

INDIRECT DISCRIMINATION

A Case Study into the Development of the Legal Concept of Indirect Discrimination under EC Law

CHRISTA TOBLER



INSTITUUT VOOR
RECHTSWETENSCHAPPELIJK
ONDERZOEK

 intersentia
Antwerpen – Oxford

Distribution for the UK:

Hart Publishing
Salter's Boat Yard
Folly Bridge
Abingdon Road
Oxford OX1 4LB
UK
Tel: + 44 1865 24 55 33
Fax: + 44 1865 79 48 82

Distribution for Switzerland and

Germany:
Schulthess Verlag
Zwingliplatz 2
CH-8022 Zürich
Switzerland
Tel: + 41 1 251 93 36
Fax: + 41 1 261 63 94

Distribution for North America:

Gaunt Inc.
Gaunt Building
3011 Gulf Drive
Holmes Beach
Florida 34217-2199
USA
Tel: + 1 941 778 5211
Fax: + 1 941 778 5252

Distribution for other countries:

Intersentia Publishers
Groenstraat 31
2640 Mortsel
Belgium
Tel: + 32 3 680 15 50
Fax: + 32 3 658 71 21

Indirect Discrimination
Christa Tobler

© 2005 Intersentia
Antwerpen – Oxford
<http://www.intersentia.be>

ISBN 90-5095-458-8
D/2005/7849/51
NUR 825

No part of this book may be reproduced in any form, by print, photoprint, microfilm or any other means, without written permission from the publisher.

The concept of discrimination must be interpreted
on the basis of factual criteria. A purely theoretical
idea is not sufficient.
(The Commission in *Sotgiu*, 1974)

Nothing is more fascinating and at the same time
more deceptive than equality, and justice is often
based on inequality; all this is well known.
(Advocate General Lagrange in *Italian Refrigerators*, 1963)

FOREWORD

This book is an updated and restructured version of a habilitation thesis submitted in the summer of 2003 to the Law Faculty of the University of Basel, Switzerland. In German speaking Switzerland, the habilitation is a prerequisite for eligibility for what are termed ordinary professorships. Under the traditional habilitation system, a candidate must first submit a written thesis on a topic of personal expertise. Once such a thesis has been approved, a candidate must present and defend an oral address in a separate subject area. The habilitation thesis and oral presentation together determine the range of subjects which the candidate will be entitled to teach once the habilitation procedure has been successfully completed (the so-called *venia legendi*). In my case, the written habilitation thesis concerned the development of the legal concept of indirect discrimination under both EC law and Swiss sex equality law. The oral presentation addressed the liberalization of the Swiss electricity market.

In Switzerland, habilitation theses are published only after successful completion of the habilitation procedure. I am grateful to the Law Faculty of Basel University and in particular to Prof. Anne Peters for their support and help throughout this rigorous procedure. I am also very grateful to Prof. Ingeborg Schwenzer whose efforts enabled me to come to Basel from The Netherlands where I was living and working at a time when I had no formal links with any Swiss university. Without her assistance, in all likelihood I would not have undertaken my habilitation in Basel nor served in my present capacity at the University's Europe Institute.

As originally submitted, my habilitation thesis was written in English. Also written in English, this book presents to the greater public-at-large those aspects of my thesis which specifically concern EC law. However, in the near future I intend to publish the chapter that deals specifically with Swiss law in a German language version. Since English is not my mother tongue, I enlisted the assistance of a native speaker to perform the various tasks involved in the language editing of this present publication. I have enjoyed the support of Sylvester (Danny) Ryan who dedicates himself to helping non-native English speakers express themselves in law. Indeed, his grounding in both language and EC law contributed significantly to my efforts to express myself clearly in this book. For that I am truly grateful to him.

