



Pravna fakulteta  
Univerza v Ljubljani

# EQUAL PAY FOR WORK OF EQUAL VALUE: CJEU CASE LAW AND PAY TRANSPARENCY MEASURES

ERA SEMINAR ON EU GENDER EQUALITY  
LAW FOR MEMBERS OF THE JUDICIARY

AS. DR. PRIMOŽ RATAJ, FACULTY OF LAW, UNIVERSITY OF LJUBLJANA

PRIMOZ.RATAJ@PF.UNI-LJ.SI

17. 4. 2023, LJUBLJANA



Funded under the 'Citizens, Equality, Rights and Values programme 2021-2027' of the European Commission

1

## OVERVIEW

- GENDER PAY GAP AND EQUAL PAY FOR EQUAL WORK OR WORK OF EQUAL VALUE
- RELEVANT LEGISLATION
- CJEU CASE-LAW
- FUTURE PERSPECTIVES

2

## GENDER PAY GAP AND EQUAL PAY FOR EQUAL WORK OR WORK OF EQUAL VALUE

- **PAY GAP AND PENSION GAP** (PART-TIME WORK, FREQUENT CAREER INTERRUPTIONS DUE TO COMBINING WORK WITH CARE TASKS, LESS INCOME LEADS TO LESS INVESTMENTS, THE ISSUE OF POVERTY)

### EXPLAINED PART

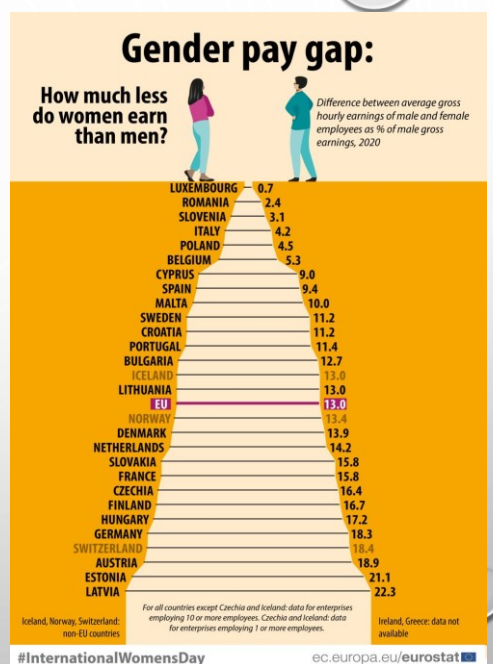
- HORIZONTAL AND VERTICAL SEGREGATION
- NATURE OF THE WORK, SKILLS, LEVEL OF EDUCATION/QUALIFICATIONS, JOB TENURE, SIZE OF THE COMPANY, PRIVATE OR PUBLIC SECTOR

### UNEXPLAINED PART

- STEREOTYPES, DEVALUATION, DISCRIMINATION

### LIMITED AMOUNT OF INDIVIDUAL CASES BROUGHT TO COURTS (CJEU OR NATIONAL CASE-LAW)

- LACK OF INFORMATION ON PAY AND THE ISSUE OF PROOF (INFORMATION INDIVIDUAL AND POSSIBLY CONFIDENTIAL)
- CLAIMANTS' LACK OF RESOURCES (INCLUDING COSTS)
- FEAR OF RETALIATION
- SCOPE OF COMPARISON



3

## THE RIGHT TO EQUAL REMUNERATION/PAY OR EQUAL TREATMENT/PAY IN RESPECT OF WORK OF EQUAL VALUE

- UN CONVENTION ON THE ELIMINATION OF ALL FORM OF DISCRIMINATION AGAINST WOMEN (CEDAW), 1979, ART. 11 EMPLOYMENT
- ILO EQUAL REMUNERATION CONVENTION, 1951 (NO. 100), ARTICLE 2(1)
- EUROPEAN SOCIAL CHARTER, ARTICLES 4(3) AND 20 (C)
- CFREU, ARTICLE 23
- TFEU, ARTICLE 157 TFEU (PREVIOUSLY ARTICLE 141 TEC AND ARTICLE 119 EEC)
- DIRECTIVE 2006/54/EC, ARTICLE 4 (PREVIOUSLY EQUAL PAY DIRECTIVE 75/117/EEC)
- EUROPEAN PILLAR OF SOCIAL RIGHTS, PRINCIPLE 2 (2)

4

**ARTICLE 157 TFEU (EX ART. 141 TEC; EX ART. 119 EEC)**

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" MEANS 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.

➤ **PRINCIPLE OF EQUAL PAY FOR MALE AND FEMALE WORKERS FOR EQUAL WORK (UNTIL 1997 AMSTERDAM TREATY) WHEN "OR WORK OF EQUAL VALUE" IS ADDED.**

**DIRECTIVE 2006/54/EC**

**ARTICLE 4 PROHIBITION OF DISCRIMINATION**

FOR THE SAME WORK OR FOR WORK TO WHICH EQUAL VALUE IS 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.

5

**DIRECTIVE 2006/54/EC ON THE IMPLEMENTATION OF THE PRINCIPLE OF EQUAL OPPORTUNITIES AND EQUAL TREATMENT OF MEN AND WOMEN IN MATTERS OF EMPLOYMENT AND OCCUPATION (SINCE 15. 8. 2009)**

- **EQUAL PAY** (ART. 4) (DIRECTIVE 75/117/EEC)
- **EQUAL TREATMENT IN OCCUPATIONAL SOCIAL SECURITY SCHEMES** (ARTS. 5-13) (DIRECTIVE 86/378/EEC)
- **EQUAL TREATMENT AS REGARDS ACCESS TO EMPLOYMENT, VOCATIONAL TRAINING AND PROMOTION AND WORKING CONDITIONS** (ARTS. 14-16) (DIRECTIVE 76/207/EEC, SUBSEQUENT DIRECTIVE 2002/73/EC)
- **HORIZONTAL PROVISIONS** (DIRECTIVE 97/80/EC ON THE **BURDEN OF PROOF** IN CASES OF DISCRIMINATION BASED ON SEX)

RELATIVELY COMMON INTERRELATION WITH OTHER DIRECTIVES:

- **DIRECTIVE 92/85/EEC ON THE INTRODUCTION OF MEASURES TO ENCOURAGE IMPROVEMENTS IN THE SAFETY AND HEALTH AT WORK OF PREGNANT WORKERS AND WORKERS WHO HAVE RECENTLY GIVEN BIRTH OR ARE BREASTFEEDING**
- **DIRECTIVE 97/81/EC CONCERNING THE FRAMEWORK AGREEMENT ON PART-TIME WORK CONCLUDED BY UNICE, CEEP AND THE ETUC**
- **DIRECTIVE 79/7/EEC ON THE PROGRESSIVE IMPLEMENTATION OF THE PRINCIPLE OF EQUAL TREATMENT FOR MEN AND WOMEN IN MATTERS OF SOCIAL SECURITY**

