

JOGI FÓRUM PUBLIKÁCIÓ

Gender Equality in Workplace with Special Regard to Pay Gap

(szakdolgozat)

Szerző:

dr. Mészáros Katalin

Témavezető:

Dr. Gyulavári Tamás egyetemi tanár

Budapest, 2017

Foreword

The aim of the present thesis is to study what kind of effect the gender equality has on men and women in the labour market. I also would like to highlight that the discrimination based on sex is linked to gender pay gap. Below I am going to review the primary sources of the gender equality law of the European Union regarding the pay, then I am going to examine the definition of pay through the case law of the Court of Justice of the European Union. I am going to highlight particularly the cases in connection with pension scheme, pregnant worker, maternity leave and part-time work.

On determining the concept of worker the Court has taken the free movement of worker into consideration and made it the base for the definition. Thus, it can be seen that, in the practise of the principle of equal treatment, the court also relies heavily on the interpretation of the terms of Article 45 of the Treaty.

Related to this I am going to analyse the cases in which the Court stated what it means to work with equal value. What is the court's view of the hypothetical worker? How are the higher value jobs, the personal characters, the different collective agreements, seniority statuses evaluated.

I am also going to also examine the caselaw in respect of which discrimination is permitted by the Court. In addition, I am looking for the answer under which conditions are possible. In brief, I present the evolution of the burden of proof in relation to indirect discrimination.

Finally, I am going to discuss the transposition of Equal Pay Principle of the European Union into the Hungarian legal system in details. I am going to take the transposition of the provisions of the Recast Directive with particular regard to the conceptual elements discussed in the previous chapter into consideration, the definition of pay and with the meaning of equal work and work with equal value. Beyond the legislature, I am going to look at the practice of the Equal Treatment Authority and the national courts and compare the decisions to the case law of the Court of Justice of the European Union.

After examining the causes of the pay gap the current situation I am going to ultimately highlights possible solutions to reduce the pay gap.

1. INTRODUCTION

What does gender pay gap mean? Firstly looking at the statistical data, the employment rate of women was 64,3 % and it was 75,9 % in case of men in 2015. The gender gap is 11,6 %. According to the statistics we can see that the situation has not changed for eleven years. (Table 1.)

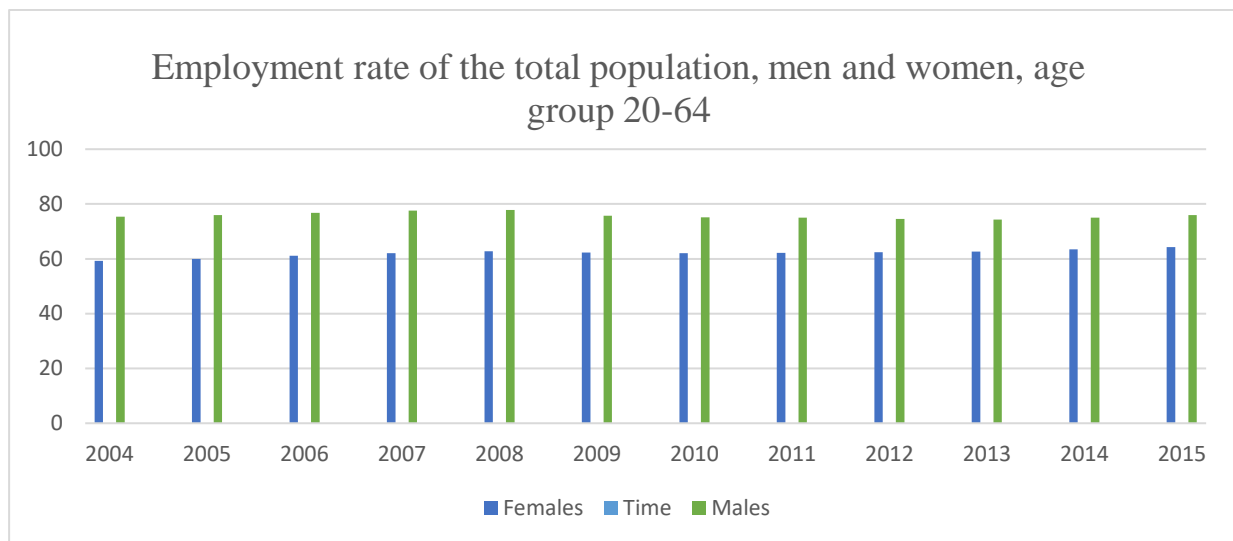


Table 1. Source: Eurostat: Employment rate of the total population, men and women, age group 20-64.

Furthermore it is clear that the women earn less than men in the European Union. The average gender pay gap of the European Union was 16,4 % in 2015.¹ (Table 2) In recent times the principle of equal pay has remained unfulfilled in practice. The pay gap between male and female worker remained wide.

¹Eurostat: <http://ec.europa.eu/eurostat/data/database>

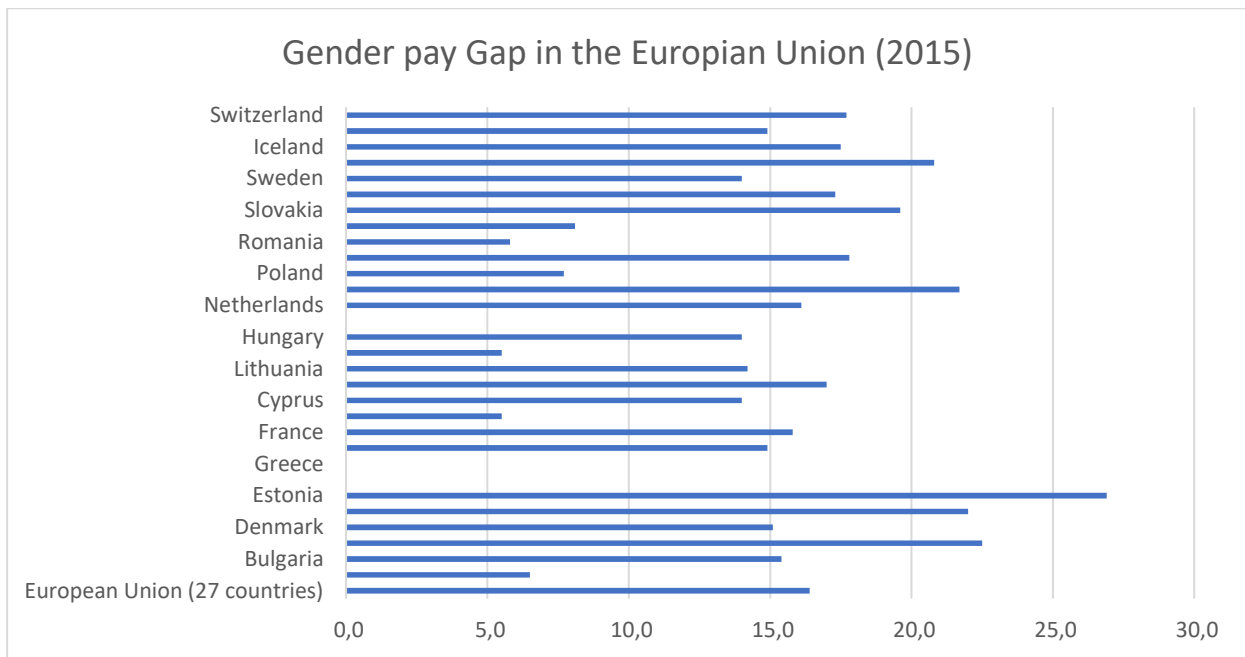
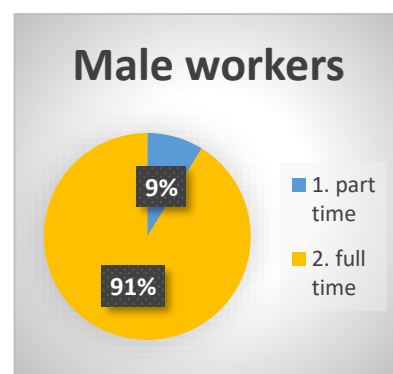
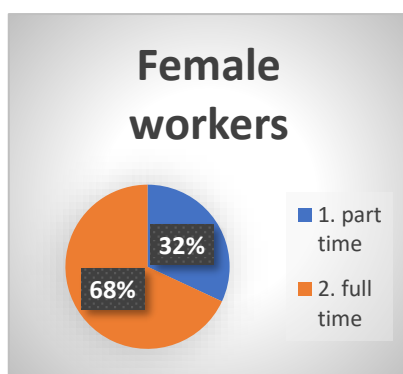


Table 2. Source: Eurostat: Gender pay gap in unadjusted form by NACE Rev. 2 activity - structure of earnings survey methodology

The causes of gender pay gap has several reasons. The women and men work in different jobs in different sectors. Furthermore the women bear the burden of the family life and they work part-time to balance work and private life. And as a result, they can receive less salary.² We can see that in 2016 31,9 % of women aged 20-64 and 8,9 % of men were employed on part-time basis in the 28 EU countries.³



Source: Eurostat, Part-time employment as percentage of the total employment, by sex

²Etta Olgiati and Dr. Gillian Shapiro: Promoting gender equality in the workplace Luxembourg, Office for Official Publications of the European Communities, 2002. page: 6.

³<http://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>

The principle of equality is a fundamental right of the Community Law. Gender equality is enshrined in the Treaty of the European Union, in the Treaty of the Functioning of the European Union and in the Charter of Fundamental Rights of the European Union. With the entry of the Lisbon Treaty the Charter has the same binding force as the Treaties⁴.

The definition of the Treaty Article is based on the Article 2(1) of International Labour Organization (ILO) Convention. The Article pronounces that “Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men workers for work of equal value.”⁵

Beside the primary legislation, the secondary legislation regulates Gender Equality Law of the European Union in details. The objective of the directives is to protect women and mothers, to accomplish better reconciliation of professional and family life and to facilitate female participation in the labour market.

2. SOURCES OF THE EQUAL PAY PRINCIPLE IN THE EUROPEAN UNION

2.1. Primary Sources

Initially Article 141 of the Treaty of Rome (now Article 157 TFEU) contains equality provision which enshrined the principle of equal pay between men and women for the same work.

