



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

### FLASH REPORT

<b>Country:</b>	Austria
<b>Title:</b>	CJEU Judgment Cresco Investigation, of 22 January 2019- Good Friday Discrimination
<b>Date:</b>	1 February 2019
<b>Expert:</b>	Dieter Schindlauer
<b><u>Context</u></b>	
<b>Issue at stake:</b>	"Good Friday" as a public paid holiday only for members of certain religious groups constitutes discrimination
<b>Ground of discrimination:</b>	Religion/belief
<b>Source:</b>	Judgment of CJEU, Nr. C-193/17, 22 January 2019
<b>Field:</b>	Employment
<b>Applicable law:</b>	Austria, Arbeitsruhegesetz (ARG, Law on Rest Periods and Public Holidays, BGBl. 144/1983)

### **Content**

The CJEU had to give a preliminary ruling on one particularity of the Austrian system of paid public holidays. Under Paragraph 7(3) of the ARG, Good Friday is a paid public holiday, entailing a 24-hour rest period for members of the Evangelical Churches of the Augsburg and Helvetic Confessions, the Old Catholic Church and the United Methodist Church. If a member of one of those churches does nevertheless work on that day, he/she is entitled to additional pay in respect of that public holiday. This bears the consequence that those who are not formally members of the churches covered by the ARG have one paid public holiday fewer than the members of one of those churches.

The case had been brought to court – ending up at the Austrian Supreme Court – by an employee who – not being a member of the religious groups listed in § 7(3) ARG – claimed the additional money (holiday pay, a 100 % supplement) from his employer for working on Good Friday.

**Decision of the Court:** The Court clearly states that the contested provision constitutes direct discrimination on grounds of religion. The Court also held that a private employer who is subject to such legislation is obliged also to grant their other employees a public holiday on Good Friday, provided that the latter have sought prior permission from that employer to be absent from work on that day, and, consequently, to recognise that those employees are entitled to public holiday pay where the employer has refused to approve such a request.

**Key points of analysis:** The judgment is not surprising regarding its basic findings. It simply puts an end to an unequal situation in employment relations, solely based on religion. It is important, though, to see the Court testing all theoretically possible justifications and clearly denying them. As the advantaged faith communities are clearly minority communities in Austria (only about 775.000 members of the Evangelical faiths, compared to the dominant Catholics – with around 5 million members), especially, the

question whether the positive measures exception of Art 7(1) of Directive 2000/78/EC was applicable was probably the only uncertainty in the case. The other decision the Court made was that the remedying solution for the time being was a positive one – stating that the free time or the extra money was to be granted to every employee who asks for it. This is a decision, taking the legal notion of “less favourable treatment” very seriously: The positive opposite decision, namely, to abolish the “extra day” for the advantaged was not chosen.

**Internet link:**

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=210073&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=11129772>

(the CJEU case).