6

## THE CONCEPT OF PAY

### ART. 157 TFEU

2. FOR THE PURPOSE OF THIS ARTICLE, "PAY" MEANS *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.

### DIRECTIVE 2006/54/EC

ART. 2(1)(E) 'PAY': 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/HER EMPLOYMENT FROM HIS/HER EMPLOYER;

„IT IS APPARENT FROM THE COURT’S CASE-LAW THAT **THE CONCEPT OF ‘PAY’** WITHIN THE MEANING OF ARTICLE 157(2) TFEU **MUST BE INTERPRETED BROADLY**. IT COVERS, IN PARTICULAR, ANY CONSIDERATION, WHETHER IN CASH OR IN KIND, **WHETHER IMMEDIATE OR FUTURE**, PROVIDED THAT THE WORKER RECEIVES IT, ALBEIT INDIRECTLY, **IN RESPECT OF HIS EMPLOYMENT** FROM HIS EMPLOYER, AND IRRESPECTIVE OF WHETHER IT IS RECEIVED UNDER A CONTRACT OF EMPLOYMENT, **BY VIRTUE OF LEGISLATIVE PROVISIONS OR ON A VOLUNTARY BASIS**. MOREOVER, THE FACT THAT CERTAIN **BENEFITS ARE PAID AFTER THE TERMINATION OF THE EMPLOYMENT RELATIONSHIP DOES NOT PREVENT THEM FROM BEING IN THE NATURE OF PAY** WITHIN THE MEANING OF THAT PROVISION.“

7

### CASES AS EXAMPLES:

- C-381/99, BRUNNHOFER (**MONTHLY SALARY SUPPLEMENT**)
- C-12/81, GARLAND (**TRAVEL BENEFITS FOR MALE EMPLOYEES FOR THEIR FAMILY MEMBERS UPON RETIREMENT, EVEN IF VOLUNTARILY**)
- C-342/93, JOAN GILLESPIE AND OTHERS (**MATERNITY PAY CALCULATION**); C-147/02, ALABASTER (**MATERNITY PAY CALCULATION**)  
„SINCE THE BENEFIT PAID BY AN EMPLOYER UNDER LEGISLATION OR COLLECTIVE AGREEMENTS TO A WOMAN ON MATERNITY LEAVE IS BASED ON THE EMPLOYMENT RELATIONSHIP, IT CONSTITUTES PAY WITHIN THE MEANING OF ARTICLE 119 OF THE TREATY AND DIRECTIVE 75/117.“
- C-333/97, LEWEN (**CHRISTMAS BONUS, MATERNITY LEAVE, PARENTAL LEAVE, PRO-RATA**)  
„IT FOLLOWS THAT A CHRISTMAS BONUS ... EVEN IF PAID ON A VOLUNTARY BASIS AND EVEN IF PAID MAINLY OR EXCLUSIVELY AS AN INCENTIVE FOR FUTURE WORK OR LOYALTY TO THE UNDERTAKING OR BOTH, CONSTITUTES PAY WITHIN THE MEANING OF ARTICLE 119.“
- C-281/97, KRÜGER (**CHRISTMAS BONUS, COLLECTIVE AGREEMENT, NURSE, MINOR EMPLOYMENT, INDIRECT DISCRIMINATION**)
- C-171/88, RINNER-KUEHN (**CONTINUED PAYMENT OF WAGES IN THE EVENT OF ILLNESS**)
- C-360/90, BÖTEL; C-457/93, LEWARK; C-278/93, FREERS AND SPECKMANN V DEUTSCHE BUNDEPOST (**COMPENSATION FOR ATTENDANCE OF TRAINING COURSES OF STAFF COUNCILS**)
- C-19/02, HLOZEK (**BRIDGING ALLOWANCE**)
- C-262/88, BARBER (**REDUNDANCY BENEFITS**)  
„THE BENEFITS PAID BY AN EMPLOYER TO A WORKER IN CONNECTION WITH THE LATTER'S COMPULSORY REDUNDANCY FALL WITHIN THE SCOPE OF THE SECOND PARAGRAPH OF ARTICLE 119 OF THE EEC TREATY, WHETHER THEY ARE PAID UNDER A CONTRACT OF EMPLOYMENT, BY VIRTUE OF LEGISLATIVE PROVISIONS OR ON A VOLUNTARY BASIS.“
- C-33/89, KOWALSKA (**SEVERANCE GRANT AT RETIREMENT**)
- C-69/80, WORRINGHAM (**CONTRIBUTION TO A RETIREMENT BENEFITS SCHEME**)  
„A PENSION PAID UNDER A CONTRACTED-OUT PRIVATE OCCUPATIONAL SCHEME FALLS WITHIN THE SCOPE OF ARTICLE 119 OF THE TREATY.“

8

## PENSIONS AND THE CONCEPT OF 'PAY'

### C-262/88, BARBER CASE

„ALTHOUGH IT IS TRUE THAT MANY ADVANTAGES GRANTED BY AN EMPLOYER ALSO REFLECT CONSIDERATIONS OF SOCIAL POLICY, THE FACT THAT A BENEFIT IS IN THE NATURE OF PAY CANNOT BE CALLED IN QUESTION WHERE THE WORKER IS ENTITLED TO RECEIVE THE BENEFIT IN QUESTION FROM HIS EMPLOYER BY REASON OF THE EXISTENCE OF THE EMPLOYMENT RELATIONSHIP. IT MUST BE POINTED OUT IN THAT REGARD THAT THE COURT STATED THAT CONSIDERATION IN THE NATURE OF SOCIAL SECURITY BENEFITS IS NOT IN PRINCIPLE ALIEN TO THE CONCEPT OF PAY. HOWEVER, THE COURT POINTED OUT THAT THIS CONCEPT, AS DEFINED IN ARTICLE 119, CANNOT ENCOMPASS SOCIAL SECURITY SCHEMES OR BENEFITS, IN PARTICULAR RETIREMENT PENSIONS, DIRECTLY GOVERNED BY LEGISLATION WITHOUT ANY ELEMENT OF AGREEMENT WITHIN THE UNDERTAKING OR THE OCCUPATIONAL BRANCH CONCERNED, WHICH ARE COMPULSORILY APPLICABLE TO GENERAL CATEGORIES OF WORKERS. THE COURT NOTED THAT THOSE SCHEMES AFFORD THE WORKERS THE BENEFIT OF A STATUTORY SCHEME, TO THE FINANCING OF WHICH WORKERS, EMPLOYERS AND POSSIBLY THE PUBLIC AUTHORITIES CONTRIBUTE IN A MEASURE DETERMINED LESS BY THE EMPLOYMENT RELATIONSHIP THAN BY CONSIDERATIONS OF SOCIAL POLICY.“

„IN THAT REGARD IT MUST BE POINTED OUT FIRST OF ALL THAT **THE SCHEMES IN QUESTION ARE THE RESULT EITHER OF AN AGREEMENT BETWEEN WORKERS AND EMPLOYERS OR OF A UNILATERAL DECISION TAKEN BY THE EMPLOYER. THEY ARE WHOLLY FINANCED BY THE EMPLOYER OR BY BOTH THE EMPLOYER AND THE WORKERS WITHOUT ANY CONTRIBUTION BEING MADE BY THE PUBLIC AUTHORITIES IN ANY CIRCUMSTANCES.** ACCORDINGLY, SUCH SCHEMES FORM PART OF THE CONSIDERATION OFFERED TO WORKERS BY THE EMPLOYER.

