

## **Kalanke v Freie Hansestadt Bremen, Case C-450/93 [1995] IRLR 660**

### **1) Reference Details**

Jurisdiction: European Court of Justice (ECJ), reference for a preliminary ruling from Germany

Date of Decision: 17 October 1995

Link to full case:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61993J0450:EN:HTML>

### **2) Facts**

Eckhard Kalanke held a diploma in horticulture and landscape gardening. He had worked since 1973 as a horticultural employee in the Parks Department and acted as a permanent assistant to the Section Manager. He was shortlisted for promotion along with Ms Glissman, who held a similar post and similar qualifications. The Parks Department put Mr Kalanke forward for promotion, which was refused by the Staff Committee. The case was referred to arbitration with a finding in Mr Kalanke's favour. The Staff Committee then appealed to a conciliation committee which ruled that as the two candidates were equally qualified, priority should be given to Ms Glissman in accordance with the state law. Mr Kalanke appealed to the *Arbeitsgericht* (Labour Court), claiming he was better qualified and that the state law was incompatible with the German Basic Law and Civil Code. His appeal was dismissed and was also dismissed by the *Landesarbeitsgericht* (Regional Labour Court). The Federal Labour Court stayed proceedings and referred a number of questions to the European Court of Justice.

### **3) Law**

#### *National Law*

- Paragraph 4 of the Bremen Law on Equal Treatment for Men and Women in the Public Service, 20 November 1990 [(1) In the case of an appointment (including establishment as a civil servant or judge) which is not made for training purposes, women who have the same qualifications as men applying for the same post are to be given priority in sectors where they are under-represented. (2) In the case of an assignment to a position in higher pay, remuneration and salary bracket, women who have the same qualifications as men applying for the same post are to be given priority if they are under-represented...(5) There is under-representation if women do not make up at least half of the staff in the individual pay, remuneration and salary brackets in the relevant personnel group within a department].

#### *European Community Law*

- Article 2(1) of Council Directive 76/207/EEC (Equal Treatment Directive)
- Article 2(4) of Council Directive 76/207/EEC (Equal Treatment Directive) (which provides that the directive is to be without prejudice to measures taken to promote equal opportunity for men and women, in particular by removing existing inequalities which affect women's opportunities).

### **4) Legal questions referred to the ECJ**

1. Does Article 2(4) extend to statutory provisions such as those under the Bremen Law making positive discrimination obligatory?
2. If not, must Article 2(1) be taken to make it impermissible to apply statutory provisions such as those under the Bremen Law?

### **5) Decision**

The ECJ held that Article 2(4) must be read restrictively. National rules such as those in the Bremen Law which guarantee women absolute and unconditional priority for appointment or promotion go beyond promoting equal opportunities and are outside the ambit of the exception in Article 2(4).

It followed that Article 2(1) and 2(4) of the Directive preclude national rules such as the Bremen Law.