

Conclusions of the summary report on the examination of the breach of the principle of equal treatment in the labour courts' jurisprudence

The requirement of equal treatment is one of the most important principles in the field of labour law. Discrimination may occur not only in employment relationships, however, employees – due to their weaker position in a hierarchical structure – are far more significantly exposed to such unfair treatment.

On the basis of section 121, subsection (1) of the Code of Civil Procedure on the mandatory elements of statements of claims and section 355, subsection (1) of the Code of Civil Procedure on the compulsory conduct of a court-led conciliation process in an attempt to reach a friendly settlement between the parties, in employment discrimination cases, the labour courts have to take special care to prepare their hearings and to ensure that the plaintiff's statement of claims is in compliance with the legal requirements.

In legal actions for the breach of the principle of equal treatment, the Equal Treatment Act, with regard to the disadvantaged position of the aggrieved party, contains special provisions in comparison with the general rules set forth in section 164, subsection (1) of the Code of Civil Procedure. In such cases, the aggrieved party must produce prima facie evidence that he suffered a disadvantage and he – truly or, based on the infringer's assumption, presumably – possessed, at the time of his unequal treatment, one of the protected characteristics enshrined in the Equal Treatment Act. If the aggrieved party produces prima facie evidence, then it is up to the other party to prove that the circumstances presumed by the aggrieved party were absent or that he observed or, in respect of the relevant relationship, was not obliged to observe the principle of equal treatment. The Equal Treatment Act therefore does not place the burden of proving the existence of a link of causation between the damage suffered and the protected characteristic on the aggrieved party seeking remedy (on the employee). During the provision of prima facie evidence, the aggrieved party's right to choose and express his identity should be respected.

The term "other status or attribute" as a protected characteristic should be determined as precisely as possible, since a broad interpretation of that term would lead to the unjustified extension of the scope of the favourable rules of evidence, which would be contrary to the purposes of the Equal Treatment Act. The term "other status or attribute" includes two main criteria: i. it has to be an essential feature of the personality of the individual concerned and ii. the aforementioned feature has to link the individual concerned to a vulnerable societal group.

Both discrimination and rights abuses are to be considered as being the employer's actions that violate the employee's legitimate interests without any rational reason related to the purpose of the employment relationship. They can be differentiated according to whether the damage suffered is connected to one of the protected characteristics enumerated in the Equal Treatment Act. If there is such connection, then the court has to examine the alleged discrimination on the basis of those rules of evidence that are more favourable to the plaintiff. In the event that there is no such connection, the court has to apply the general rules of evidence in the assessment of the abuse of rights.

The principle of equal pay for equal work can and should be interpreted within the requirement of equal treatment. The violation of the principle of equal pay for equal work cannot be established without indicating and producing prima facie evidence in respect of the protected characteristic of and the damage suffered by the aggrieved party.

If, in his statement of claims, the employee refers not only to a violation of substantive legal provisions, but to the breach of the principle of equal treatment and an abuse of rights as well, then the court has to examine the lawfulness (clarity, truthfulness and reasonableness) of the reasoning of the employer's measure prior to dealing with the action for the breach of the requirement of equal treatment. If the court finds that there has been a violation of law committed by the employer, it has to judge the plaintiff's action for the breach of the principle of equal treatment only in case of the submission of separate claims – for instance, the employee may request the court to reinstate him in his previous functions (section 83 of the Labour Code) or to award him damages for pain and suffering (section 2:52 of the Civil Code to be applied on the basis of section 9 of the Labour Code) – related to such action.