SECONDLY, **SUCH SCHEMES ARE NOT COMPULSORILY APPLICABLE TO GENERAL CATEGORIES OF WORKERS.** ON THE CONTRARY, THEY APPLY ONLY TO WORKERS EMPLOYED BY CERTAIN UNDERTAKINGS, WITH THE RESULT THAT AFFILIATION TO THOSE SCHEMES DERIVES OF NECESSITY FROM THE EMPLOYMENT RELATIONSHIP WITH A GIVEN EMPLOYER. FURTHERMORE, EVEN IF THE SCHEMES IN QUESTION ARE ESTABLISHED IN CONFORMITY WITH NATIONAL LEGISLATION AND CONSEQUENTLY SATISFY THE CONDITIONS LAID DOWN BY IT FOR RECOGNITION AS CONTRACTED-OUT SCHEMES, THEY ARE GOVERNED BY THEIR OWN RULES.“

„(2) A PENSION PAID UNDER A CONTRACTED-OUT PRIVATE OCCUPATIONAL SCHEME FALLS WITHIN THE SCOPE OF ARTICLE 119 OF THE TREATY.“

RECENT CASE: C-192/18, **COMMISSION VS. POLAND**, FIXING DIFFERENT RETIREMENT AGES (65/60) AS AN EXAMPLE OF DISCRIMINATION ACCORDING TO ARTS. 5 AND 9(1)(F) OF DIRECTIVE 2006/54/EC

\*THE RETIREMENT PENSION PROVIDED FOR BY THOSE SCHEMES CONCERNS ONLY A PARTICULAR CATEGORY OF WORKERS, IT IS DIRECTLY RELATED TO THE PERIOD OF SERVICE COMPLETED AND ITS AMOUNT IS CALCULATED BY REFERENCE TO THE FINAL SALARY.

## PRINCIPLE OF EQUAL PAY FOR EACH ELEMENT OF PAY

### C-262/88, BARBER

„WITH REGARD TO THE MEANS OF VERIFYING COMPLIANCE WITH THE PRINCIPLE OF EQUAL PAY, IT MUST BE STATED THAT **IF THE NATIONAL COURTS WERE UNDER AN OBLIGATION TO MAKE AN ASSESSMENT AND A COMPARISON OF ALL THE VARIOUS TYPES OF CONSIDERATION GRANTED,** ACCORDING TO THE CIRCUMSTANCES, TO MEN AND WOMEN, **JUDICIAL REVIEW WOULD BE DIFFICULT** AND THE EFFECTIVENESS OF ARTICLE 119 WOULD BE DIMINISHED AS A RESULT.

IT FOLLOWS THAT **GENUINE TRANSPARENCY, PERMITTING AN EFFECTIVE REVIEW, IS ASSURED ONLY IF THE PRINCIPLE OF EQUAL PAY APPLIES TO EACH OF THE ELEMENTS OF REMUNERATION GRANTED TO MEN OR WOMEN.**“

### C-381/99 BRUNNHOFER

„AS REGARDS THE METHOD TO BE USED FOR COMPARING THE PAY OF THE WORKERS CONCERNED IN ORDER TO DETERMINE WHETHER THE PRINCIPLE OF EQUAL PAY IS BEING COMPLIED WITH, AGAIN ACCORDING TO THE CASE-LAW, GENUINE TRANSPARENCY PERMITTING AN EFFECTIVE REVIEW IS ASSURED ONLY IF THAT PRINCIPLE APPLIES TO EACH ASPECT OF REMUNERATION GRANTED TO MEN AND WOMEN, EXCLUDING ANY GENERAL OVERALL ASSESSMENT OF ALL THE CONSIDERATION PAID TO WORKERS.“

**THE CONCEPT OF 'WORKER' WITHIN THE MEANING OF  
ARTICLE 141(1) EC (NOW ARTICLE 157 TFEU)**

**C-256/01, ALLONBY**

„IN THAT CONNECTION, IT MUST BE POINTED OUT THAT THERE IS NO SINGLE DEFINITION OF WORKER IN COMMUNITY LAW: IT VARIES ACCORDING TO THE AREA IN WHICH THE DEFINITION IS TO BE APPLIED. THE TERM 'WORKER' WITHIN THE MEANING OF ARTICLE 141(1) EC IS NOT EXPRESSLY DEFINED IN THE EC TREATY. IT IS THEREFORE NECESSARY, IN ORDER TO DETERMINE ITS MEANING, TO APPLY THE GENERALLY RECOGNISED PRINCIPLES OF INTERPRETATION, HAVING REGARD TO ITS CONTEXT AND TO THE OBJECTIVES OF THE TREATY.

ACCORDINGLY, THE TERM 'WORKER' USED IN ARTICLE 141(1) EC CANNOT BE DEFINED BY REFERENCE TO THE LEGISLATION OF THE MEMBER STATES BUT HAS A **COMMUNITY MEANING**. MOREOVER, IT CANNOT BE INTERPRETED RESTRICTIVELY. FOR THE PURPOSES OF THAT PROVISION, THERE MUST BE CONSIDERED AS A **WORKER A PERSON WHO, FOR A CERTAIN PERIOD OF TIME, PERFORMS SERVICES FOR AND UNDER THE DIRECTION OF ANOTHER PERSON IN RETURN FOR WHICH HE RECEIVES REMUNERATION** (SEE, IN RELATION TO FREE MOVEMENT OF WORKERS, IN PARTICULAR C-66/85 *LAWRIE-BLUM*, PARAGRAPH 17).“