The provision of the Treaty ensured the proper function of the Common Market for the first time. The Article was not elaborated in details and the Treaty allowed Commission and the Court of Justice of the European Union to play an active role in the promotion of equality between men and women in the field of employment.

The enforceability of the equal pay principle was laid down in the Defrenne cases. The Court ruled that the provision of the Treaty had direct horizontal and vertical effect. It means that an individual

⁴Susanne Burri and Sacha Prechal: EU Gender Equality Law, Luxembourg Publication Office 2014. page 2.

⁵ ILO: C100 - Equal Remuneration Convention, 1951 (No. 100) Art.: 2(1).

can rely upon the article of the Treaty before the national court even if the national legislation came into conflict with community law. ⁶

The Amsterdam Treaty targeted the Member States and the Community to promote equality between men and women. The amendment expanded the equal pay principle. The Article 157 (3) in TFEU says that the Council shall adopt measures to ensure the application of the principle of equal opportunities and equal treatment of male and female workers and the inclusion of the principle of equal pay for equal work or work of equal value.⁷

The Lisbon Treaty mentioned the equality as a common value and this principle is stated in Article 2 of the Treaty on the European Union (TEU). Furthermore the Article 3(3) in TEU respects the principle of non-discrimination and equality between women and men.⁸

Article 8 of the Treaty on the Functioning of the European Union pronounces that the activities of the Union should aim to eliminate inequality and it promotes the equality between women and men. In accordance with the provision the Community combats against any form of discrimination. Since the Lisbon Treaty the European Union has competence to adopt appropriate action in discrimination issues.

The Lisbon Treaty has become the Charter of Fundamental Rights of the European Union a binding force.

The document was adopted on 12 December 2007. Furthermore the Charter is primary source of the European Union law. It contains the catalogue in six titles, they are Dignity, Freedoms, Equality, Solidarity, Citizens Rights, Justice.⁹ The Charter of Fundamental Rights of the European Union includes the general principle of equality meaning “equality before the law”.¹⁰

⁶ Gwyneth Pitt: Cases and Materials on Employment Law Harlow, Pearson-Lingman 2008. Third edition page: 282-283.

⁷ The Treaty on the Funkctioning of the European Union Art. 157 (3).

⁸ The Treaty on European Union Art. 2 and 3(3).

⁹Etta Olgiati and Gillian Shapiro op. cit. page: 13.

¹⁰ Charter of Fundamental Rights of the European Union Art. 20.

The Charter mentions the non-discrimination and the “equality between men and women”¹¹ in all areas including the equal pay, family protection and it recognises the possibility of positive action for its promotion. The Charter prohibits any discrimination on grounds of sex and requires the right to equal treatment of men and women in all aspect.

In Åkerberg Fransson’s case the Court of Justice of the European Union stated that the applicability of EU law covers applicability of Charter of Fundamental Rights. The Court referred to Article 51(1) of the Charter, which determines its applicability. Charter is applied in case of such situations that fall within the scope of EU law.¹²

Currently Article 157 TFEU requires that “(1) Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.

(2) For the purpose of this Article, ‘pay’ s the ordinary basic or minimum wage or salary and any *other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer.*

Equal pay without discrimination based on sex means: (a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement; (b) that pay for work at time rates shall be the same for the same job.”¹³

Who is a worker under the Treaty Article? The Court stated the definition of the worker in its judgement. Worker is a person who performs services for and under the direction of another person for remuneration. ¹⁴

What does ‘pay’ mean? The ‘pay’ is defined by Treaty Article very broadly. According to Treaty Article the ‘pay’ means the ordinary basic minimum wage or salary and any other consideration including the allowances in cash or in any kind, which the worker receives in employment.¹⁵ The CJEU extended the definition of the pay in case law. It stated in its judgements that pay involves for example the

¹¹ Charter Art. 21.

¹²C-617/10 Åklagaren v. Hans Åkerberg Fransson, judgement of 26 February 2013.

¹³ TFEU: 157 (1) (2).

¹⁴ C-66/85 Deborah Lawrie-Blum v Land Baden- Württemberg, judgement of 3 July 1986. at para 17.

¹⁵ TFEU Art. 157 (2).

overtime supplements, the special bonuses paid by the employer, travel facilities, compensation for attending training courses and training facilities, severance payments in case of dismissal and occupational pensions.¹⁶ I am going to explain the definition of the pay in light of the case law of the Court in accordance with the related appropriate chapter.

2.2. Secondary Sources

After the brief summary of the provisions of the Treaties I would like to prepare an overview of the legislation adopted by the European Union in connection with the principle of equal pay.

The first part of the Equal Pay Directive contains the principle of equal pay for men and women. The principle of equal pay is applied for equal work and work which has equal value. Moreover the directive states that “direct and indirect discrimination regard to all aspects and conditions of remuneration shall be eliminated”¹⁷

However the Equal Pay Directive has now been repealed by the Gender Equality in the Labour Market Directive¹⁸. The so-called Recast Directive aims to prohibit gender discrimination in employment and it ensures the principle of equal opportunities and equal treatment for male and female workers. The directive pronounces that the equality must be fulfilled in the area of social protection, women and men are treated equally under occupational social security schemes.

The directive incorporates certain principles from case law. The preamble notes say that the principle of equal pay is not limited to situations in which a man and a woman works for the same employer.

The general provisions of the directive include definitions of direct and indirect discrimination, harassment and sexual harassment, pay and occupational social security schemes.

The Article 4(1) makes it clear that the concepts of direct and indirect discrimination is applicable to equal pay issue.¹⁹ The Article state that “*For the same work or for work to which equal value is*

¹⁶ Susanne Burri op.cit. page 6.

¹⁷75/117 Directive Article 4.

¹⁸Directive 2006/54 of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).

¹⁹Evelyn Ellis op. cit. page: 258.

attributed, direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration shall be eliminated. In particular, where a job classification system is used for determining pay, it shall be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex.”

The equal pay principle of the directive aims to eliminate the direct and indirect discrimination.

In accordance with the provision of the directive the Member States must take steps to ensure the principle of equal pay. They must guarantee legal redress, must abolish any pay discrimination issue from laws, regulations or administrative provisions, laws, regulations or administrative provisions - may be amended or declared null and avoid the terms that are contrary to equal pay principle in collective agreements, wage scales, wage agreements, or individual contracts. The directive orders the Member States to protect employees from dismissal based on their right for equal pay.

Article 12 of the Recast Directive enshrines how the principle of equal pay has to be applied in the calculation of benefits under such schemes. It incorporates the Court of Justice in Barber decision. However in this case the court limited the reference to the directive.

The directive furthermore imposes obligations on Member States to establish adequate judicial procedures for the enforcement of obligation. The directive requires the Member States to ensure that the victims of the discrimination receive ‘real and effective’ compensation.

In accordance with the burden of proof the directive states that the claimant has to prove that he is discriminated. In case the claimant does not prove that, he fails the case. He must prove the grievance first. If his reference is proven, the burden of proof reverses and it falls upon the respondent to prove that no breach of that principle has been committed.

3. EQUAL PAY PRINCIPLE

3.1. Definition of Pay in Article 157

As I have mentioned above the definition of pay is incorporated in Article 157 of TFEU. This regulation is the starting point to the case law which the CJEU has developed in its judgements.

In the following I am going to group the case laws concerning the equal pay principle in connection with the direct effect of Article 119, occupational pensions schemes, the nature of maternity leave and part-time working. I would like to illustrate the development of the practice with regards to equal pay of the Court of Justice of the European Union by the interpretation of the cases.

In the first Defrenne case the claimant was employed as a steward. The company required her to retire at the age of 40. The special scheme was established for the air crews. This scheme was more favourable than the general pension scheme because it was payable at the age of 55 and women who were covered by general scheme were not entitled to pension until the age of 60.

The national court took the case to the CJEU and asked if the pension is involved in the meaning of Article 157. In this case we talk about pension financed by workers and employees.

The Court set out that the general and the special pension schemes are excluded from the field of Article 157. The court ruled that the nature of social security benefits are not alien to the concept of pay. The worker is entitled to the benefits if he fulfills the legal conditions. The employee does not receive direct or indirect payment from the employers.²⁰

The heads of state and government attempted to declare some measures in social field, because it was important for the economic priorities and to deepen the integration.

In this aspect the second Defrenne case means the most important milestone in the case law of the CJEU. The Court interpreted the definition of work and work with equal value. It ruled that any measurements based on discrimination directly or indirectly are prohibited. Furthermore the equal pay principle could be applied in cases where the work is comparable between a woman and a man. In the above-mentioned case the Treaty Article was directly effective because the claimant did exactly the same job as her male colleague and she was paid lower than he.²¹

²⁰ Evelyn Ellis and Philippa Watson op. cit. page: 188-190.

²¹ Luis Miguel Poiaras Pessoa Maduro, Loïc Azoulai: The Past and Future of EU Law: The Classics of EU Law Revisited on the 50th Anniversary of the Rome Treaty Oxford Bloomsbury Publishing, 2010. page: 274-284.

The Court developed the principle of direct effect for the Treaty provisions and ruled that Article 119 EC has horizontal (against private party) and vertical (against the state) direct effect. Article 119 is directly effective in cases concerning both direct discrimination and indirect discrimination.

On one hand the wider interpretation of the Treaty Article by the Court has economic function and, on the other hand it contains social function. The economic function is to eliminate the distortion of competition and the social function is that the member states fulfill the aim of Article 117 EC and the Preamble to the Treaty of Rome.

Furthermore the direct effect of the Treaty Article promotes the enforcement of the equal treatment and non-discrimination at the domestic level.²²

After the review of the direct effect I would like to highlight cases in which the Court of Justice of the European Union extended the meaning of pay. I am going to choose cases regarding occupational pension schemes because the practice of the Court of Justice of the European Union is ambivalent. We can see that in the first Defrenne case the Court elaborated that the definition of pay in Article 119 did involve the benefits under national pension schemes. However the fact in Worringham case was that a bank established two special pension schemes for its employees, one for men and another one for women. The male employees had to pay 5 per cent of their salary to the pension schemes and the age of the staff was irrelevant. The female employees had to paid 5 per cent nevertheless they did not have to pay the contribution under the age of 25. As a compensation the employer paid supplementary contributions to their salaries.²³

The Court in this case laid down that the pension contribution paid by the employee meant a kind of pay. The female and male employees over the age of 25 were paid gross salaries that were 5 % higher than that of the female employees who were under the age of 25. Approximately the net salary of male and female employees was equal. Nevertheless female staff suffered from some disadvantages

²² Erika M. Szyszczak: EC Labour Law London Pearson Education Limited 2000. page: 77-107.

