

Gender equality and discrimination in the European court of Justice case law

Abstract

This thesis deals with the legal regulation of the European Union and the related case law of the Court of Justice in the field of equality and anti-discrimination on the basis of sex in social security law. The aim of this thesis is to provide a basic overview of the currently valid EU legal regulation in this area, focusing mainly on secondary law of the European Union and linking it with a selection of relevant case law of the Court of Justice from the 21st century.

The thesis is divided into an introduction, two separate parts and a conclusion. In the first part, which is further divided into individual points and related subpoints, I focus on defining the basic concepts and principles central to this thesis (equality, discrimination, the principle of equal treatment and anti-discrimination) and their division into types. The concepts of gender and gender mainstreaming are also included. Furthermore, the institute of positive measures is introduced and, from the field of procedural law, the institute of the shifted burden of proof. Attention is focused on the provisions of the applicable EU legislation concerning the above-mentioned concepts and institutes, which are accompanied by a brief overview of the relevant case law of the Court of Justice on the interpretation of these provisions.

The second part contains a brief overview of primary law (both historical and current founding treaties) and a more detailed overview of individual applicable provisions of secondary law of the European Union in the field of equality and anti-discrimination on grounds of sex. I then follow up on the individual directives with an analysis of selected case law of the Court of Justice. The topics covered are the right to maternity leave, the protection of pregnant employees and employees shortly after giving birth before dismissal, the protection of witnesses to discriminatory conduct at the workplace, the rights of trans people within social security systems, the right to parental benefits for both parents, the position of domestic workers in social security systems, surrogacy, equal treatment for men and women in insurance and derived discrimination.

In the conclusion, I summarize the findings from this work and highlight specific areas of current interest in equality and anti-discrimination on the basis of sex in social security law arising from the discussed case law of the Court of Justice, especially those that I consider still problematic.

Key words: CJEU case law, gender discrimination, social security law