11

**CJEU CASE-LAW**

**C-43/75, DEFRENNE SABENA (AIR HOSTESS, CABIN STEWARD, EQUAL WORK)**

„SECONDLY, THIS PROVISION FORMS PART OF THE SOCIAL OBJECTIVES OF THE COMMUNITY, WHICH IS NOT MERELY AN ECONOMIC UNION, BUT IS AT THE SAME TIME INTENDED, BY COMMON ACTION, TO ENSURE SOCIAL PROGRESS AND SEEK THE CONSTANT IMPROVEMENT OF THE LIVING AND WORKING CONDITIONS OF THEIR PEOPLES, AS IS EMPHASIZED BY THE PREAMBLE TO THE TREATY. **THIS DOUBLE AIM, WHICH IS AT ONCE ECONOMIC AND SOCIAL, SHOWS THAT THE PRINCIPLE OF EQUAL PAY FORMS PART OF THE FOUNDATIONS OF THE COMMUNITY.**“

„PRINCIPLE OF EQUAL CONTAINED IN ARTICLE 119 MAY BE RELIED UPON BEFORE THE NATIONAL COURTS AND THAT THESE COURTS HAVE A DUTY TO ENSURE THE PROTECTION OF THE RIGHTS WHICH THIS PROVISION VESTS IN INDIVIDUALS, IN PARTICULAR AS REGARDS THOSE TYPES OF DISCRIMINATION ARISING DIRECTLY FROM LEGISLATIVE PROVISIONS OR COLLECTIVE LABOUR AGREEMENTS, AS WELL AS IN CASES IN WHICH MEN AND WOMEN RECEIVE UNEQUAL PAY FOR EQUAL WORK WHICH IS CARRIED OUT IN THE SAME ESTABLISHMENT OR SERVICE, WHETHER PRIVATE OR PUBLIC.“

„IN FACT, SINCE **ARTICLE 119 IS MANDATORY IN NATURE**, THE PROHIBITION ON DISCRIMINATION BETWEEN MEN AND WOMEN APPLIES NOT ONLY TO THE ACTION OF PUBLIC AUTHORITIES, BUT ALSO **EXTENDS TO ALL AGREEMENTS WHICH ARE INTENDED TO REGULATE PAID LABOUR COLLECTIVELY, AS WELL AS TO CONTRACTS BETWEEN INDIVIDUALS.**“

12

**C-43/75, DEFRENNE SABENA (AIR HOSTESS, CABIN STEWARD, EQUAL WORK)**

„COUNCIL DIRECTIVE NO 75/117 DOES NOT PREJUDICE THE **DIRECT EFFECT OF ARTICLE 119.**“ (ALSO IN **HORIZONTAL RELATIONSHIPS**)

- SEE ALSO **C-96/80, JENKINS**: „IT FOLLOWS, THEREFORE, THAT **ARTICLE 1 OF COUNCIL DIRECTIVE 75/117/EEC** WHICH IS PRINCIPALLY DESIGNED TO FACILITATE THE PRACTICAL APPLICATION OF THE PRINCIPLE OF EQUAL PAY OUTLINED IN ARTICLE 119 OF THE TREATY IN **NO WAY ALTERS THE CONTENT OR SCOPE OF THAT PRINCIPLE AS DEFINED IN THE TREATY.**“

**C-129/79, MACARTHYS V WENDY SMITH**: „AS THE COURT INDICATED IN THE DEFRENNE JUDGMENT OF 8 APRIL 1976, **THAT PROVISION APPLIES DIRECTLY, AND WITHOUT THE NEED FOR MORE DETAILED IMPLEMENTING MEASURES ON THE PART OF THE COMMUNITY OR THE MEMBER STATES,** TO ALL FORMS OF DIRECT AND OVERT DISCRIMINATION WHICH MAY BE IDENTIFIED SOLELY WITH THE AID OF THE CRITERIA OF EQUAL WORK AND EQUAL PAY REFERRED TO BY THE ARTICLE IN QUESTION.“

13

#### **CJEU CASE-LAW ON EQUAL PAY FOR EQUAL WORK OR WORK OF EQUAL VALUE (1)**

##### **EQUAL PAY FOR EQUAL WORK**

- **C-129/79, MACARTHYS V WENDY SMITH** (EQUAL WORK BUT UNEQUAL PAYMENT OF A WOMAN IN COMPARISON WITH A MAN PREVIOUSLY);
- **C-69/80, WORRINGHAM, HUMPHREYS V. LLOYDS BANK LIMITED** (5% ADDITION TO GROSS SALARY FOR MEN UNDER 25, CONTRIBUTION TO A RETIREMENT BENEFITS SCHEME, UNEQUAL PAY FOR EQUAL WORK OR WORK OF EQUAL VALUE);
- **C-157/86, MARY MURPHY** (WORK OF HIGHER VALUE THAN THAT OF THE PERSON WITH WHOM A COMPARISON IS TO BE MADE, A FORTIORI)

##### **EQUAL PAY FOR EQUAL WORK OR WORK OF EQUAL VALUE**

- **C-624/19, K AND OTHERS V TESCO STORES LTD** (EQUAL PAY FOR MALE AND FEMALE WORKERS – ARTICLE 157 TFEU – DIRECT EFFECT – CONCEPT OF ‘WORK OF EQUAL VALUE’ – CLAIMS SEEKING EQUAL PAY FOR WORK OF EQUAL VALUE – SINGLE SOURCE – WORKERS OF DIFFERENT SEX HAVING THE SAME EMPLOYER – DIFFERENT ESTABLISHMENTS – COMPARISON)

##### **EQUAL PAY FOR WORK OF EQUAL VALUE**

- **C-237/85 – RUMMLER V DATO-DRUCK** (PRINTING, MUSCULAR WORK, EQUAL WORK OF EQUAL VALUE)

##### **DETERMINING WHETHER WORK IS THE SAME OR OF EQUAL VALUE AND OBJECTIVE JUSTIFICATIONS FOR UNEQUAL PAY**

- **C-381/99, BRUNNHOFER** (EQUAL WORK OF EQUAL VALUE, MONTHLY SALARY SUPPLEMENT, EACH ASPECT OF PAY TAKEN IN ISOLATION, BURDEN OF PROOF, JUSTIFICATION BY OBJECTIVE REASONS UNRELATED TO ANY DISCRIMINATION BASED ON SEX AND IN CONFORMITY WITH THE PRINCIPLE OF PROPORTIONALITY, JUSTIFICATION WHEN WORK IS PAID AT TIME RATES)

##### **BURDEN OF PROOF, JUSTIFICATION OF THE SUPPLEMENT – MOBILITY, TRAINING, LENGTH OF SERVICE**

- **C-109/88, DANFOSS** (LACK OF TRANSPARENCY, BURDEN OF PROOF, JUSTIFICATION OF THE SUPPLEMENT – MOBILITY, TRAINING, LENGTH OF SERVICE)
- **C-17/05, CADMAN** (LENGTH OF SERVICE AS A DETERMINANT OF PAY, OBJECTIVE JUSTIFICATION, BURDEN OF PROOF)