When I undertook the study of law in Switzerland in the early 1980s, EC law was not a well established part of the university legal curriculum. In fact, I only began my formal study of EC law during the academic year 1993/1994 as a participant of The Leiden LL.M. Programme in EC Law. That same academic year I also gained a thorough grounding in equality and discrimination law through courses offered by

the (then in existence) Department on Women and the Law (afdeling vrouw en recht) of the Law Faculty of Leiden University. The coursework that I was privileged to take in Leiden laid the groundwork for the analyses which I have undertaken in this book. Thus, I would like to express my heartfelt thanks to all my Leiden teachers, but particularly to Prof. Rikki Holtmaat (Professor of International Non-Discrimination Law at the Leiden Law Faculty), Dr. Bob Lane (of Edinburgh University and my teacher in the important Basic Course of the Leiden LL.M. Programme) and Prof. Piet Jan Slot (Director of the Europa Institute of the Leiden Law Faculty). After the completion of my LL.M. studies at Leiden, Prof. Slot enabled me to return to the Europa Institute and to work for The Leiden LL.M. Programme in EC Law. I have benefitted enormously from my continued close association with Leiden, particularly with regard to my knowledge of EC law. In the framework of my position with Leiden University, the work done for this present study was part of the E.M. Meijers Institute's research programme 'Securing the rule of law in a world of multilevel jurisdiction: coherence, institutional principles and fundamental rights' and, more specifically, of the sub-programme 'The protection of fundamental rights in an integrating Europe'.

Finally, my education, my habilitation and the publication of this book would not have been possible without the love, care and continued support of family and friends, particularly of my parents, Ruth and Theophil Tobler-Pulfer, and of my partner, Jacques Beglinger. They have been and continue to be a blessing to me. It is to them that I dedicate this book – though in the case of my mother, I must do so 'in loving memory'.

Basel and Leiden, March 2005

Christa Tobler

TABLE OF CONTENTS

FOREWORD	vii
ABBREVIATIONS	xxiii
 <i>PART ONE:</i>	
<i>INTRODUCTION AND BACKGROUND</i>	1
A. SUBJECT AND METHODOLOGY OF THE STUDY	3
I. ON THE SUBJECT	3
1. Introducing indirect discrimination	3
2. Why a study on indirect discrimination?	4
3. A study on EC law	5
4. The two main research questions	7
a. The development of the legal concept of indirect discrimination	7
b. The place of the concept in today's EC law	8
II. ON METHOD	11
1. A legal and conceptual analysis essentially based on case law	11
2. A note on materials, language and reference to EC law provisions	12
3. Set-up of the study	14
B. PARAMETERS	15
I. INTRODUCTORY REMARKS	15
II. EQUALITY	17
1. Equality before the law and in the law	17
a. The concepts	17
b. Equality in the law: an 'Aristotelian' notion	19
i. The Aristotelian formula	19
ii. Aristotelian equality – An empty shell?	21
c. The Aristotelian approach in EC law	22
2. Formal and substantive equality	25
a. The concepts	25

Table of Contents

b.	In EC law	26
i.	A formal starting point	26
ii.	Substantive equality in EC law	28
3.	Equality of opportunity	31
a.	The concept	31
b.	In EC law	32
c.	Specifically: positive equality obligations in EC law	34
4.	Some remarks on the function of equality in EC law	35
a.	The economic (competition) perspective	35
b.	The social (human rights or solidarity) perspective	38
III.	DISCRIMINATION	40
1.	Introductory remarks	40
2.	The general concept of discrimination	41
3.	Comparability as a precondition for a finding of discrimination	43
a.	The importance of comparability	43
b.	The assessment of comparability in EC law	45
c.	Exceptions where comparability is not a precondition in EC law	46
i.	Pregnancy discrimination	46
ii.	Discrimination through harassment	48
4.	Important forms of non-discrimination provisions	49
a.	Open and closed non-discrimination provisions	50
b.	Symmetric and asymmetric non-discrimination provisions	52
5.	Specific notions of discrimination	54
a.	Introductory remarks	54
b.	Direct and indirect discrimination	55
i.	Direct discrimination	56
ii.	Indirect discrimination	57
iii.	Discrimination <i>sui generis</i> prohibited under EC law?	59
c.	Structural discrimination	61
d.	Specifically in EC law: discrimination in form and in substance	63
e.	Factual discrimination	64
i.	The concept	64
ii.	The relevance of the law's limited field of application	65
iii.	In particular: limited number and reach of discriminatory grounds	67
6.	Justification for discrimination	69
a.	The concept	69
b.	Derogations in form or in substance?	69
c.	Absolutely and relatively worded provisions	71
d.	Justification and scope	72
e.	Justification and objective differences (comparability)	73