²³ C.A. Crisham: The equal pay principle: Some recent decisions of the European Court of Justice C. M. L. Rev. 1981. page: 601-612.

because certain payments were linked to the gross salaries. As a consequence women who were under that age were treated less favourable than the male employee.²⁴

In the above-mentioned case the key question was if an employer paid supplementary contribution based on the gross salary to the pension fund then this payment should be considered as pay. The Court ruled that the addition of the gross salary which is paid by an employer and which supports to determine the sum of that salary is “pay”.²⁵

Consequently the Court interpreted the definition of pay broadly. The case law does not consider only direct payments but also indirect payments as pay.

In Barber case the claimant, Mr Barber was a member of his employer’s pension fund. This scheme ensures benefits to the employee in case of dismissal. In accordance with the company’s terms men aged 55 and women aged 50 were entitled to immediate pension.

The claimant was 52 years old when he was made redundant. Consequently he received only cash benefit and he was not entitled to redundancy benefit. Nevertheless a woman who was 52 years old and who was made redundant could receive cash support and immediate pension.

Mr. Barber complained that he was discriminated and the employee contract term was against the equal treatment. The national court referred the case to the Court of Justice of the European Union. The question was whether the redundancy benefit belongs to Article 119 of the Treaty.²⁶

The Court ruled that the payment of the benefit based on the contract of employment, on statutory or on voluntary basis it fell within the scope of pay under Article 119. Furthermore the Court held that the pension paid by the national social security scheme or received under contracted-out scheme belongs to the definition of pay because it was paid in accordance with the employment.

²⁴Lorna Woods and Philippa Watson: EU Law Oxford Oxford University Press 2012. Eleventh edition page: 613-615.

²⁵Richard Plender: Equal Pay for Men and Women: Two Recent Decisions of the European Court The American Journal of Comparative Law, Vol. 30. No. 4. 1982. Oxford University Press, Page: 627-653.

²⁶Gwyneth Pitt: Cases and Materials on Employment Law Harlow, Pearson-Lingman 2008. Third edition page: 334-338.

In summary the court stated that the redundancy benefit paid to the worker in relation to the latter's compulsory redundancy payment belongs to field of Article 157 of the Treaty. The case when a woman is entitled to a redundancy benefit and a man of the same age is not must be considered as unequal pay within the Article 119 of the Treaty. It should be identified by the national court.²⁷

The Court set out in many decisions that occupational pensions fall under the definition of pay of Article 157. Because it is paid directly or indirectly by the employer in line with the employment. It is calculated on the basis of the employee's gross salary.

The third group of my classification is the maternity leave. I would like examine the nature of definition of pay in connection with maternity pay within the case law.

In case Gillespie the plaintiffs went on maternity leave. During this period they received full weekly pay for the first four weeks, nine-tenths of full weekly pay for two weeks thereafter and one-half of full weekly pay for 12 week under a collective agreement. These benefits were more advantageous than the general welfares. In November 1988 the employer changed the pay system and the plaintiff did not receive the increase because the measure was backdated and they were on maternity leave during this period. The plaintiffs argued that they suffered from discrimination because they had not received enhanced cash benefit during the period of maternity leave. The Court referred to Garland and Barber judgement that the legal nature of the pay the employees receive from the employer directly or indirectly-related to the employment is irrelevant. In recent case the employee is entitled to the increase under the collective agreement and it supposes employment relationship. The income remunerated during maternity leave must be the same as the wage of an active worker. The employee is entitled to pay rise during maternity leave because she is related to the employer by a contract.²⁸

In the Gassmayr case the plaintiff was a junior hospital doctor and she was entitled to on-call duty for extra hours. First she stopped working due to her pregnancy and later what with her maternity leave. She argued that she was entitled to on-call duty even during the prohibition of work. The

²⁷John Tillotson, Nigel Foster: Text, Cases and Materials on European Union Law London Cavendish Publishing Limited 2013. Fourth edition page: 668-670.

²⁸Case C-342/93, Joan Gillespie and Others and Northern Health and Social Services Board, Department of Health and Social Services, Eastern Health and Social Services Board, Southern Health and Social Services Board, judgement of 13 February 1996.

defendant rejected her request because the on-call duty is a compensation of extra work and it does not belong to general salary. Therefore the Court examined the nature of on-call duty and right to on-call duty during prohibition of work. It ruled that the on-call duty was paid in employment relationship by the employment. Hence the allowance fall within the Article 141 of the Treaty. However the employer should take the normal worker's monthly salary and the pay elements or supplements into account related to her occupational status on establishing the payment of a pregnant worker or of an employee exempted from work. So the national provision is that "a pregnant worker temporarily granted leave from work on account of her pregnancy is entitled to pay equivalent to the average earnings she received during a reference period prior to the beginning of her pregnancy with the exception of the on-call duty allowance"²⁹ it does not oppose to the community law.³⁰

In the Parviainen case the plaintiff was a pregnant worker as in previous case but she had worked until her maternity leave began. She worked as an air hostess and she was transferred to "office work" what with her pregnancy.

The salary of the plaintiff in the new job was lower and she claimed the same pay in the transferred job as air staff. The main question for the Court was whether the worker who is transferred due to her pregnancy must receive the same pay she was entitled to before the transfer in the new post. Worthy of note that about 40% of the salary of an air hostess consisted of supplementary allowances. The Court confirmed in its judgement that the consideration paid by the employer with regards to employment to the employee during her maternity leave means pay in accordance with the Treaty Article. Furthermore the Court made it clear that a pregnant worker's right to the pay is not comparable to that of worker going maternity leave.

So in recent case we must focus on the shifting due to pregnancy and the reduced salary. The Court ruled that some of the supplementary allowances earned as air hostess depended on special conditions and these special circumstances did not exist in the new post. The plaintiff worked in an office because working in air is very harmful for the baby.

²⁹ C-194/08 para 76.

³⁰ C-194/08 Susanne Gassmayr v. Bundesminister für Wissenschaft und Forschung, judgement of 1 July 2010.

Therefore in this case the pregnant worker was temporarily transferred to a new position on grounds of her pregnancy she is entitled to basic pay and supplementary allowance that is connected to her professional status such as her seniority status, length of service and her professional qualification.³¹ In accordance with the community law the national legislation must ensure the adequate allowance. Accordingly the Court adopted objective viewpoint which is based on the professional status and the circumstances of the post in this case. Consequently the wage of the transferred pregnant worker can increase and decrease too.

The last group of my classification does not relate narrowly to the definition of pay but to definition of equal pay nevertheless the significance of these cases are very important. Because the part-time work constitutes one of the reasons of the gender pay gap.

So Jenkins case is related to equal pay principle in field of part-time work. The fact was that the company paid lower salary to its part-time workers than to the full-time workers. The company employed 89 full-time workers, out of whom 35 were men. The plaintiff was one of the six part-time workers out of whom 5 were females.³² The respondent company argued that the differences among wages aimed to eliminate a practice in which employees regularly stayed away from work and it encouraged productivity. The variance was based on “material difference” which was different from gender inequality.³³

The Court ruled that the difference in rates between full-time workers and part-time workers is prohibited by Article 119. Nevertheless it established the exception to the equal pay principle. The Court elaborated the meaning of “material difference”. So the difference between wages based on objectively justification and it had nothing to do with discrimination based on sex. The Court support the argument of the employer and it permitted exception on economic grounds and if the aim is to encourage full-time work. ³⁴

³¹ C-471/08 Sanna Maria Parviainen v. Finnair Oyj, judgement of 1 July 2010.

³²Richard Plender: Equal Pay for Men and Women: Two Recent Decisions of the European Court The American Journal of Comparative Law, Vol. 30. No. 4. 1982. page: 632.

³³ David Freestone: Equal Pay in the European Court The Modern Law Review, Vol. 45, No. 1 1982 page: 81-87.

³⁴ Richard Plender op. cit page: 635.

In another case Bilka's the part-time workers could participate on supplementary occupational pension schemes if they worked full-time work at least 15 years out of the total period of 20 years. 90 % of the part-time workers were women at the company. In practice the company excluded the part-time workers from occupational pension schemes benefits. The defendant argued that the full-time workers involved lower costs for the company so the differentiation is based on economical justification.³⁵

Firstly the CJEU held that an occupational pension scheme which based on an agreement between the parties and which was included in the labour contract is not financed by the national legislation and therefore it is excluded from the social benefits.

As a consequence the occupational pension scheme paid by the employer belong to the scope of Article 119. Secondly the different conditions for part-time workers are contrary to Article 119 unless the company can provide objective justification. The Court elaborated a stricter test than in Jenkins's case. The "Bilka test" specified three conditions. The objective factor does not have to be related to forbidden discriminatory measures, secondly the employer must have a genuine need and finally the tools must be appropriate and necessary to reach the purpose.³⁶

In both cases Jenkins and Bilka the Court avoided to providing an exact definition of the indirect discrimination. Instead it described the situation which can cause an indirect sex discrimination and it elaborated the above mentioned 'Bilka test' and it stated that the national court has the right to decide whether the act of indirect discrimination has been realized.

3.2. *Who is a Worker?*

The concept of worker is not defined explicitly in Treaty Article 157 therefore the Court of Justice of the European Union refers to the case law concerning Article 45 of the TFEU.

The case Lawrie- Blume means milestone in the elaboration of the term of worker. In accordance with the guideline the Court shall determine a person as a worker if the person is obliged to work for

³⁵ C-170/84 Bilka - Kaufhaus GmbH v Karin Weber von Hartz, judgement of 13 May 1986.

