

PA研究会報告「ヨーロッパ法」

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PA研究会報告「ヨーロッパ法」資料

I. 成文法源

- A 1976.2.9雇用平等ディレクティブ(Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions)
1. 原始規定: Art. 2, para. 4. This Directive shall be without prejudice to measures to promote equal opportunity for men and women, in particular by removing existing inequalities which affect women's opportunities in the areas referred to in Article 1 (1).
 2. 欧州委員会の改正提案(1996): Art . 2, para. 4. This Directive shall be without prejudice to measures to promote equal opportunity for men and women in particular by removing existing inequalities which affect the opportunities of the *under-represented sex* in the areas referred to in article 1(1). *Possible measures shall include the giving of preference, as regards access to employment or promotion, to a member of the under-represented sex, provided that such measures do not preclude the assessment of the particular circumstances of an individual case.*
 3. 現行規定(Dir. 2002/73, 23-9-2002): Art. 2, para. 8. Member States may maintain or adopt measures within the meaning of Article 141(4) of the Treaty with a view to ensuring full equality in practice between men and women.
- B 1984.12.13理事会勧告(Council recommendation 84/635/EEC of 13 December 1984 on the promotion of positive action for women)
- C アムステルダム条約改正によるart. 141(4) EC(1997.10.2調印, 1999.5.1発効): With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.
- D EU憲法条約(2004.10.28調印, 未発効)
1. Art. II-83(2): The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.
 2. Art. III-214, para. 4. With a view to ensuring full equality in practice between women and men in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity, or to prevent or compensate for disadvantages in professional careers.

II. 判決例

1. OVG Münster, 1990.10.23, 12 B 2298/90
2. BAG, 1993.6.2, Kalanke
3. Kalanke判決(CJCE, 1995.10.17, C-450/93, Rec. I-3051, concl. Tesauro)
4. VG Gelsenkirchen 1995.12.21, Marschall
5. BAG, 1996.3.5, Kalanke
6. HessStGH, 1997.4.16, Badeck
7. Marschall判決(CJCE, 1997.11.11, C-409/95, Rec. I-6363, concl. Jacobs)
8. Badeck判決(CJCE, 2000.3.28, C-158/97, Rec. I-1875, concl. Saggio)
9. Abrahamsson判決(CJCE, 2000.7.6, C-407/98, Rec. I-1875, concl. Saggio)
10. OGH (Österreich), 2001.1.30, Schneider
11. Cons. const. (France), 2001.6.19, n. 2001-445 DC, Loi organique relative au statut des magistrats et au Conseil supérieur de la magistrature
12. Cons. const. (France), 2002.1.12, n. 2001-455 DC, Loi de modernisation sociale
13. Lommers判決(CJCE, 2002.3.19, C-476/99, Rec. I-2891, concl. Alber)
14. EFTA Court, 2003.1.24, Case E-1/02, EFTA Surveillance Authority / The Kingdom of Norway
15. Briheche判決(CJCE, 2004.9.30, C-319/03, concl. Poiares Maduro)

III. 参考文献

1. 辻村みよ子(編著) 『世界のポジティブ・アクションと男女共同参画』 東北大学出版会(2004)
2. 柴山恵美子・中曽根佐織 『EUの男女均等政策』 日本評論社(2004)
3. 柴山恵美子・中曽根佐織(編訳) 『EU男女均等法・判例集』 日本評論社(2004)