IV.	RESTRICTIONS IN A WIDER SENSE	75
1.	The concept	75
2.	Development and relevance in the context of this present study	76
V.	WHAT IS AN EQUALITY OR NON-DISCRIMINATION RULE FOR THE PRESENT PURPOSES?	77
1.	Relevant types of rules	77
a.	Only substantive rules directly prohibiting discrimination	77
b.	Only equality and non-discrimination provisions in a strict sense	78
i.	Included provisions and areas of law	78
ii.	Not the basic Treaty provisions on free movement of goods	79
iii.	Not competition law	83
2.	Analytical tools for analysing non-discrimination and equality provisions	83
VI.	SUMMARY OF THE MOST IMPORTANT POINTS	85
1.	Equality	85
2.	Discrimination	86
3.	Restrictions in a wider sense	87
C.	HISTORICAL PRECURSORS OF THE CONCEPT OF INDIRECT DISCRIMINATION	89
I.	HISTORIC ORIGINS IN PUBLIC INTERNATIONAL LAW	89
II.	THE 'DISPARATE IMPACT' DOCTRINE IN U.S. LAW	91
1.	Introduction through case law	91
a.	Early indications	91
b.	The landmark case: <i>Griggs v. Duke Power Co.</i>	93
2.	Introducing a legal definition through the Civil Rights Act 1991	94
III.	EUROPEAN PRECURSORS: UK AND IRISH LAW	95
IV.	THE FIRST EXPLICIT REFERENCE IN THE LAW OF THE EUROPEAN COMMUNITIES: <i>GEITLING</i>	96
 PART TWO:		
<i>THE DEVELOPMENT OF THE LEGAL CONCEPT OF INDIRECT DISCRIMINATION IN EC LAW</i>		
A.	THE DEVELOPMENT THROUGH CASE LAW	101
I.	RECOGNITION OF THE POSSIBILITY THAT DISCRIMINATION CAN BE OF AN INDIRECT NATURE	101

1.	Introductory remarks	101
2.	The foundational cases: introducing the idea of indirect discrimination .	104
	a. Free movement of workers: <i>Ugliola</i>	104
	i. The case	104
	ii. Comments	105
	b. The general principle of non-discrimination on grounds of sex: <i>Sabbatini</i>	107
	i. The case	107
	ii. Comments	108
	c. <i>Sotgiu</i> , a landmark case on discrimination on grounds of nationality	110
	i. The case	111
	ii. Comments	113
	d. An interim conclusion (I)	115
3.	A complicated but necessary excursion: the <i>Defrenne II</i> distinction in relation to direct effect	116
	a. The case	116
	b. Comments	118
	i. Para. 18: ‘indirect discrimination’ as related to direct effect	118
	ii. Para. 19, 48 and 60: a trace of a substantive notion of indirect discrimination	121
	c. An interim conclusion (II)	121
4.	Application of the concept in an enlarging context	122
	a. Internal taxation of goods	122
	i. Preliminary remarks	122
	ii. Indirect discrimination: a general statement in <i>Steinike &</i> <i>Weinlig</i>	124
	iii. In search of application in concrete cases	125
	b. Freedom of establishment	128
	i. A general statement in <i>Thieffry</i>	128
	ii. Concrete application: <i>Data-processing contracts</i>	129
	c. An interim conclusion (III)	130
	d. Agricultural law	131
	i. Preliminary remarks	131
	ii. <i>Sea Fisheries</i> : the case	131
	iii. Comments	133
	e. Social security in the context of free movement	134
	i. Preliminary remarks	134
	ii. A general statement: <i>Kenny</i>	136
	iii. The Court’s case law: <i>Palermo-Toia</i>	136