³⁶Christa Tobler: Indirect Discrimination: A Case Study Into the Development of the Legal Concept of Indirect Discrimination Under EC Law Oxford Intersentia 2005. page: 193-196.

another person, the work is done for financial consideration or payment in kind and the work is performed under the direction and control of another person.³⁷

In Allonby case the plaintiff was a part-time employee at a college. The employer had to reduce its financial costs and it had to retain its employees. Consequently the employer re-engaged the plaintiff through an agency, hence she had contractual relationship with the agency. The employee did the same job as before nevertheless she received less favourable benefit as a man who was employed directly by the college. ³⁸

Therefore the question in this situation was whether the equal pay principle prevailed. If the plaintiff did equal work or work with equal value whether she had been entitled to the same remuneration as man employed by the college.³⁹

The Court ruled that if the employee has a contract with an intermediary undertaking and he provides same services for the previous company then he is not entitled to equal pay as the employee who has employment relationship with the previous enterprise. The undertakings don't have associations and the employees receive their salaries from different sources.⁴⁰

The Court of Justice of the European Union referred to Lawrie-Blume case and it confirmed the definition of the worker in above-mentioned case. Furthermore the Court ruled that the concept of worker can not be interpreted restrictively.⁴¹ The judgement elaborated the term of employer beside the determination of the definition of worker.

In Danosa case the company appointed the plaintiff as sole member of LKB's Board of Directors. The parties did not sign an employment contract because the employer preferred agency contract. When

³⁷ C-66/85 Deborah Lawrie-Blum vs Land Baden-Württemberg judgement of 3 July 1986 para 12.

³⁸ C-256/01 Debra Allonby vs Accrington & Rossendale College, Education Lecturing Services, trading as Protocol Professional, formerly Education Lecturing Services, Secretary of State for Education and Employment judgement of 13 January 2004 para 16-17.

³⁹ Case Allonby para 41.

⁴⁰ Case Allonby para 46.

⁴¹ Case Allonby para 66-67.

the general meeting of shareholders exempted Mrs. Danosa from her positions, she was pregnant. The plaintiff brought the case to national court and she argued that her dismissal was unlawful.⁴²

The Court examined the question in the case whether the plaintiff was an employee of the undertaking. The parties did not have employment contract hence the court had to analyse the nature of the relationship.

The Court referred to Lawrie-Blum criteria and ruled that the plaintiff provided services regularly to company and she received remuneration. The contestant had different opinion with regards to subordination of the relationship⁴³

In recent case Mrs. Danosa was appointed to direct and represent the enterprise. She was not independent, she had to report to supervisory board and had to cooperate with that board. Finally she was dismissed by a board which was not controlled by her.

The Court stated that the person who is a member of a capital company's Board of Directors, provides services to that company and is an integral part of the undertaking can belong to the concept of worker, if that activity is done for determined period of time, under the direction or control of another body of that enterprise and the person receives remuneration. ⁴⁴

The Court of Justice of the European Union has a broad interpretation of the concept of employee, this approach is in line with the purpose of the Treaty and allows the widest possible enforcement of equal treatment.

3.3. *Work with Equal Value*

The Treaty Article contains the concept of work with equal value. It pronounces that *"Equal pay without discrimination based on sex means: (a) that pay for the same work at piece rates shall be*

⁴² C-232/09 Dita Danosa vs LKB Līzings SIA judgement of 11 November 2011 para 20-24.

⁴³ Case Danosa para 39.

⁴⁴ Case Danosa.

calculated on the basis of the same unit of measurement (b) that pay for work at time rates shall be the same for the same job.”⁴⁵

The secondary legislation does not include the definition of work with equal value in details. Hence the Court of Justice of the European Union elaborated the term.

The equal pay principle means that the same situation must be handled similarly. In the following I would like to present which situation are the same at a workplace through the case law of the Court of Justice of the European Union. One of the best examples of equal work is provided by the Defrenne judgments where the stewards and stewardesses did exactly the same job - irrespective of the title of their jobs - but women and men had different wages and thus the women are discriminated against men.

Hereunder I would like to point out what the opinion of the Court is of a hypothetical worker, how to evaluate a higher value job, the personal character, the different collective agreement, seniority status and the objective justification.

Finally I would like to mention the concept of burden of proof briefly and a little bit of criticism about the Court's position.

In Macharty's case the defendant was paid less than the former employee in same position. She argued that she was entitled to equal pay as the man who was employed four months before.

The ground of the comparison was a previous employee of the opposite of sex so the employees were not doing contemporaneous work for their employer.

The Court highlighted the elimination of all sex discrimination in relation to equal pay principle. The temporal or spatial limits are not defined in primary or secondary sources of the community law. The comparison with a hypothetical worker does not fall within the scope of the Treaty Article 119.⁴⁶

⁴⁵ TFEU Art. 157 2. (a) (b).

⁴⁶ C.A. Christman op. cit. page: 602-602.

Consequently, the comparator must be actual and must belong to the opposite sex, furthermore he must be employed at the same establishment or services.

We can see the reverse aspect of the equal pay principle in Murphy's judgement. In the above-mentioned case the plaintiff was employed by a telecommunications factory. She was engaged in work of higher value than the male employee and she received lower remuneration than her colleague belonging to other sex.⁴⁷

In current judgement the employee performed unequal value and the community law contains work with equal value. The narrow interpretation of the Treaty Article would be contrary to the purpose of the Treaty and the Court ruled that the person who is engaged in work of higher value shall receive the remuneration which is at least the same as that of the employee who performs work of lower value.⁴⁸

In Rummler case the employer applied seven wage groups which were based on the degree of knowledge, concentration, muscular demand or effort and responsibility. The plaintiff argue that she was not classified in appropriate wage group because she packed parcels which were more than 20 kilograms and this job meant heavy physical work for her.

The defendant referred to the nature of work and in his opinion she did not satisfy the criteria of another group. ⁴⁹

The Court did not interpret the fact so stiffly when it stated that the job classification system which is based on muscular effort did not violate the equal pay principle. Nevertheless the remuneration is received for work by a man must be equal the one that is obtained by a woman for equal work. The job classification system must be based on objective criteria and must be transparent. ⁵⁰

⁴⁷ C-157/86 Mary Murphy and Others vs Bord Telecom Eireann judgement of 4 February 1988 para 3

⁴⁸ Case Murphy para 9-10.

⁴⁹ C-237/85 Gisela Rummler vs Dato-Druck GmbH judgement of 1 July 1986 para 3-5.

⁵⁰ Case Rummler para 15 and 25.

The fact is obvious men have greater aptitude to certain physical work than the women, because the men have more muscular strength than the women. Hence the individual component is relevant in the context of the type of work. The Court applied the term of objective justification elaborated in Bilka case and ruled that in this case the difference was necessary, the system was appropriate to the effort required by the job and the difference was linked to a real need of the company. 51

In Lawrence case the employee carried out cleaning and catering services but they were employed by different undertakings in schools under the control of the Council. The plaintiffs brought an action against the Council for equal pay violation. The Court expanded the application of the Article 141. The Treaty provision is applicable in cases in which the discrimination come from legislative provisions or collective labour agreements.52

Therefore the Court ruled that the Treaty Article does not apply only to cases where women and men in a comparable situation are employed by same employer. In that case if employees of equal work are employed by different employers and the pay inequality come from a “single source” the situation falls within the scope of Article 141 of the Treaty.53

In Danfoss case the defendant paid same wage in same wage group, but individual pay supplements were paid with regards to mobility, training and seniority. Employees' Union brought equal pay claims before the national court because men's average wages were higher than the pay of the two female employees.54

The employer will evaluate high quality work through the experience gained during the service period - indirectly the length of service - in the form of a reward. The Court elaborated in its former judgement that the employer who applied pay system based on length of service does not need to justify discrimination on the grounds of objective reasons.55

⁵¹ Christa Tobler: op.cit. page 236-239.

⁵² C-320/00 17 A.G. Lawrence and Others vs Regent Office Care Ltd, Commercial Catering Group, Mitie Secure Services Ltd, judgement of September 2002 para 17.

⁵³ Case Lawrence para 19.

⁵⁴ C-109/88 Handels- og Kontorfunktionærernes Forbund i Danmark vs Dansk Arbejdsgiverforening judgement of 17 Oktober 1989 para 3-4.

⁵⁵ Case Danfoss para 22.

However it is important that the pay system that is applied by the undertaking must comply with the principle of transparency. However if the system of pay totally lacks transparency and is based on contested criteria the employer must prove that his practice is not discriminatory.⁵⁶

Consequently determining work of equal value can be seen from case law of Court of Justice of the European Union. The concept is applicable to workers who are employed in a comparable position. It is always the tasks actually carried out that should be taken into account as the job description and the tasks actually performed do not necessarily correspond to the full extent. When determining equal work, the nature of the work and the content of the job, individual performance is the decisive factor.
57

We can see that the Court allows the employer to justify an objective justification for discrimination. Thus, on the basis of the length of service or certain personal factors, it is permissible to distinguish without disturbing the principle of equal pay.

I agree with the position of the court in Rummler's case that men have greater aptitude for certain physical work and the individual component is relevant in the context of the type of work.

According to the critics of the objective justification the Court did not elaborate detailed guidance. The conflict maybe linked to the opposition between the social politics of the European Union and market forces.

The employer's pay system remunerates the length of service because the employee who spends a lot of time at work becomes more experienced. But critics argue that the women have shorter period of service than men. As they are on parental leave with their children and they can only work part-time due to the family's needs. The remuneration of the length of service is a possibility for the employer without justification.⁵⁸

⁵⁶ Case Danfoss para 11.

⁵⁷C-129/79. sz. Macarthys Ltd v. Wendy Smith judgement of 27 March 1980.

⁵⁸A.C.L. Davies op. cit. page 122-124.

Despite the mature regulations and the detailed interpretation of the Court, we can see the fact from the statistics that the pay gap has not been reduced. Undertakings should perhaps be encouraged by other means to favour long-term labour market and economic goals, so that women's workforce is better valued.

Indeed, if women's financial appreciation is stronger in the labour market, later the public social system would be less burdened, so reducing the wage gap is not only an individual but also a national economic interest.

The equal pay claims are based on the fact that the applicant performs a similar work for less money than a colleague of the opposite sex. The burden of proof shifts if certain conditions are met. The case law was integrated in the legislation, thus Article 19(1) of the Recast Directive states Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.⁵⁹

In Bilka case which is detailed above the Court stated that exclusion of "much lower proportion" of female part-time worker from occupational pension schemes is contrary to community law.

Thus the plaintiff is required to prove that considerably more women than men suffer from unequal treatments which are based on formally neutral regulations of an employer. She is obliged to present material, so called statistical evidence. Only the statistical material can establish the presumption of indirect discrimination.

