



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

### FLASH REPORT

<b>Country:</b>	Hungary
<b>Title:</b>	Curia's decision in a case regarding the principle of equal pay for equal work; causality between sex and the suffered disadvantage
<b>Date:</b>	04 March 2019
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<b><u>Context</u></b>	
<b>Issue at stake:</b>	Curia ruled in a case on the right to equal pay for equal work that it shall be considered under the anti-discrimination legislative framework, and that the shift of the burden of proof in discrimination cases requires the respondent to prove the absence of causality between the protected characteristic and the suffered disadvantage
<b>Ground of discrimination:</b>	Sex
<b>Source:</b>	National court decision (judgment no. Mfv.I.10.371/2017) of the Curia of 18 June 2018, <sup>1</sup> adopted as decision in principle no. 24/2018 in labour law.
<b>Field:</b>	Employment; Equal pay
<b>Applicable law:</b>	Act I of 2012 (Labour Code), Article 12, Act CXXV of 2003 on equal treatment and the promotion of equal opportunities (ETA), Articles 8 and 19

### Content

**Case:** A male employee (an HR officer) filed a discrimination claim with the administrative and labour court against his employer claiming that he was discriminated based on his sex when he was hired to replace a female employee during her maternity leave, and received a lower salary than she did. The respondent (the employer) asked the court to dismiss the claim arguing that the difference in treatment was justified, and there was no causal link between the suffered disadvantage and his sex. The respondent argued that the difference in treatment was based on the condition that he did not have the same level of qualification for the position as his female comparator did.

The first instance administrative and labour court found that the employer failed to justify the difference in treatment and therefore violated the employee's right to equal treatment based on his sex, and ordered the employer to pay the difference in salary and other benefits (including interest). On appeal, the appeal court turned over the first instance judgment and found that the claimant established its claim on the violation of equal treatment based on sex, however, the respondent proved that the difference in treatment and the disadvantage suffered were not based on his sex. The appeal court also established

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<sup>1</sup> Date of communication by the Curia on the decision, see: <https://kuria-birosag.hu/hu/sajto/tajekoztato-egyenlo-banasmod-megsertese-jogkovetkezmenyei-targyaban-kuria-mi-tanacs-a-altal> (accessed on 8 February 2019). The decision is not published yet in the official Collection of Court Decisions of Hungary.

that both employees were employed for the same position, and whereas their job descriptions were not exactly the same it was not proven during the procedure that the claimant had more tasks or had worked more than his comparator. The appeal court also established that the respondent justified the difference in the wages based on both the years served at the company and the work experience of the female employee.

**Decision of the Court:** The claimant submitted a request for judicial review with the Curia (supreme court of Hungary). The Curia dismissed the request. It found that, according to the relevant legal provisions, the claimant had to substantiate that he 'possessed the protected characteristic' (i.e. that he was male) and suffered a disadvantage. The Curia held that the claimant did not have either to prove or to allege that there had been a causality link between the protected characteristic and the disadvantage. Based on the shift of the burden of proof, it is for the respondent to justify that no causality link can be established between the protected characteristic and the lower pay, or that he/she was exempted to observe the requirement of equal treatment. In this case, the respondent had proven that the difference in wage was based on the lengthier term served and work experience which consequently resulted in better performance of the female employee. Therefore the principle of equal pay for equal work was not violated.

**Key points of analysis:** The Curia ruled that the right to equal pay for equal work shall be considered under the anti-discrimination framework. It is for the employee to substantiate that he 'possesses the protected characteristic' (in this case, that he is male) and that the employer treated him less favourably based on this protected characteristic by paying him a lower wage compared to another employee in a comparable situation. Thereafter, based on the principle of the shift of the burden of proof it is for the employer to justify that there was no causality link between the difference in treatment and the protected characteristic. The amount of years served and consequently more experience may result in better performance and therefore may serve as a legal justification for difference in wage.

**Internet link source:** <https://kuria-birosag.hu/hu/elvhat/242018-szamu-munkaugyi-elvi-hatarozat> (accessed on 8 February 2019)