f.	Indirect discrimination in the context of Art. 12(1) EC (general prohibition of discrimination on grounds of nationality)	138
i.	Preliminary remarks	138
ii.	<i>Boussac</i>	139
g.	An interim conclusion (IV)	140
h.	Sex equality law outside staff law: Art. 119 of the EEC Treaty and the Equal Treatment Directives	141
i.	Preliminary remarks	141
ii.	<i>Jenkins</i> : the case	141
iii.	Comments	144
iii.	<i>Bilka</i> : the case	146
iv.	Comments	148
i.	An interim conclusion (V)	150
j.	Free movement of services	151
i.	Preliminary remarks	151
ii.	The <i>Seco</i> case	153
iii.	Comments	154
k.	Transport law	156
i.	Preliminary remarks	156
ii.	<i>Corsica Ferries Italia</i> : the case	157
iii.	Comments	158
l.	An interim conclusion (VI)	160
m.	What about free movement of capital?	161
i.	Preliminary remarks	161
ii.	Under the old regime: the example of <i>Svensson and Gustavsson</i>	164
iii.	Under the new regime: <i>Trummer and Mayer</i>	166
n.	An interim conclusion (VII)	167
5.	Application of the general rules in two specific contexts	168
a.	Public procurement	168
i.	Preliminary remarks	168
ii.	<i>Beentjes</i> : the case	170
iii.	Comments	171
b.	Direct (income) taxation	172
i.	Preliminary remarks	172
ii.	Habitual residence in <i>Biehl</i> : the case	173
iii.	Comments	174
iv.	Fiscal or tax residence in <i>Commerzbank</i> : the case	175
v.	Comments	176
c.	An interim conclusion (VIII)	178
6.	Summary and conclusion	178

II.	OBJECTIVE JUSTIFICATION	183
1.	Introductory remarks	183
2.	Early developments	184
a.	<i>Ugliola</i> and <i>Sabbatini</i> : a strict approach	184
i.	<i>Ugliola</i>	184
ii.	<i>Sabbatini</i>	185
b.	Objective differences: <i>Sotgiu</i> (and later case law)	186
c.	The special approach in <i>Boussac</i> : avoiding the disadvantage	187
3.	Objective justification in sex equality law	190
a.	A new approach in <i>Jenkins</i>	190
i.	The case	190
ii.	Comments	191
b.	From <i>Bilka</i> to <i>Rinner-Kühn</i>	194
4.	Towards objective justification in other areas	196
a.	Indirect discrimination on grounds of nationality: first indications .	196
i.	<i>Seco</i>	196
ii.	<i>Data-processing contracts</i>	198
b.	Steps on the way according to the Court	199
i.	<i>Bachmann</i>	199
ii.	<i>Commission v Luxembourg</i>	200
iii.	<i>Allué II</i>	201
c.	Discrimination on grounds of nationality: the general statement in <i>O'Flynn</i>	202
i.	The case	203
ii.	Comments	203
5.	Findings and conclusion	204
III.	SOME BASIC OVERALL FINDINGS	205
1.	What does indirect discrimination mean?	206
a.	Recalling the indirect discrimination formulae	206
i.	Discrimination on grounds of nationality	206
ii.	Discrimination on grounds of sex	208
iii.	The formula's elements according to case law	210
b.	Are there links between the development in the areas of discrimination on grounds of nationality and sex discrimination? ..	211
c.	The terminology used by the Court	212
2.	Why was the legal concept of indirect discrimination 'invented'?	213
IV.	ISSUES FOR DEBATE ARISING FROM THE CASE LAW	
	DEFINITION	214
1.	Introductory remarks	214
2.	Issues relating to the first part of the indirect discrimination formula ...	215
a.	What does 'indirect' mean?	215