The Court of Justice of the European Union highlighted the statistics can establish an irrebuttable presumption of indirect discrimination. Therefore the employer must justify the result of the pay practice or measures. 60

⁵⁹ Directive 2006/54 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).

⁶⁰ Paul Epstein: Burden of proof in sex discrimination cases ERA Conference 12 October 2015 Sofia page 13-16.

In Enderby case the claimant was employed as a speech therapist by the health authority. She complained of sex discrimination on the grounds that she was paid lower than her comparators a clinical psychologist and a pharmacist. She presented statistical data which showed that 98 % of the employee who was discriminated were women. The employer argued that the difference in pay resulted from different collective bargaining processes. The Court found that the measure of the employer violates the equal treatment if the two jobs are of equal value, the women worker are paid lower than the men and the statistics are valid. ⁶¹

An other aspect of the indirect sex discrimination appear in the above-mentioned Danfoss case the Court held if the pay system of an employer is not transparent and this circumstance results in unequal pay between the claimant and his comparator the burden shifted to employer to prove that his measure was not discriminatory.⁶²

Consequently the Court took the social and cultural reasons of indirect sex discrimination into account in its judgement. Several cases are related to part-time work because the women bear the family responsibility. Therefore the Court stated that the plaintiff shall prove that the indirect sex discrimination is systematic and constructive. The evidence provided by the claimant must be statistical material. Due to the nature of the evidence, not only the individual but the large number of female workers will be the subject of discrimination. However, I agree with the view that this is a very misleading way, because it is precisely the individual who should focus on these cases. Researches and studies have been appearing for decades in gender equality, so the court should rather focus on scientific knowledge instead of placing an unreasonable burden on the claimant by obtaining statistical data.⁶³

4. IMPLEMENTATION OF THE EQUAL PAY PRINCIPLE IN HUNGARY

Due to Hungary's EU membership, the country must implement the directives and apply the provisions which have direct effect.

⁶¹ C-127/92 Dr Pamela Mary Enderby vs Frenchay Health Authority, Secretary of State for Health 27 judgement of October 1993 para 35.

⁶² A.C.L Davis 122-122.

⁶³ Ann Numhauser-Henning: Legal Perspectives on Equal Treatment and Non-Discrimination Hague, Kluwer Law International 2001.page: 144-160.

In this chapter, I would like to present the current situation and relevant Hungarian legal provisions. Furthermore, I would like to highlight a number of domestic jurisdictions to demonstrate the validity of Community law. In connection with the implementation, I take the aspects discussed above as well pay and work with equal value. I will look at the objective justification and the burden of proof.

In Hungary, the pay gap between men and women was 14% in 2015.⁶⁴ Compared to the EU average, which is 17,7 % this rate can not be considered too high. However, the aim is to eliminate this gap both at Community and at national level. The causes of the national pay gap are that there are men in supervisory positions and the women are underrepresented in many areas. Less than 4 percent of managers are women. The unpaid work is another reason because the men have 9 hours unpaid work per week while women spend 26 hours with household activities. This can be explained by the fact that women are employed part-time at a higher rate. Women are temporarily absent from the labour market as a result of childbearing or family care, and thus they are disadvantaged in future benefits like pension.⁶⁵ As it is apparent from the case law discussed below, employers often use pay discrimination.

In the Hungarian legal system the Fundamental Law contains the basic provisions, the detailed rules are enshrined in Act CXXV of 2003 (hereinafter Equality Act), while special rules are contained in Act I of 2012 (hereinafter Labour Code).

Article XV (3) of the Fundamental Law states that “women and men shall have equal rights.”⁶⁶ We can see that the Fundamental Law only provides general gender equality provisions.

The Article 3 of Equality Act contains the term of the ‘employment relationship’ and the concept of ‘other relationship’.⁶⁷ Consequently the principle of equal treatment shall be applied in all employment relationships and over the employment contracts.⁶⁸

⁶⁴Eurostat: Gender pay gap in unadjusted form by NACE Rev. 2 activity - structure of earnings survey methodology: Eurostat http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=sdg_05_20&plugin=1.

⁶⁵http://ec.europa.eu/justice/genderequality/files/gender_pay_gap/gpg_country_factsheet_hu_2015_en.pdf.

⁶⁶ Fundamental Law Article XV (3).

⁶⁷ Equality Act Art. 3 (a) (b).

⁶⁸ Gyulavári Tamás: A magyar jogharmonizáció fogalmi készlete Pécsi Munkajogi Közlemények 2010/3. I. page: 17.

The Article 21 of the Equality Act allows equal treatment to be enforced even if the employment relationship is not established. In accordance with the provision of the Act the employer is required to abide the equal treatment relating to hiring and working conditions. ⁶⁹

Hence the Hungarian legislation and the case law, like the Community Law, seek to extend the scope of equal treatment.

The fact of direct discrimination is regulated in Article 8 of Equality Act, while the fact of indirect discrimination is set out in Article 9.

Direct discrimination is a provision which can bring less favourable treatment for an individual or a group on the basis of their real or perceived character as opposed to another person or group of comparable situations who are entitled to the same benefit.⁷⁰ The law extends widely attributes, life situations, characteristics such as sex, age, marital status, maternity but the listing is not taxative.

In the case of direct discrimination, the provision seems to satisfy the requirement of equal treatment, however actually it causes a disadvantage.⁷¹

The applicant must designate a protected character in proceedings relating to equal pay. This character is the sex in our cases.

The notion of the provision is based on the Article 7 (2), the term means measure, condition, omission, instruction or practice.⁷²

Article 21 of the Act lists what kind of conduct results in direct or indirect disadvantage discrimination by the employer against the employee.⁷³

⁶⁹ Kádár András Kristóf - Gyulavári Tamás op. cit. page 10.

⁷⁰ Art. 8 of Equality Act.

⁷¹ Art. 9. of Equality Act.

⁷² Kádár András Kristóf - Gyulavári Tamás: A magyar antidiszkriminációs jog vázlat, Bíbor Kiadó, Miskolc, 2009. page 41.

⁷³ Equality Act 21. §.

4.1. Concept of Pay in National Law

On the basis of the Article 21 f), the violation of the principle of unequal treatment is, in particular, a direct or indirect discrimination in relation to the remuneration of work. The provision also refers to the Article 12 (2) of the Labour Code furthermore the paragraph states that the principle of equal pay must be respected for all benefits payable to the employment relationship.

Consequently, the Equality Act expressly states the principle of equal pay for equal work with the substance of the provision of Labour Code.⁷⁴

The Labour Code in Article 12 (1) declares that the requirement of equal pay must be maintained and it must highlights the area of remuneration for work. In the next paragraph, the law gives the concept of wages, ‘wage’ shall mean any remuneration provided directly or indirectly in cash or in kind, based on the employment relationship.⁷⁵

We can see that the Law does not explicitly state the principle of equal pay for equal work, but the concept of remuneration is clearly defined by the rule in the light of the principle. The Labour Code broadly interprets the concept of pay. All cash benefits and benefits in kind paid by the employee directly or indirectly from his employer are considered to be wages.

The Article 157 (2) of the Treaty of Rome defines the term more accurately that “ordinary basic or minimum wage or salary and any other consideration” and extends the interpretation and uses the “other consideration”.⁷⁶

The concept of remuneration will be similarly defined in the Article 2 (1) e) of Directive 2006/54. This definition already includes a broad interpretation of the Court of Justice of the European Union. As a result the definition of pay in Labour Code is in compliance with the term in Article 157 (2) TFEU and with relevant provision of the Recast Directive.

⁷⁴ Dr. Zaccaria Márton Leó: Az egyenlő munkáért egyenlő bér elv megjelenése és alkalmazása az Egyenlő Bánásmód Hatóság gyakorlatában, tekintettel az európai bírósági és kúriai joggyakorlatra, Debrecen, 2015. page: 15.

⁷⁵ 12(2) of Labour Code.

⁷⁶ Article 157 (2) TFEU.

Regarding the claim enforcement under Hungarian law for breach of the principle of equal pay for equal work, the employee may apply to the Equal Treatment Authority or Labour Court. Missing wages and damages can only be enforced in court.

Hereunder, I would like to demonstrate, through the practice of the Equal Treatment Authority and the Labour Court, what to consider as a concept of pay. Finally, I am going to compare the Hungarian case law with the practice of the Court of Justice of the European Union.

With regards to the practice, the national court stated that this remuneration based on employment relationship is considered wage regardless of the name. In the case the plaintiff was employed as a foreman under a contract with the defendant in Germany. The employment was terminated during the probationary period. The applicant sought payment of the sum of DEM 2459 to pay the defendant for foreign employment because he became a foreign currency agent for the duration of the mission. The national court highlighted that it is not the name of the benefit, that matters but the actual content of the benefit. If the employee has received the benefit in the light of the performance of his employment relationship, the employee's earnings must be considered as pay. ⁷⁷

Judicial practice is also consistent with the fact that the premium is a wage-type benefit. Thus, when the employment relationship was terminated by mutual agreement, the applicant was entitled to claim it. The Kúria (Supreme Court of Hungary) stated that the Labour Code does not define the concept of premium, the conditions for the payment of the allowance, therefore the employer's regulations, practices and the agreement of the parties are of decisive importance. It can not be excluded that the employer applies an incentive pay system which ensures bonus if the employee achieves specific performance. When an employer considers individual entitlement to bonus he must take the principle of good faith, purposefulness and fairness into account furthermore he must to ensure the enforcement of equal treatment.⁷⁸

The court ruled in a case that an employer's loan to a worker can not be regarded as pay. The employer gave the employee compensation for lower hourly wages.

⁷⁷ Mfv. II. 10. 053/1999 decision of Kúria (251/2000 Munkaiügyi Elvi Határozat).

⁷⁸ EBH 2342/2011.

The employer did not demonstrate that the purpose of the loan was to compensate. Male workers could not benefit from this type of loan, nor did they justify the extent to which the loan was a financial benefit for the female worker. It was found that the reference did not meet the requirement of transparency.⁷⁹

In the above discussed Barber case the Court of Justice of the European Union elaborated that an employer's contribution to a non-contractual pension fund falls under the pay concept. Even if the employee it receives indirectly, he is entitled to the employment relationship.