14

## CJEU CASE-LAW ON EQUAL PAY FOR EQUAL WORK OR WORK OF EQUAL VALUE (2)

### „WORK OF EQUAL VALUE“, „SAME WORK“ – COMPARISON BETWEEN DIFFERENT PROFESSIONS

- C-127/92, **ENDERBY** (SPEECH THERAPIST, PSYCHOLOGIST, PHARMACIST, COMPARISON, EQUAL PAY FOR WORK OF EQUAL VALUE, COLLECTIVE AGREEMENT, **SHORTAGE OF CANDIDATES**, OBJECTIVE JUSTIFICATION);
- C-309/97, **WIENER GEBIETSKRANKENKASSE** (PSYCHOLOGISTS VS. DOCTORS, UNEQUAL PAY DUE TO **INCOMPARABLE QUALIFICATIONS**)

### „WORK OF EQUAL VALUE“ – COMPARISON OF PAY

- C-236/98, **JÄMO (JAMSTALLDHETSOMBUDSMANN V ÖREBRO)** (EQUAL PAY FOR WORK OF EQUAL VALUE, COMPARISON OF A MIDWIFE'S PAY WITH THAT OF A CLINICAL TECHNICIAN – (NOT) TAKING INTO ACCOUNT A SUPPLEMENT AND A REDUCTION IN WORKING TIME FOR INCONVENIENT WORKING HOURS)

### WORK OF EQUAL VALUE – PIECE WORK PAY SCHEMES

- C-400/93, **ROYAL COPENHAGEN** (WORK OF EQUAL VALUE, PIECE-WORK PAY SCHEMES)

### SINGLE SOURCE

- C-320/00 **LAWRENCE** (PAY CONDITIONS OF DIFFERENT SEXES CANNOT BE ATTRIBUTED TO A SINGLE SOURCE);
- C-256/01, **ALLONBY** (PRINCIPLE OF EQUAL PAY FOR MEN AND WOMEN - DIRECT EFFECT - MEANING OF WORKER - SELF-EMPLOYED FEMALE LECTURER UNDERTAKING WORK PRESUMED TO BE OF EQUAL VALUE TO THAT WHICH IS UNDERTAKEN IN THE SAME COLLEGE BY MALE LECTURERS WHO ARE EMPLOYEES, BUT UNDER CONTRACT WITH A THIRD COMPANY - SELF-EMPLOYED LECTURERS NOT ELIGIBLE FOR MEMBERSHIP OF AN OCCUPATIONAL PENSION SCHEME) ;
- C-624/19, **K AND OTHERS V TESCO STORES LTD** (EQUAL PAY FOR MALE AND FEMALE WORKERS – ARTICLE 157 TFEU – DIRECT EFFECT – CONCEPT OF ‘WORK OF EQUAL VALUE’ – CLAIMS SEEKING EQUAL PAY FOR WORK OF EQUAL VALUE – SINGLE SOURCE – WORKERS OF DIFFERENT SEX HAVING THE SAME EMPLOYER – DIFFERENT ESTABLISHMENTS – COMPARISON)

JUSTIFICATIONS: NATURE OF THE WORK, TRAINING, LENGTH OF SERVICE, WORKING CONDITIONS, NEEDS OF THE COMPANY, STATE POLICIES, LABOUR MARKET SITUATIONS (E. G. SHORTAGE OF WORKERS)

15

## EQUAL PAY FOR EQUAL WORK

C-129/79, **MACARTHYS V WENDY SMITH** (EQUAL WORK BUT UNEQUAL PAYMENT OF A WOMAN IN COMPARISON WITH A MAN PREVIOUSLY)

MRS WENDY SMITH, WAS EMPLOYED AS FROM 1 MARCH 1976 BY MACARTHYS LIMITED, WHOLESALE DEALERS IN PHARMACEUTICAL PRODUCTS, AS A WAREHOUSE MANAGERESS AT A WEEKLY SALARY OF £50. SHE COMPLAINS OF DISCRIMINATION IN PAY BECAUSE HER PREDECESSOR, A MAN, WHOSE POST SHE TOOK UP AFTER AN INTERVAL OF FOUR MONTHS, RECEIVED A SALARY OF £60 PER WEEK.

„1. **THE PRINCIPLE** THAT MEN AND WOMEN SHOULD RECEIVE EQUAL PAY FOR EQUAL WORK, ENSHRINED IN ARTICLE 119 OF THE EEC TREATY, IS **NOT CONFINED TO SITUATIONS** IN WHICH MEN AND WOMEN ARE **CONTEMPORANEOUSLY DOING EQUAL WORK FOR THE SAME EMPLOYER.**

2. THE PRINCIPLE OF EQUAL PAY ENSHRINED IN ARTICLE 119 APPLIES TO THE CASE WHERE IT IS ESTABLISHED THAT, HAVING REGARD TO THE NATURE OF HER SERVICES, A WOMAN HAS RECEIVED LESS PAY THAN A MAN WHO WAS EMPLOYED PRIOR TO THE WOMAN'S PERIOD OF EMPLOYMENT AND WHO DID EQUAL WORK FOR THE EMPLOYER.“

C-69/80, **WORRINGHAM, HUMPHREYS V. LLOYDS BANK LIMITED** (5% ADDITION TO GROSS SALARY FOR MEN UNDER 25, CONTRIBUTION TO A RETIREMENT BENEFITS SCHEME, UNEQUAL PAY FOR EQUAL WORK OR WORK OF EQUAL VALUE)

C-157/86, **MARY MURPHY** (WORK OF HIGHER VALUE THAN THAT OF THE PERSON WITH WHOM A COMPARISON IS TO BE MADE, A FORTIORI)

MARY MURPHY AND 28 OTHER WOMEN AGAINST THEIR EMPLOYER, BORD TELECOM EIREANN. THEY ARE EMPLOYED AS FACTORY WORKERS AND THEY ARE ENGAGED IN SUCH TASKS AS DISMANTLING, CLEANING, OILING AND REASSEMBLING TELEPHONES AND OTHER EQUIPMENT. THEY CLAIM THE RIGHT TO BE PAID AT THE SAME RATE AS A SPECIFIED MALE WORKER EMPLOYED IN THE SAME FACTORY AS A STORES LABOURER AND ENGAGED IN CLEANING, COLLECTING AND DELIVERING EQUIPMENT AND COMPONENTS AND IN LENDING GENERAL ASSISTANCE AS REQUIRED. THE EQUALITY OFFICER TO WHOM THE CLAIM WAS REFERRED IN THE FIRST INSTANCE ... CONSIDERED THE APPELLANTS' WORK TO BE OF HIGHER VALUE TAKEN AS A WHOLE THAN THAT OF THE MALE WORKER.