b.	Indirect discrimination and the Aristotelian equality formula	217
i.	Indirect discrimination caused through different treatment	218
ii.	Indirect discrimination caused through same treatment?	219
c.	Indirect discrimination in the context of openly worded non-discrimination provisions	221
i.	In the case of general non-discrimination or equality provisions (comparability)	221
ii.	In the case of a non-exhaustive list of discriminatory grounds	223
d.	The assessment of the discriminatory effect	225
i.	Indirect discrimination on grounds of nationality	225
ii.	A different test for indirect sex discrimination	228
iii.	Are there good reasons for the difference in approach?	233
e.	The relevance of intent for the recognition of the potentially indirect nature of discrimination	234
f.	The special case of ‘work of equal value’	235
i.	Meaning and function of the concept of ‘work of equal value’	236
ii.	Consequences in the context of indirect sex discrimination	237
3.	Issues relating to the second part of the indirect discrimination formula	239
a.	Objective justification: a vague test	239
i.	The test as formulated by the Court	239
ii.	Acceptable justification grounds	240
iii.	Over- and underinclusiveness	241
iv.	Proportionality	241
v.	Can this vague test be improved on the conceptual level?	242
b.	Applying the objective justification test	243
i.	Who should determine the legitimacy of a claim of objective justification?	243
ii.	The test: strict in principle, lenient in practice?	245
c.	Specifically: justification based on economic considerations	247
i.	Economic justification in free movement law	247
ii.	Specifically: economic justification in the context of indirect sex discrimination	248
iii.	Who should bear the costs of non-discrimination?	250
d.	Procedural implications of the objective justification element	252
e.	The place of objective justification in the discrimination analysis	253
i.	Objective justification as an issue of justification (proper)	254
ii.	Objective justification as an issue of causation	254
iii.	The relevance of the distinction between the two approaches	258
4.	Issues relating to the aim of the legal concept of indirect discrimination	260
a.	Effectiveness in a broader context	260

b.	Limits to effectiveness inherent in the indirect discrimination formula	262
c.	Limits of a more general nature	264
i.	Comparability	265
ii.	Different treatment	266
d.	Awareness and avoidance	270
5.	Findings and conclusion	273
a.	Garrone’s definition revisited	273
b.	Consistency, precision and effectiveness	276
B.	THE DEVELOPMENT OF THE LEGAL DEFINITIONS	279
I.	INTRODUCTORY REMARKS	279
II.	CODIFICATION: THE BURDEN OF PROOF DIRECTIVE (SEX DISCRIMINATION)	280
1.	The development of the definition	280
2.	The definition as adopted	283
III.	A NEW GENERATION	284
1.	The Race Directive	285
a.	The development of the definition	285
b.	The definition as adopted	286
2.	The so-called General Framework Directive	288
a.	The development of the definition	288
b.	The definition as adopted	291
3.	The revised Second Equal Treatment Directive (sex discrimination) ...	294
a.	The development of the definition	294
b.	The definition in comparison	295
IV.	COMPARISON AND FINDINGS	296
1.	Recalling the legal definitions	296
2.	Different fields of application	297
3.	Precision, effectiveness and consistency of the new definitions	301
a.	Precision	301
b.	Effectiveness	302
c.	Consistency	302

PART THREE:	
DEMARCATIONS	305
A. DIRECT AND INDIRECT DISCRIMINATION	307
I. PRELIMINARY REMARKS	307
II. DEMARCATION ON THE CONCEPTUAL LEVEL	307
1. Introduction	307
2. The effect of directly and indirectly discriminatory measures	308
a. The issue	308
b. Discrimination on grounds of nationality: <i>Ugliola, De Vos</i> and <i>Mora Romero</i>	308
c. Discrimination on grounds of sex: <i>Schnorbus</i>	310
i. The case	310
ii. Comments	312
d. An interim conclusion (I)	315
3. Justification	316
a. Introductory remarks	316
b. Is there extra-textual justification for direct discrimination?	317
i. Absolutely worded provisions: Arts. 34(2), 90(1) and 12 EC as examples	317
ii. Relatively worded provisions: the example of direct taxation ...	320
iii. Relatively worded provisions: the example of sex discrimi- nation in areas other than pay	322
iv. A special case: equal pay for work of equal value	324
c. A new legislative approach	326
i. The example of the Part-Time Work Directive	326
ii. The example of the Fixed-Term Work Directive	328
iii. The example of age discrimination	328
iv. Not a universal approach	329
d. An interim conclusion (II)	330
III. APPLYING THE CONCEPTS IN CONCRETE CASES	333
1. Introductory remarks	333
2. Analysing the case and the law	334
a. Analysing the case	334
i. Which ground forms the basis for the distinction?	334
ii. Whose treatment is at issue?	336
b. Analysing the law	338
i. The example of residence in the context of free movement ...	338
ii. The example of marital and family status	339
c. An interim conclusion (III)	341