However in accordance with the consistent practice of the court, the premium, bonus and the dividend were understood as falling within the definition of pay.⁸⁰

In the case of bonuses, the employer's decision is more free, but he must comply with the Article 12 of the Labour Code and Article 21 f) of the Equality Act.⁸¹

On the basis of the practice of Equal Treatment Authority, the employee's accommodation in a work-stay, as a benefit in kind, belongs to definition of pay.⁸²

According to the case law of the Authority, the quality wage allowance⁸³, cafeteria allowance, gift voucher⁸⁴ also fall within the concept of wage.

As a consequence the equal pay principle are implemented in national legislation in Article 12 (1) of Labour Code. In the subparagraphs the concept of pay is enshrined. Domestic regulation provides a broad definition of wage. In my opinion the definition of pay is defined precisely in the Article 157 (2) of the TFEU and the Treaty provisions have direct effect hence the accuracy of the domestic regulation is irrelevant. The practice of the national court and the Equal Treatment Authority interpret the provisions of law in a sufficiently extensive manner in accordance with EU case law.

⁷⁹ Kfv. IV.37.332/2007/5 decision of Kúria

⁸⁰ Dr. Kártyás Gábor: A munka díjazása Budapest, Complex Kiadó, 2014. page: 28-29.

⁸¹ Dr. Zaccaria Márton Leó op. cit. page: 35.

⁸² 45/2013 decision of Equal Treatment Authority.

⁸³ 122/2012 decision of Equal Treatment Authority.

⁸⁴ 785/2010 decision of Equal Treatment Authority

Both the case law of the European Community and the domestic practice emphasize the remuneration which is based on employment relationship.

4.2. Work with Equal Value

There are two issues related to the principle of equal pay: one states what benefits should be applied to equal treatment and the other says what constitutes equal work.⁸⁵

I discussed the implementation of the concept of pay above and I am going to look at the conceptual elements of the work of equal value and the practice that has developed in this respect.

Article 12 (3) of the Labour Code stated that equal value of work is determined on the basis of the nature of the work performed, its quality and quantity, the working conditions, the required vocational training, physical or intellectual efforts, experience, responsibilities and labour market conditions. ⁸⁶

In general, the principle of direct discrimination is applied in disputes relating to the principle of equal pay, since discrimination in wages is, in most cases, considered as such.⁸⁷

So let's look at an example of the practice of the Equal Treatment Authority to directly discriminate against an employee in the same job. The female employee was employed as a fleet operator by the employer. Later, two male colleagues were employed in the same job and they did same work as her. Her colleagues received a significantly higher basic salary despite the fact that they had the same duties. The employer argued that one male employee had a higher education qualification than the complainant and had a managerial experience. The employer stated that he was more satisfied with his work. With regards to the other male employee, the employer claimed that he had an university degree and spoke Russian. The Authority has not accepted the employer's justification, and according to its decision, it is a breach of a salary system to give higher-educated workers a higher salary, if this qualification is not required to fill the job. In addition, greater work experience and time spent

⁸⁵ Dr. Kártyás Gábor op.cit. page 8.

⁸⁶ Article 12 (3) of the Labour Code.

⁸⁷ Az Egyenlő Bánásmód Tanácsadó Testület 384/2/2008. TT.sz. állásfoglalása az egyenlő értékű munkáért egyenlő bér elvéről page 4.

can not be a legitimate reason for different wages. 88 Furthermore, the decision ruled that the employer did not apply a transparent wage system.

As a comparison Danfoss case discussed in the previous chapter the Court of Justice of the European Union agreed with the employer's argument that longer length of service means more experience and thus the employer can achieve higher quality. However, the Court as the Hungarian Authority has emphasized that the pay system must be transparent.

In the next case, the complainant largely carried out the same work as his male colleagues who were only responsible for the other part of the same process nevertheless she was rewarded lower wages by the employer. Later, the applicant's salary was not changed despite the fact that she had been appointed to fulfil a manager position. The Authority has come to the conclusion that if employees are working in the same workflow but are responsible for the different stages of a given work process, the equivalence of work can be established. 89

In the case of equal pay for equal work, the judicial practice was uncertain regarding the need to designate a protected character. At present, the standpoint is that the principle of equal pay for equal work must be interpreted within the framework of equal treatment. That position is based, inter alia, on the fact that directives dispose only to a protected character relating to the principle of equal pay for equal work.⁹⁰

Thus, the court dismissed the plaintiff's claim for compensation from his employer for breach of the principle of equal pay since he unlawfully established his salary. The Kúria stated that without any indication of the protected character or the disadvantage, no prejudice to the principle of equal pay for equal work can be established. 91

⁸⁸ 577/2013 decision of Equal Treatment Authority.

⁸⁹1395/2009 decision of Equal Treatment Authority.

⁹⁰Dr. Tálné dr. Molnár Erika, Dr. Tallián Blanka, Dr. Stark Marianna, Dr. Hajdu Edit, Dr. Zanathy János, Dr. Suba Ildikó, Szolnokiné dr. Csernai Krisztina, Dr. Mészárosné dr. Szabó Zsuzsanna, Dr. Magyarfalvi Katalin, Dr. Farkas Katalin, Dr. Szőke Zoltán, Dr. Fuhrmann Gábor, Dr. Orosz Andrea, Dr. Kulisity Mária, Dr. Gyulavári Tamás, Dr. Horváth István, Dr. Bankó Zoltán, Dr. Zaccaria Márton Leó, Dr. Halmos Szilvia Dr. Lőrincz György, Dr. Pál Lajos, Dr. Gregor Katalin, Dr. Szájbély Katalin, Dr. Fórika László: Az egyenlő bánásmód követelményének megsértésével kapcsolatos munkaügyi bírósági gyakorlat, Összefoglaló vélemény Budapest, 2017. (http://www.lb.hu/sites/default/files/joggyak/osszefoglalo_velemeney_-_egyenlo_banasmod.pdf downloaded: 07 11 2017).

⁹¹19/2014. számú munkaügyi elvi határozat.

The principle of equal pay can be applied to workers in comparable situations. The national legislation does not require the claimant to designate to a comparator. ⁹² However, in case of disadvantage associated with the remuneration of work it is generally necessary for the applicant to indicate the people compared to whom he is lower remunerated.

According to the relevant provision of Equality Act, the comparator could be a hypothetical comparator. The definition of direct and indirect discrimination in Article 8 and 9 use the phrase “would be”.⁹³

The lack of comparison is a barrier to claiming the injured party.⁹⁴ There is hypothetical comparison in Community law, but its application is difficult. In domestic case law it does not appear at all.⁹⁵ In the above-mentioned Macarthys case, the Court of Justice of the European Union did not exclude the time comparison, but permitted only in the case of actual situations.⁹⁶

What is the spatial scope of comparison? According to consistently established case law, the position of workers at the various places of work of the employer is generally not equal.⁹⁷ However, it is apparent from the provisions of the law that workers at the same employer are in a comparable situation. ⁹⁸

The Court of Justice of the European Union stated that in the discussed Lawrence case the comparison can be made between the employees of the same employer and the employees of different employers if the difference in pay between equal work workers and workers of equal value comes from a single source. This single source may be a legal provision or a collective agreement, which in effect means that employees at different employers under the same (sectoral) collective agreement or legislation

⁹²Beáta Nacsa: Country Report, Gender Equality, How are EU rules transposed into national law? European Commission 2017 page 18.

⁹³ Beata Nacsa op. cit. page 18.

⁹⁴ Jeney Petra: Az összehasonlítás nehézségei, Fundamentum, 2002/3-4, page.

⁹⁵ Dr. Zaccaria Márton Leó op. cit. page 9

⁹⁶ Bagdi Katalin: A diszkriminációmentes munkadíjazás alapvető sajátosságai az Európai Unióban Debreceni Jogi Műhely, 2013. évi (X. évfolyam) 3. szám page: 162.

⁹⁷ Dr. Tálné dr. Molnár Erika, Dr. Tallián Blanka, Dr. Stark Marianna, Dr. Hajdu Edit, Dr. Zanathy János, Dr. Suba Ildikó, Szolnokiné dr. Csernai Krisztina, Dr. Mészárosné dr. Szabó Zsuzsanna, Dr. Magyarfalvi Katalin, Dr. Farkas Katalin, Dr. Szőke Zoltán, Dr. Fuhrmann Gábor , Dr. Orosz Andrea, Dr. Kulicity Mária, Dr. Gyulavári Tamás, Dr. Horváth István, Dr. Bankó Zoltán, Dr. Zaccaria Márton Leó, Dr. Halmos Szilvia Dr. Lőrincz György, Dr. Pál Lajos, Dr. Gregor Katalin, Dr. Szájbély Katalin, Dr. Főrika László: op.cit page: 55.

⁹⁸ Az Egyenlő Bánásmód Tanácsadó Testület 384/2/2008. TT.sz. állásfoglalása az egyenlő értékű munkáért egyenlő bér elvéről page 5.

may be comparable if the sole source of the wage differential is this law or a collective contract. The restrictive interpretation of the court is justified, as equal pay for equal work for different employers would have an inevitable consequence. 99

Below I would like to review which justifications for pay inequality are permitted in legislation and in case law.

Article 22 (1) a of Equality Act provides a wider range of justifications than Article 14 (2) of the Recast Directive. Saving is possible where the pay gap is justified on the basis of the characteristic or nature of the work.¹⁰⁰

According to the Authority's interpretation, the employer's wage system is discriminatory, if it remunerates the employees at the same level of education differently. The applicant was employed as a legal rapporteur by the employer. Then, in a legal succession, he became aware that a male worker with the same qualification and equal work would receive 70% more wages than she. The employer explained the discrimination with the language skills of the male worker, with his more professional experience and better quality of his work.

According to the employer's wage system the applicant was classified as an employee with high school qualifications and her comparator was paid according to his degree.

The Equal Treatment Authority found that even if there were differences in between their language proficiency and their professional experience, the wage gap was prominently disproportionate and the employer did not apply objective scale when he evaluated the advantages. 101

In the decision 155/2014. of Equal Treatment Authority, the employer had to objectively justify apparent wage differences. It had to be demonstrated that the nature and the most basic features of the given job necessitate discrimination, but the requirement of equal treatment has been maintained.