„IT IS TRUE THAT ARTICLE 119 EXPRESSLY REQUIRES THE APPLICATION OF THE PRINCIPLE OF EQUAL PAY FOR MEN AND WOMEN **SOLELY IN THE CASE OF EQUAL WORK OR, ACCORDING TO A CONSISTENT LINE OF DECISIONS OF THE COURT, IN THE CASE OF WORK OF EQUAL VALUE**, AND NOT IN THE CASE OF WORK OF UNEQUAL VALUE. NEVERTHELESS, IF THAT PRINCIPLE FORBIDS WORKERS OF ONE SEX ENGAGED IN WORK OF EQUAL VALUE TO THAT OF WORKERS OF THE OPPOSITE SEX TO BE PAID A LOWER WAGE THAN THE LATTER ON GROUNDS OF SEX, **IT A FORTIORI PROHIBITS SUCH A DIFFERENCE IN PAY WHERE THE LOWER-PAID CATEGORY OF WORKERS IS ENGAGED IN WORK OF HIGHER VALUE.**“

16



### EQUAL PAY FOR EQUAL WORK OR WORK OF EQUAL VALUE

**C-624/19, K AND OTHERS V TESCO STORES LTD** (EQUAL PAY FOR MALE AND FEMALE WORKERS – ARTICLE 157 TFEU – DIRECT EFFECT – CONCEPT OF ‘WORK OF EQUAL VALUE’ – CLAIMS SEEKING EQUAL PAY FOR WORK OF EQUAL VALUE – SINGLE SOURCE – WORKERS OF DIFFERENT SEX HAVING THE SAME EMPLOYER – DIFFERENT ESTABLISHMENTS – COMPARISON)

AS IS APPARENT FROM THE ORDER FOR REFERENCE, TESCO STORES SUBMITTED IN THE MAIN PROCEEDINGS THAT ARTICLE 157 TFEU LACKS DIRECT EFFECT IN CIRCUMSTANCES, SUCH AS THOSE OBTAINING IN THOSE PROCEEDINGS, IN WHICH THE WORKERS COMPARED PERFORM DIFFERENT WORK. IN SUPPORT OF THAT CONTENTION, THE RESPONDENT COMPANY IN THE MAIN PROCEEDINGS MAINTAINS, IN ITS OBSERVATIONS SUBMITTED TO THE COURT, THAT THE CRITERION OF ‘WORK OF EQUAL VALUE’, UNLIKE THE CRITERION OF ‘EQUAL WORK’, REQUIRES DEFINITION BY PROVISIONS OF NATIONAL OR EU LAW... IN PARTICULAR, ACCORDING TO THAT COMPANY, IN ESSENCE, RELIANCE UPON THE PRINCIPLE OF EQUAL PAY FOR MALE AND FEMALE WORKERS WHEN WORK OF EQUAL VALUE IS BEING COMPARED IS FOUNDED ON A CLAIM OF DISCRIMINATION THAT IS IDENTIFIABLE ONLY BY REFERENCE TO PROVISIONS MORE EXPLICIT THAN THOSE OF ARTICLE 157 TFEU.

„IT MUST BE POINTED OUT AT THE OUTSET THAT THE VERY WORDING OF ARTICLE 157 TFEU CANNOT SUPPORT THAT INTERPRETATION. THAT ARTICLE STATES THAT EACH MEMBER STATE IS TO ENSURE THAT THE PRINCIPLE OF EQUAL PAY FOR MALE AND FEMALE WORKERS FOR EQUAL WORK OR WORK OF EQUAL VALUE IS APPLIED. **THEREFORE, IT IMPOSES, CLEARLY AND PRECISELY, AN OBLIGATION TO ACHIEVE A PARTICULAR RESULT AND IS MANDATORY AS REGARDS BOTH ‘EQUAL WORK’ AND ‘WORK OF EQUAL VALUE’.** FURTHERMORE, THE COURT HAS HELD THAT ARTICLE 119 OF THE EEC TREATY (WHICH IS) ...NOW ARTICLE 157 TFEU) REQUIRES THE APPLICATION OF THE PRINCIPLE OF EQUAL PAY FOR MEN AND WOMEN IN THE CASE OF EQUAL WORK OR, ACCORDING TO A CONSISTENT LINE OF DECISIONS OF THE COURT, IN THE CASE OF WORK OF EQUAL VALUE (SEE, TO THAT EFFECT, JUDGMENT (IN) 1988, *MURPHY AND OTHERS*, 157/86, PARAGRAPH 9).

IT SHOULD ALSO BE NOTED THAT THE TERMS ‘EQUAL WORK’, ‘SAME JOB’ AND ‘WORK OF EQUAL VALUE’ IN ARTICLE 157 TFEU ARE ENTIRELY QUALITATIVE IN CHARACTER IN THAT THEY ARE EXCLUSIVELY CONCERNED WITH THE NATURE OF THE WORK ACTUALLY PERFORMED (SEE, TO THAT EFFECT, JUDGMENT OF 26 JUNE 2001, *BRUNNHOFER*, C-381/99, PARAGRAPH 42 AND THE CASE-LAW CITED). ACCORDINGLY, IT IS APPARENT FROM SETTLED CASE-LAW THAT, CONTRARY TO TESCO STORES’ SUBMISSIONS, THE DIRECT EFFECT OF ARTICLE 157 TFEU IS NOT LIMITED TO SITUATIONS IN WHICH THE WORKERS OF DIFFERENT SEX WHO ARE COMPARED PERFORM ‘EQUAL WORK’, TO THE EXCLUSION OF ‘WORK OF EQUAL VALUE’. IN THAT CONTEXT, THE QUESTION WHETHER THE WORKERS CONCERNED PERFORM ‘EQUAL WORK’ OR ‘WORK OF EQUAL VALUE’, AS REFERRED TO IN ARTICLE 157 TFEU, IS A MATTER OF FACTUAL ASSESSMENT BY THE (NATIONAL) COURT.“