3.	The reach of directly discriminatory grounds	342
a.	The example of discrimination on grounds of pregnancy	342
i.	Direct sex discrimination: <i>Dekker</i>	343
ii.	At the most indirect sex discrimination: <i>Hertz</i>	347
iii.	Specific legislation: doing away with the need to distinguish between direct and indirect discrimination?	349
b.	The example of discrimination against sexual minorities	350
i.	Direct or indirect sex discrimination?	350
ii.	Indirect discrimination on grounds of nationality?	353
iii.	Specific legislation: doing away with the need to distinguish between direct and indirect discrimination?	354
c.	An interim conclusion (IV)	355
4.	Explicit provisions: no need for distinguishing between direct and indirect discrimination	356
a.	Residence in Arts. 73, 77(2) and 78(2) of Regulation 1408/71	357
b.	Language requirements under Art. 3(1) of Regulation 1612/68	359
c.	An interim conclusion (V)	361
5.	Using EU citizenship as a shortcut?	364
a.	<i>Pusa</i>	364
b.	<i>Gaumain-Cerri</i>	366
c.	An interim conclusion (VI)	368
IV.	OVERALL CONCLUSION: A RATHER UNCLEAR DIVIDING LINE ..	368
B.	INDIRECT DISCRIMINATION AND RESTRICTIONS IN A WIDER SENSE	371
I.	INTRODUCTORY REMARKS: APPROACHING A VAGUE DIVIDING LINE	371
II.	WHY A NEW APPROACH?	372
1.	Introductory remarks	372
2.	Three early cases	372
a.	The cases	372
i.	Prudential supervision: <i>Van Binsbergen</i>	372
ii.	Recognition of foreign diplomas: <i>Thieffry</i>	374
iii.	Recognition of foreign driving licences: <i>Choquet</i>	376
b.	Indirect discrimination or restriction?	377
3.	Confirmation in a changed legal context	381
a.	<i>Kraus</i>	381
b.	<i>Gebhard</i>	382
c.	<i>Vlassopoulou</i>	384

4.	No need for the demarcation under specific secondary law	386
5.	An interim conclusion (I)	388
III.	ON THE CONCEPTUAL LEVEL: IS THERE A DIFFERENCE IN EFFECT?	389
1.	Introductory remarks	389
2.	In search of truly indistinctly applicable measures: the example of cross-border television	390
a.	<i>Debauve</i>	391
i.	The case	391
ii.	Comments	392
b.	<i>Collectieve Antennevoorziening</i>	393
i.	The case	393
ii.	Comments	394
3.	An interim conclusion (II)	395
IV.	ASSESSING CONCRETE CASES	397
1.	Introductory remarks	397
2.	Different relevance of the concepts for different categories of cases?	397
a.	Taking double regulation cases out of indirect discrimination	397
i.	Contrasting <i>Seco</i> and <i>Vander Elst</i> : the cases	398
ii.	Comments	400
b.	Indirect discrimination: less relevant in core areas of Community law?	402
3.	Oscillating between indirect discrimination and restrictions	403
a.	<i>Konstantinidis</i>	403
i.	The case	403
ii.	Comments	405
b.	<i>Dafeki</i>	406
i.	The case	406
ii.	Comments	407
4.	The ‘avoidance cases’	408
a.	Taxation of life insurance: <i>Safir</i>	409
i.	The case	409
ii.	Comments	411
b.	Insurance for medical services: <i>Kohll</i>	413
i.	The case	413
ii.	Comments	414
5.	An interim conclusion (iii)	415
V.	OVERALL CONCLUSION: A VERY VAGUE DIVIDING LINE	417