⁹⁹ Dr. Kártyás Gábor: Bizonyos munkavállalók egyenlőbbek? Pécsi Munkajogi Közlemények 2009/1. szám page: 120-123.

¹⁰⁰ Beata Nacsa op. cit page: 19-20.

¹⁰¹ 1363/2009 decision of the Equal Treatment Authority.

The employer argued that the “relevant professional experience” that the applicant did not possess had a prominent role. It was necessary to examine whether this reference was due to the nature and quality of the given work.

On the basis of the facts, it was found that there were differences on an objective basis between workers performing equal work, as those with relevant professional experience received higher wages.

However, the differences should be enshrined in advance by a contract, by regulation or by informing the employee. Nevertheless, the employer reference can not be ignored, the relevant professional experience should be evaluated.¹⁰²

Kúria considered the requirement of equal treatment in the case of a worker receiving a different amount of in-kind benefits to the employees in view of the place of employment. According to the facts, the employer provided a warm meal voucher for employees at the headquarters for a value of 9000 HUF, while those who could not make use of it had a cold meal value of 4500 HUF. Workers at the headquarters were allowed to use their allowance only in the local canteen, while the other group of workers could spend their cold meal voucher for a bar.

Consequently Kúria ruled that as workers at the seat were able to use their voucher only locally, they were not in a comparable position against the workers who received the cold meal allowance. Furthermore the judgement stated that there was a proportionate discrimination based on a substantive and legitimate condition.¹⁰³

In accordance with the case law of the Court of Justice of the European Union, contrary to the concept of pay, legitimate discrimination can not be interpreted extensively. Discrimination can only be based on real, substantial facts.

¹⁰² Zaccaria Márton Leó op. cit. page 27-31.

¹⁰³ EBH 2009.1980.

Under the legislation in force, in the case of breach of equal treatment, the Equality Act contains more specific rules than the Code of Civil Procedure. In these cases a party who has suffered an injury must have probable disadvantage and he had a protected characteristics enshrined in Article 8 of the Equality Act. If the plaintiff fulfilled his obligation of probability, the respondent must prove that the probable circumstances by the injured party did not exist or maintained the requirement of equal treatment or was not obliged to keep the principle with respect the legal relationship.¹⁰⁴

The Equal Treatment Authority's resolution number 384/4/2008. (III.28.) TT. complements the provisions of the Equality Act and helps in the legal interpretation.

According to the resolution, a presumption of breach of the principle of equal treatment should be presumed to be successful, but this presumption can be rebutted. ¹⁰⁵

The use of unequal rules can compensate for the disadvantage that the applicant has difficulty accessing the evidence as they are in the possession of the defendant. The provision of law and the practice of the Authority and the national court, in accordance with Community law and the jurisprudence of the Court of Justice of the European Union narrowly interprets the exemption of the defendant.¹⁰⁶

The above discussed are supported by the decision of the Equal Treatment Authority number 470/2014 that the proof of the defendant is unsuccessful if he can not prove the causal relationship between the probable protected property and the disadvantage.¹⁰⁷

The Authority found in its decision that the employer violated the requirement of equal treatment when determining the wage income of a female employee lower than the male workers in the same job. Court of Appeal did not accept the reference of the employer to the freedom of contract. The court did not accept an objective and reasonable justification that the two male comparators had already worked in the past for another job. In the judgement was enshrined that differences in the

¹⁰⁴ Article 19 (1) (2) of the Equality Act.

¹⁰⁵ 384/4/2008 (III.28) TT sz. állásfoglalás a bizonyítási teher megosztásával kapcsolatban.

¹⁰⁶ Zaccaria Márton Leó: Áldozatvédelem vagy tényleges bizonyítás? A fordított bizonyítási teher megítélése a foglalkozási diszkriminációs ügyek haza gyakorlatában Pro Futuro 2015/2. page 127-128.

¹⁰⁷ Decision of the Equal Treatment Authority number 470/2014.

wage could exist between the same jobseekers in the ground of bargaining but the significant 70-100% difference was not justified.¹⁰⁸

Consequently both the practise of Authority and the national courts stated that the probability obligation of the injured party is opposed the obligation to proof of the injurious party.

It may be difficult for the defendant to have the evidence to which the applicant refers. If the defendant refuses to provide the evidence that conduct is opposite of the purpose of the directive, but there may be a case where it is legitimately denied the provision of evidence. There may be EU or national legislation that excludes access to information.¹⁰⁹

If the defendant has no legitimate reason to refuse the information in accordance with the Code of Civil Procedure Article 190 (2) *“at the request of the party adducing evidence the court may order the opposing party to present such document in his possession that he is otherwise liable to submit or present under the rules of civil procedure. Such obligation is in particular bestowed upon the opposing party if the document in question was made out to the benefit of the party adducing evidence, or if it embodies a relationship pertaining to him, or if it pertains to a hearing connected to such relationship.”*¹¹⁰

Therefore, the Hungarian procedural rules are in line with the provisions of the directive on the obligation to provide evidence and the practice of the Court of Justice of the European Union. The solution to the problem of pay gap is therefore not rooted in implementation or in the application of Community Law.

¹⁰⁸ KGD2013.5.

¹⁰⁹Duró Edit: A munkajog területén megvalósuló egyenlő bánásmód követelménye, valamint megsértésének módjai az Európai Bíróság és a magyar bírói gyakorlat tükrében. Debreceni Jogi Műhely, 2014. évi (XI. évfolyam) 3-4. szám (http://www.debrecenijogimuhely.hu/archivum/3_4_2014/a_munkajog_teruleten_megvalosulo_egyenlo_banasmod_kovetelmenye_valamint_megsertesenek_modjai_az_europai_birosag_es_a_magyar_biroi_gyakorlat_tukreben/) downloaded: 25 November 2017.

¹¹⁰ Code of Civil Procedure Article 190 (2).

5. CONCLUSION

The legal framework of equal pay principle is very detailed at Community and at Member State level however the pay gap has been an unresolved problem for decades. We can see that the existing regulations have been less effective in ensuring implementation of the principle of equal pay for work.

Nevertheless, Community legislation is effective in the area of elimination of direct discrimination when a woman is paid less than her male comparator for the same job. Still the respect of the principle of equality has been waiting for solution.

It is also apparent from the jurisprudence discussed above that it often happens that two equivalent jobs are valued differently at a company. It is less likely that the cases should be brought to court by the person concerned in view of the fact that victims are probably not aware of the difference of pay.

Companies should recognize this fact that the realization of equality in the scope of pay is not only an ethical issue but also an increase in productivity and a competitive advantage¹¹¹ In the long term, ensuring equity among wages creates quality jobs. The excellence of workplaces increases the employees' more efficient, more innovative work. It also improves the company's perception and attracts customers.

Furthermore companies have a social responsibility to close the pay gap between men and women, helping to reduce the economic dependence of women. If the undertakings increase women's earnings during their lifetimes the retirement gap will be also decreased, which means less expenditure for the state budget.¹¹²

Naturally, the biggest incentive of the state for companies would be to return this savings back to the companies.

¹¹¹ COM(2007) 424 final (<http://eurlex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:52007DC0424&from=hu>; downloaded: 01 December 2017).

¹¹² http://ec.europa.eu/justice/gender-equality/files/gender_pay_gap/140319_gpg_en.pdf (downloaded: 01 December 2017).

In my opinion the closure of the pay gap can be achieved at Member State level more effectively. According to the Committee's Recommendation the transparency of wage category can reveal discrimination in the pay structures of an undertaking.

Transparency would create the requirement for employees to request information on benefits paid to their colleagues in the same or similar position. Access to data by the employee would also improve the chances of individual legal action in discrimination cases to succeed before national courts and would consequently have a discouraging effect.

In the Recommendation the company reporting is mentioned. Within the framework of reporting on pay, the employer regularly informs the employees, workers' representatives and social partners about the average remuneration by employee category or position, broken down by gender. Data presentation for all workers could provide some kind of control and would facilitate dialogue between the parties. In my opinion, keeping such a statement would be a disproportionate burden for employers.

Employers and workers' representatives discuss elimination of gender discrimination in pay on the bases of pay audits. Dialogue could cure wage differences so there would not be judicial proceedings, which would mean substantial financial savings for companies.¹¹³

Regarding the keeping of records and the provision of data, the problem of data protection arises. Employers should be aware of Community and national data protection legislation.

As I mentioned above, women earn less in their active age later appear to be less entitled to a pension. The use of the sex as actuarial factor has already appeared in the practice of the Court of Justice of the European Union.¹¹⁴ I consider it important that this factor should become part of the *acquis communautaire* as soon as possible.

¹¹³ C(2014) 1405 final. (http://ec.europa.eu/justice/genderequality/files/gender_pay_gap/c_2014_1405_en.pdf; downloaded: 1 December 2017).

¹¹⁴ http://ec.europa.eu/justice/gender-equality/document/files/strategic_engagement_en.pdf (downloaded: 1 December 2017).

The lack of stereotypes and information remain a major problem. So it is important to draw attention to the pay gap. The European Commission launched the first European Equal Pay Day on 5 March 2011. The event is held annually. On the employees' side, only few know that they can enforce their claims. On the employer side, companies should be informed that equality is rewarding. They must take the labour potential of women into account and they should utilize female labour to manage the shortage of skilled workers.

The financing is key to achieve the goals. The European Structural and Investment Funds, in particular the European Social Fund and the European Regional Development Fund, are financial levers for promoting equality. The Funds support career progression, reconciliation of work and private life, equal pay for equal work and investment in the provision of childcare infrastructure.

Consequently, finding a solution to the gender pay gap is mainly in the hands of national governments and the social partners. Measures should be taken to ensure that companies are profitable for the maintenance of equality. The application of wage transparency is indispensable, as this makes the differences evident, promotes the judicial enforcement of employee claims and the application of sanctions against the company. In my opinion, this provides effective dissuasive power and helps to close the pay gap.