17

### EQUAL PAY FOR WORK OF EQUAL VALUE

**C-237/85 – RUMMLER V DATO-DRUCK** (PRINTING, MUSCULAR WORK, EQUAL WORK OF EQUAL VALUE)

GISELA RUMMLER AGAINST HER EMPLOYER, DATO-DRUCK GMBH, A PRINTING FIRM, FOR THE PURPOSE OF OBTAINING CLASSIFICATION IN A HIGHER CATEGORY IN THE PAY SCALE. THE PLAINTIFF IN THE MAIN PROCEEDINGS, WHO IS CLASSIFIED IN WAGE GROUP III, CONSIDERS THAT SHE OUGHT TO BE CLASSIFIED IN WAGE GROUP IV SINCE SHE CARRIES OUT WORK FALLING UNDER THAT WAGE GROUP; IN PARTICULAR, SHE IS REQUIRED TO PACK PARCELS WEIGHING MORE THAN 20 KILOGRAMS, WHICH FOR HER REPRESENTS HEAVY PHYSICAL WORK. THE DEFENDANT IN THE MAIN PROCEEDINGS DENIES THAT THE PLAINTIFF’S DUTIES ARE OF THE NATURE DESCRIBED BY HER; IT CONSIDERS THAT THEY DO NOT EVEN FULFIL THE CONDITIONS FOR CLASSIFICATION IN WAGE GROUP III, IN WHICH THE PLAINTIFF IS NOW CLASSIFIED AND THAT HAVING REGARD TO THE NATURE OF HER DUTIES, WHICH MAKE ONLY SLIGHT MUSCULAR DEMANDS, SHE SHOULD BE CLASSIFIED IN WAGE GROUP II. ACCORDING TO DATO-DRUCK GMBH, PAY CRITERIA MUST IN ESSENCE BE ESTABLISHED IN ACCORDANCE WITH THE DUTIES ACTUALLY PERFORMED, AND NOT BY REFERENCE TO THE PERSONAL ATTRIBUTES OF THE WORKER WHO CARRIES THEM OUT.

„THAT IS TRUE EVEN OF A CRITERION BASED ON VALUES CORRESPONDING TO THE AVERAGE PERFORMANCE OF WORKERS OF THE SEX CONSIDERED TO HAVE LESS NATURAL ABILITY FOR THE PURPOSES OF THAT CRITERION, FOR THE RESULT WOULD BE ANOTHER FORM OF PAY DISCRIMINATION: WORK OBJECTIVELY REQUIRING GREATER STRENGTH WOULD BE PAID AT THE SAME RATE AS WORK REQUIRING LESS STRENGTH. THE FAILURE TO TAKE INTO CONSIDERATION VALUES CORRESPONDING TO THE AVERAGE PERFORMANCE OF FEMALE WORKERS IN ESTABLISHING A PROGRESSIVE PAY SCALE BASED ON THE DEGREE OF MUSCLE DEMAND AND MUSCULAR EFFORT MAY INDEED HAVE THE EFFECT OF PLACING WOMEN WORKERS, WHO CANNOT TAKE JOBS WHICH ARE BEYOND THEIR PHYSICAL STRENGTH, AT A DISADVANTAGE. **THAT DIFFERENCE IN TREATMENT MAY, HOWEVER, BE OBJECTIVELY JUSTIFIED BY THE NATURE OF THE JOB WHEN SUCH A DIFFERENCE IS NECESSARY IN ORDER TO ENSURE A LEVEL OF PAY APPROPRIATE TO THE EFFORT REQUIRED BY THE WORK AND THUS CORRESPONDS TO A REAL NEED ON THE PART OF THE UNDERTAKING** (SEE C-170/84 *BILKA-KAUFBAUS*).

AS HAS ALREADY BEEN STATED, HOWEVER, A JOB CLASSIFICATION SYSTEM MUST, IN SO FAR AS THE NATURE OF THE TASKS IN QUESTION PERMITS, INCLUDE OTHER CRITERIA WHICH SERVE TO ENSURE THAT THE SYSTEM AS A WHOLE IS NOT DISCRIMINATORY.“

18

## DETERMINING WHETHER WORK IS THE SAME OR OF EQUAL VALUE

**C-381/99, BRUNNHOFER** (EQUAL WORK OF EQUAL VALUE, MONTHLY SALARY SUPPLEMENT, EACH ASPECT OF PAY TAKEN IN ISOLATION, BURDEN OF PROOF, JUSTIFICATION BY OBJECTIVE REASONS UNRELATED TO ANY DISCRIMINATION BASED ON SEX AND IN CONFORMITY WITH THE PRINCIPLE OF PROPORTIONALITY, JUSTIFICATION WHEN WORK IS PAID AT TIME RATES)

„IN REPLYING TO THIS POINT RAISED BY THE REFERENCE, IT MUST BE BORNE IN MIND THAT IT IS CLEAR FROM THE COURT'S CASE-LAW THAT THE TERMS 'THE SAME WORK', 'THE SAME JOB' AND 'WORK OF EQUAL VALUE' IN ARTICLE 119 OF THE TREATY AND ARTICLE 1 OF THE DIRECTIVE ARE ENTIRELY QUALITATIVE IN CHARACTER IN THAT THEY ARE EXCLUSIVELY CONCERNED WITH THE NATURE OF THE WORK ACTUALLY PERFORMED (SEE *MACARTHYS*, PARAGRAPH 11, AND *C-237/85 RUMMLER* , PARAGRAPHS 13 AND 23). THE COURT HAS REPEATEDLY HELD THAT, IN ORDER TO DETERMINE WHETHER EMPLOYEES PERFORM THE SAME WORK OR WORK TO WHICH EQUAL VALUE CAN BE ATTRIBUTED, IT IS NECESSARY TO ASCERTAIN WHETHER, TAKING ACCOUNT OF A NUMBER OF FACTORS SUCH AS THE NATURE OF THE WORK, THE TRAINING REQUIREMENTS AND THE WORKING CONDITIONS, THOSE PERSONS CAN BE CONSIDERED TO BE IN A COMPARABLE SITUATION (SEE *C-400/93 ROYAL COPENHAGEN*, PARAGRAPHS 32 AND 33, AND *WIENER GEBIETSKRANKENKASSE*, PARAGRAPH 17).“

„IT FOLLOWS THAT THE FACT THAT THE EMPLOYEES CONCERNED ARE CLASSIFIED IN THE SAME JOB CATEGORY UNDER THE COLLECTIVE AGREEMENT APPLICABLE TO THEIR EMPLOYMENT IS NOT IN ITSELF SUFFICIENT FOR CONCLUDING THAT THEY PERFORM THE SAME WORK OR WORK OF EQUAL VALUE. SUCH A CLASSIFICATION DOES NOT EXCLUDE THE EXISTENCE OF OTHER EVIDENCE TO SUPPORT THAT CONCLUSION. IT IS THEREFORE NECESSARY TO ASCERTAIN WHETHER, WHEN A NUMBER OF FACTORS ARE TAKEN INTO ACCOUNT, SUCH AS THE NATURE OF THE ACTIVITIES ACTUALLY ENTRUSTED TO EACH OF THE EMPLOYEES IN QUESTION IN THE CASE, THE TRAINING REQUIREMENTS FOR CARRYING THEM OUT AND THE WORKING CONDITIONS IN WHICH THE ACTIVITIES ARE ACTUALLY CARRIED OUT, THOSE PERSONS ARE IN FACT PERFORMING THE SAME WORK OR COMPARABLE WORK.“

