



## European network of legal experts in gender equality and non-discrimination

### NEWS REPORT

<b>Country:</b>	Belgium
<b>Title:</b>	Court decision on refusal to hire a man
<b>Date:</b>	31 August 2018
<b>Expert:</b>	Jacqmain Jean
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Direct discrimination in recruitment
<b>Ground of discrimination:</b>	Sex
<b>Source:</b>	Judgment of 4 January 2018 of the Labour Court in Leuven, <i>Algemene rol</i> n°17/456/A
<b>Field:</b>	Employment
<b>Applicable law:</b>	Federal Gender Act of 10 May 2007

### Content

**Case:** When a man applied for a position of stock manager which was vacant in a clothing store, he received the candid answer that it was a woman whom the store wished to employ. The man and the Institute for Equality of Women and Men (the gender equality body under Directive 2006/54/EC) took legal action.

**Decision of the Court:** In its judgment of 4 January 2018, the Labour Court in Leuven found that there had been direct discrimination under the Gender Act of 10 May 2007 and allowed fixed damages to the victim. However, it was not known before August that the defendant did not intend to appeal.

**Key points of analysis:** The key point of interest concerns the fixed damages which may be allowed as compensation for discrimination. Article 23 (2) of the Gender Act is inspired by the CJEU's reasoning in Case C-180/95 *Draehmpaehl* [1997-I-2195] and states that when discrimination was perpetrated in a context of employment, fixed damages are equal to 6 months' remuneration unless the employer can demonstrate that, even if there had been no gender discrimination, the difference of treatment would still have happened, in which case fixed damages are equal to 3 months' remuneration only. Thus, the Labour Court had to examine the store's various arguments aimed at demonstrating that the male candidate would not have been hired even if he had been a woman. This required a comparison with the woman who had been hired in preference, and the Labour Court found that none of those arguments was convincing as both candidates had rather similar professional profiles. Consequently, the higher amount of fixed damages was allowed.

**Internet link source:** Judgment available in Dutch at [https://igvm-iefh.belgium.be/sites/default/files/downloads/cp180823\\_jugement\\_0.pdf](https://igvm-iefh.belgium.be/sites/default/files/downloads/cp180823_jugement_0.pdf). Press release of the Gender Institute on the case in French and Dutch available at [https://igvm-iefh.belgium.be/fr/actualite/refuser\\_une\\_candidature\\_en\\_raison\\_du\\_sexe\\_est\\_de\\_la\\_discrimination](https://igvm-iefh.belgium.be/fr/actualite/refuser_une_candidature_en_raison_du_sexe_est_de_la_discrimination).