6. BIBLIOGRAPHY

1. Ann Numhauser-Henning: Legal Perspectives on Equal Treatment and Non-Discrimination Hague, Kluwer Law International 2001.
2. Bagdi Katalin: A diszkriminációmentes munkadíjazás alapvető sajátosságai az Európai Unióban Debreceni Jogi Műhely, 2013. évi (X. évfolyam) 3. szám.
3. Beáta Nacsa: Country Report, Gender Equality, How are EU rules transposed into national law? Luxembourg Publication Office 2017.
4. C.A. Crisham: The equal pay principle: Some recent decisions of the European Court of Justice C. M. L. Rev. 1981.
5. Christa Tobler: Indirect Discrimination: A Case Study Into the Development of the Legal Concept of Indirect Discrimination Under EC Law Oxford Intersentia 2005.
6. David Freestone: Equal Pay in the European Court The Modern Law Review, Vol. 45, No. 1 1982.
7. Duró Edit: A munkajog területén megvalósuló egyenlő bánásmód követelménye, valamint megsértésének módjai az Európai Bíróság és a magyar bírói gyakorlat tükrében Debreceni Jogi Műhely, 2014. évi (XI. évfolyam) 3-4. szám (http://www.debrecebijogimuhely.hu/archivum/3_4_2014/a_munkajog_teruleten_megvalosulo
9. [_egyenlo_banasmod_kovetelmenye_valamint_megsertesenek_modjai_az_europai_birosag_es_a_magyar_biroi_gyakorlat_tukreben/](http://www.debrecebijogimuhely.hu/archivum/3_4_2014/a_munkajog_teruleten_megvalosulo)) downloaded: 25 November 2017
10. Erika M. Szyszczak: EC Labour Law England, Pearson Education Limited 2000.
11. Etta Olgiati and Dr. Gillian Shapiro: Promoting gender equality in the workplace Luxembourg, Office for Official Publications of the European Communities, 2002.
12. Evelyn Ellis and Philippa Watson: EU Anti-Discrimination Law Oxford 2012.
13. Gwyneth Pitt: Cases and Materials on Employment Law Harlow, Pearson-Lingman 2008. Third edition.
14. Gyulavári Tamás: A magyar jogharmonizáció fogalmi készlete Pécsi Munkajogi Közlemények 2010/3. I.
15. Jeney Petra: Az összehasonlítás nehézségei Fundamentum 2002/3-4.
16. John Tillotson, Nigel Foster: Text, Cases and Materials on European Union Law London Cavendish Publishing Limited 2013. Fourth edition.

17. Kádár András Kristóf - Gyulavári Tamás: A magyar antidiszkriminációs jog vázлата, Miskolc Bíbor Kiadó 2009.
18. Kártyás Gábor: A munka díjazása Budapest Complex Kiadó 2014.
19. Kártyás Gábor: Bizonyos munkavállalók egyenlőbbek? Pécsi Munkajogi Közlemények 2009/1. szám.
20. Lorna Woods and Philippa Watson: EU Law Oxford Oxford University Press 2012. Eleventh edition.
21. Luis Miguel Poiares Pessoa Maduro, Loïc Azoulay: The Past and Future of EU Law: The Classics of EU Law Revisited on the 50th Anniversary of the Rome Treaty Oxford Bloomsbury Publishing, 2010.
22. Paul Epstein: Burden of proof in sex discrimination cases ERA Conference 12 October 2015 Sofia
23. Richard Plender: Equal Pay for Men and Women: Two Recent Decisions of the European Court The American Journal of Comparative Law, Vol. 30. No. 4. 1982.
24. Susanne Burri and Sacha Prechal: EU Gender Equality Law, Luxembourg Publication Office 2014.
25. Tálné dr. Molnár Erika, Dr. Tallián Blanka, Dr. Stark Marianna, Dr. Hajdu Edit, Dr. Zanathy János, Dr. Suba Ildikó, Szolnokiné dr. Csernai Krisztina, Dr. Mészárosné dr. Szabó Zsuzsanna, Dr. Magyarfalvi Katalin, Dr. Farkas Katalin, Dr. Szőke Zoltán, Dr. Fuhrmann Gábor , Dr. Orosz Andrea, Dr. Kulicity Mária, Dr. Gyulavári Tamás, Dr. Horváth István, Dr. Bankó Zoltán, Dr. Zaccaria Márton Leó, Dr. Halmos Szilvia Dr. Lőrincz György, Dr. Pál Lajos, Dr. Gregor Katalin, Dr. Szájbély Katalin, Dr. Fórika László: Az egyenlő bánásmód követelményének megsértésével kapcsolatos munkaügyi bírósági gyakorlat, Összefoglaló vélemény Budapest, 2017. (http://www.lb.hu/sites/default/files/joggyak/osszefoglalo_velemeny_-_egyenlo_banasmod.pdf downloaded: 07 11 2017)
26. Zaccaria Márton Leó: Áldozatvédelem vagy tényleges bizonyítás? A fordított bizonyítási teher megítélése a foglalkozási diszkriminációs ügyek haza gyakorlatában Pro Futuro 2015/2.
27. Zaccaria Márton Leó: Az egyenlő munkáért egyenlő bér elv megjelenése és alkalmazása az Egyenlő Bánásmód Hatóság gyakorlatában, tekintettel az európai bírósági és kúriai joggyakorlatra, Debrecen, 2015. „Az Egyenlő Bánásmód Hatóság 10 éve”

28. című pályázat keretei között elkészült tudományos pályamunka
(http://www.egyenlobanasmod.hu/app/webroot/files/img/articles/5519181185fc04821a2b9de90fc1dafa/Zaccaria_M%C3%A1rton_Le%C3%B3_p%C3%A1lyamunka.pdf; doxnloaded: 23 November 2017.)

EU and National Law:

1. The Treaty on the Functioning of the European Union
2. The Treaty on European Union
3. Charter of Fundamental Rights of the European Union
4. Directive 2006/54 of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)
5. Fundamental Law of Hungary
6. Act CXXV of 2003 on the Equality Act
7. Act I of 2012 on the Labour Code
8. Act III of 1952 on the Code of Civil Procedure
9. ILO: C100 - Equal Remuneration Convention, 1951 (No. 100)
10. Az Egyenlő Bánásmód Tanácsadó Testület 384/2/2008. TT.sz. állásfoglalása az egyenlő értékű munkáért egyenlő bér elvéről
11. Az Egyenlő Bánásmód Tanácsadó Testület 384/4/2008 (III.28) TT sz. állásfoglalása a bizonyítási teher megosztásával kapcsolatban

Cases of the Court of Justice of the European Union:

1. C-617/10 Åklagaren v. Hans Åkerberg Fransson, judgement of 26 February 2013.
2. C-66/85 Deborah Lawrie-Blum v Land Baden- Württemberg, judgement of 3 July 1986.
3. C-342/93 Joan Gillespie and Others and Northern Health and Social Services Board, Department of Health and Social Services, Eastern Health and Social Services Board, Southern Health and Social Services Board, judgement of 13 February 1996.
4. C-471/08 Sanna Maria Parviainen v. Finnair Oyj, judgement of 1 July 2010.

5. C-170/84 Bilka - Kaufhaus GmbH v Karin Weber von Hartz, judgement of 13 May 1986.
6. C-256/01 Debra Allonby vs Accrington & Rossendale College, Education Lecturing Services, trading as Protocol Professional, formerly Education Lecturing Services, Secretary of State for Education and Employment judgement of 13 January 2004.
7. C-232/09 Dita Danosa vs LKB Līzings SIA judgement of 11 November 2011.
8. C-237/85 Gisela Rummler vs Dato-Druck GmbH judgement of 1 July 1986.
9. C-320/00 17 A.G. Lawrence and Others vs Regent Office Care Ltd, Commercial Catering Group, Mitie Secure Services Ltd, judgement of September 2002.
10. C-109/88 Handels- og Kontorfunktionærernes Forbundi Danmark vs Dansk Arbejdsgiverforening judgement of 17 October 1989.
11. C-127/92 Dr Pamela Mary Enderby vs Frenchay Health Authority, Secretary of State for Health judgement of October 1993.
12. Case C-342/93, Joan Gillespie and Others and Northern Health and Social Services Board, Department of Health and Social Services, Eastern Health and Social Services Board, Southern Health and Social Services Board, judgement of 13 February 1996
13. C-471/08 Sanna Maria Parviainen v. Finnair Oyj, judgement of 1 July 2010,
14. C-256/01 Debra Allonby vs Accrington & Rossendale College, Education Lecturing Services, trading as Protocol Professional, formerly Education Lecturing Services, Secretary of State for Education and Employment judgement of 13 January 2004
15. C-232/09 Dita Danosa vs LKB Līzings SIA judgement of 11 November 2011
16. C-237/85 Gisela Rummler vs Dato-Druck GmbH judgement of 1 July 1986
17. C-194/08 Susanne Gassmayr v. Bundesminister für Wissenschaft und Forschung, judgement of 1 July 2010
18. C-129/79. sz. Macarthis Ltd v. Wendy Smith judgement of 27 March 1980.
19. C-157/86 Mary Murphy and Others vs Bord Telecom Eireann judgement of 4 February 1988.

Cases of the national courts and the Equal Treatment Authority:

1. 19/2014. számú Munkaügyi Elvi Határozat
2. Mfv. II. 10. 053/1999 decision of Kúria (251/2000 Munkaügyi Elvi Határozat)

3. Kfv. IV.37.332/2007/5 decision of Kúria
4. EBH 2342/2011.
5. EBH 2009.1980.
6. KGD2013.5
7. 45/2013 decision of Equal Treatment Authority
8. 122/2012 decision of Equal Treatment Authority
9. 785/2010 decision of Equal Treatment Authority
10. 577/2013 decision of Equal Treatment Authority
11. 1395/2009 decision of Equal Treatment Authority
12. 1363/2009 decision of the Equal Treatment Authority
13. 470/2014 decision of the Equal Treatment Authority

Websites:

1. methodology:Eurostathttp://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=sdg_05_20&plugin=1 (downloaded: 15 October 2017)
2. <http://eurlex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:52007DC0424&from=hu>;
downloaded: 01 December 2017)
3. http://ec.europa.eu/justice/gender-equality/files/gender_pay_gap/140319_gpg_en.pdf
(downloaded: 01 December 2017)
4. http://ec.europa.eu/justice/genderequality/files/gender_pay_gap/c_2014_1405_en.pdf;
downloaded: 1 December 2017)
5. http://ec.europa.eu/justice/gender-equality/document/files/strategic_engagement_en.pdf (downloaded: 1 December 2017)
6. <http://ec.europa.eu/eurostat/data/database> (downloaded: 15 October 2017)