C.	DO WE STILL NEED THE CONCEPT OF INDIRECT DISCRIMINATION?	419
I.	RECALLING THE STARTING POINT AND THE MAIN FINDINGS ..	419
II.	WHAT APPROACH FOR THE FUTURE?	421
1.	Introductory remarks	421
2.	Keeping the status quo: the ‘label of convenience’ approach	422
a.	A pragmatic approach	422
b.	... and its meaning for the importance of the legal concept of indirect discrimination	423
3.	Improving the <i>status quo</i> by sharpening definitions and distinctions ...	424
a.	Improving the definition of indirect discrimination	424
b.	Demarcations: clarifying the dividing lines	427
i.	Direct and indirect discrimination	427
ii.	Indirect discrimination and restrictions in a wider sense	428
4.	Abolishing (certain) distinctions	429
a.	In free movement law	430
i.	Abolishing the concept of <i>indirect</i> discrimination	430
ii.	Abolishing the concept of discrimination altogether	430
b.	In areas where there is only a prohibition of discrimination	432
i.	The <i>status quo</i> : indirect discrimination as an important concept	432
ii.	Changing the equality paradigm: the example of the Canadian approach	432
	TABLES	437
A.	EC LEGISLATION	437
I.	Regulations	437
II.	Directives	438
B.	CASE LAW	441
I.	Court of Justice of the European Communities	441
1.	Court of Justice	441
2.	Court of First Instance	454
II.	EFTA Court	455
III.	Permanent Court of International Justice	455
IV.	European Court of Human Rights	455

V. Canadian Supreme Court 455
VI. U.S. Supreme Court 456
C. LITERATURE QUOTED 456

INDEX 509

ABBREVIATIONS

AG	Advocate General
AJP	Aktuelle Juristische Praxis
Art.	Article
BRK	Zeitschrift für Bank- und Kapitalmarktrecht
CDE	Cahiers de droit européen
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CML Rev	Common Market Law Review
DM	Deutsche Mark (German Mark; former German currency)
ECHR	European Convention on Human Rights (European Convention for the Protection of Human Rights and Fundamental Freedoms)
EC	European Community
ECHR	European Convention on Human Rights
ECJ	European Court of Justice (Court of Justice of the European Communities)
ECSC	European Coal and Steel Community
EEC	European Economic Community
e.g.	exempli gratia (for example)
EL Rev	European Law Review
EU	European Union
EuGH	Europäischer Gerichtshof (Court of Justice of the European Communities)
EuGRZ	Europäische Grundrechte-Zeitschrift
EWS	Zeitschrift für europäisches Wirtschafts- und Steuerrecht
GATT	General Agreement on Trade and Tariffs
I.C.R.	Industrial Court Reports (UK)
i.e.	id est (that is)
ISO	International Organization for Standardization
ILJ	Industrial Law Journal
LL.M.	Master of Laws

Abbreviations

MJ	Maastricht Journal of European and Comparative Law
NJB	Nederlands Juristenblad
NJW	Neue Juristische Wochenschrift
NTER	Nederlands tijdschrift voor Europees recht
n.y.r.	not yet reported
OJ	Official Journal of the European Union
PCIJ	Permanent Court of International Justice
RdA	Recht der Arbeit
R & R	Tijdschrift voor Rechtstheorie en Rechtsphilosophie
RTDE	Revue trimestrielle de droit européen
Rt. Hon.	Right Honorable (Government Minister in the UK)
S.C.R.	Supreme Court Reports (Canada)
SDA	Sex Discrimination Act (UK)
SEW	Sociaal-economische wetgeving
SR	Systematische Sammlung (systematic collection of Swiss Federal law)
StR	Steuer Revue
TvC	Tijdschrift voor Consumentenrecht
UK	United Kingdom of Great Britain and Northern Ireland
USA	United States of America
WTO	World Trade Organisation
ZeuP	Zeitschrift für Europäisches Privatrecht
ZvglRwiss	Zeitschrift für vergleichende Rechtswissenschaft