+0.108

GABRIELLE DEFRENNE V SABENA

Gabrielle Defrenne v Sabena

- ECJ Judgment of 8 April 1976, C-43/75, ECLI:EU:C:1976:56
- Reference for a preliminary ruling – interpretation of art. 119 of EEC Treaty
- **Applicant in the main proceeding:** Gabrielle Defrenne
- **Defendant in the main proceeding:** Societe Anonyme Belge De Navigation Aerienne Sabena
- **National court:** Cour de Cassation
- **Subject matter:** The principle that men and women should receive equal pay for equal work

GABRIELLE DEFRENNE V SABENA

Question

1. Does the art. 119 of the Treaty introduce directly into the national law of each Member State of the European Community the principle that men and women should receive equal pay for equal work and does it therefore, independently of any national provision, entitle workers to institute proceedings before national courts in order to ensure its observance?

Art. 119 (original text)

1. Each Member State shall (...) ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work.
2. For the purpose of this Article, “pay” means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer. Equal pay without discrimination based on sex means:
 - a) that pay for the same work at piece shall be calculated on the basis of the same unit of measurement;
 - b) that pay for work at time rates shall be the same for the same job.

KARLHEINZ SCHMIDT v. GERMANY

Karlheinz Schmidt v. Germany

- ECHR Judgment of 18 July 1994, application no. 13580/88
- **Applicant:** Mr Karlheinz Schmidt
- **State party:** Germany
- **Subject matter:** Discrimination on the ground of sex in breach of Article 14 taken in conjunction with Article 4 para. 3 (d)

KARLHEINZ SCHMIDT v. GERMANY

Karlheinz Schmidt v. Germany

Art. 14

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, ..."

Art. 4

2. No one shall be required to perform forced or compulsory labour.

3. For the purpose of this Article (art. 4) the term 'forced or compulsory labour' shall not include (...)

(d) any work or service which forms part of normal civic obligations.

MAÏSTRELLIS

Maïstrellis

- CJEU Judgment of 16 July 2015, C-222/14, ECLI:EU:C:2015:473
- Reference for a preliminary ruling – interpretation of Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC and Directive 2006/54/EC of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation
- **Applicant in the main proceeding:** Konstantinos Maïstrellis
- **Defendant in the main proceeding:** Greek Minister for Justice, Transparency and Human Rights
- **National court:** Simvoulío tis Epikratias (Council of State)
- **Subject matter:** Right to parental leave

MAÏSTRELLIS

Question

Must the provisions of Directive 96/34 and Directive 2006/54, in so far as they are applicable, be interpreted as precluding national regulations, such as the contested provision of the third sentence of Article 53(3) of the Civil Service Code, providing that if the civil servant's wife does not work or exercise any profession the male spouse is not entitled to parental leave, unless it is considered that due to a serious illness or injury the wife is unable to meet the needs related to the upbringing of the child?'

RAGAN SALGADO V UNITED KINGDOM

Ragan Salgado v United Kingdom

- CEDAW decision of 22 January 2007, CEDAW/C/37/D/11/2006
- **Submitted by:** Constance Ragan Salgado
- **State party:** United Kingdom
- **Subject matter:** Violation of art. 9(2)