19

## SINGLE SOURCE

**C-624/19, K AND OTHERS V TESCO STORES LTD** (EQUAL PAY FOR MALE AND FEMALE WORKERS – ARTICLE 157 TFEU – DIRECT EFFECT – CONCEPT OF 'WORK OF EQUAL VALUE' – CLAIMS SEEKING EQUAL PAY FOR WORK OF EQUAL VALUE – SINGLE SOURCE – WORKERS OF DIFFERENT SEX HAVING THE SAME EMPLOYER – DIFFERENT ESTABLISHMENTS – COMPARISON)

THE CLAIMANTS IN THE MAIN PROCEEDINGS ARE EMPLOYEES OR FORMER EMPLOYEES OF TESCO STORES, BOTH FEMALE ('THE FEMALE CLAIMANTS IN THE MAIN PROCEEDINGS') AND MALE, WHO WORK OR USED TO WORK IN ITS STORES. THEY BROUGHT PROCEEDINGS AGAINST TESCO STORES ... FROM FEBRUARY 2018 ONWARDS, ON THE GROUND THAT THEY HAD NOT RECEIVED EQUAL PAY FOR EQUAL WORK, CONTRARY TO THE EQUALITY ACT 2010 AND ARTICLE 157 TFEU. IN SUPPORT OF THEIR EQUAL PAY CLAIMS, THE FEMALE CLAIMANTS IN THE MAIN PROCEEDINGS SUBMIT, FIRST, THAT THEIR WORK AND THAT OF THE MALE WORKERS EMPLOYED BY TESCO STORES IN THE DISTRIBUTION CENTRES IN ITS NETWORK ARE OF EQUAL VALUE AND, SECOND, THAT THEY ARE ENTITLED TO COMPARE THEIR WORK AND THAT OF THOSE WORKERS, **ALTHOUGH THE WORK IS CARRIED OUT IN DIFFERENT ESTABLISHMENTS**, UNDER BOTH THE EQUALITY ACT 2010 AND ARTICLE 157 TFEU. THEY CONTEND THAT, IN ACCORDANCE WITH SECTION 79(4) OF THE EQUALITY ACT 2010, **COMMON TERMS OF EMPLOYMENT ARE APPLICABLE IN THE STORES AND DISTRIBUTION CENTRES**. FURTHERMORE, IN ACCORDANCE WITH ARTICLE 157 TFEU, THERE IS A **SINGLE SOURCE, NAMELY TESCO STORES, FOR THE TERMS AND CONDITIONS OF EMPLOYMENT** OF THE FEMALE CLAIMANTS IN THE MAIN PROCEEDINGS AND THOSE WORKERS.

„FURTHERMORE, IT SHOULD BE POINTED OUT THAT, WHERE THE DIFFERENCES IDENTIFIED IN THE PAY CONDITIONS OF WORKERS PERFORMING EQUAL WORK OR WORK OF EQUAL VALUE CANNOT BE ATTRIBUTED TO A SINGLE SOURCE, THERE IS NO ENTITY WHICH IS RESPONSIBLE FOR THE INEQUALITY AND WHICH COULD RESTORE EQUAL TREATMENT, WITH THE RESULT THAT SUCH A SITUATION DOES NOT COME WITHIN THE SCOPE OF ARTICLE 157 TFEU (SEE, TO THAT EFFECT, *LAWRENCE AND OTHERS*, **C-320/00**, PARAGRAPHS 17 AND 18, AND *ALLONBY*, **C-256/01**, PARAGRAPH 46).

IT FOLLOWS THAT A SITUATION IN WHICH THE PAY CONDITIONS OF WORKERS OF DIFFERENT SEX PERFORMING EQUAL WORK OR WORK OF EQUAL VALUE CAN BE ATTRIBUTED TO A SINGLE SOURCE COMES WITHIN THE SCOPE OF ARTICLE 157 TFEU AND THAT **THE WORK AND THE PAY OF THOSE WORKERS CAN BE COMPARED ON THE BASIS OF THAT ARTICLE, EVEN IF THEY PERFORM THEIR WORK IN DIFFERENT ESTABLISHMENTS.**“

20

## EQUAL PAY FOR EQUAL WORK: PART-TIME WORKERS

- C-96/80, **JENKINS** (HOURLY WAGE FOR PART-TIME WORKERS LOWER THAN FOR FULL-TIME WORKERS PERFORMING THE SAME JOB, INDIRECT DISCRIMINATION, OBJECTIVE JUSTIFICATION) – **ENCOURAGING FULL-TIME EMPLOYMENT**
  
- C-170/84, **BILKA-KAUFHAUS GMBH** (PART-TIME/FULL-TIME WORK, CONDITION TO CLAIM AN OCCUPATIONAL PENSION, INDIRECT DISCRIMINATION, OBJECTIVE JUSTIFICATION) – **ENCOURAGING FULL-TIME EMPLOYMENT**
  
- C-171/88, **RINNER-KÜHN** (PART-TIME WORKERS UNDER 10H/WEEK NOT ENTITLED TO CONTINUED PAYMENT OF WAGES BY EMPLOYER IN THE EVENT OF ILLNESS, INDIRECT DISCRIMINATION)
  
- C-33/89, **KOWALSKA** (ÜBERGANGSGELD,, SEVERANCE GRANT AT RETIREMENT ONLY TO FULL-TIME WORKERS, INDIRECT DISCRIMINATION) – **PROPORTIONAL APPROACH**
  
- C-285/02, **ELSNER** (NO REMUNERATION FOR ADDITIONAL HOURS WORKED, PART-TIME/FULLTIME, SCHOOL TEACHERS) – **PROPORTIONAL APPROACH**
  
- C-360/90, **BÖTEL**; C-457/93, **LEWARK**; C-278/93, **FREERS AND SPECKMANN V DEUTSCHE BUNDEPOST** (INDIRECT DISCRIMINATION AGAINST WOMEN WORKERS - COMPENSATION FOR ATTENDANCE AT TRAINING COURSES PROVIDING MEMBERS OF STAFF COMMITTEES WITH THE KNOWLEDGE NECESSARY FOR PERFORMING THEIR FUNCTIONS, HONORARY FUNCTION, PAY, PART-TIME WORK, OBJECTIVE JUSTIFICATION)

21

- **BARBARA KRESAL**, GENDER PAY GAP AND UNDER-REPRESENTATION OF WOMEN IN DECISION-MAKING POSITIONS: UWE DECISIONS OF THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS, ERA FORUM, 2021, 22:311-325, [HTTPS://LINK.SPRINGER.COM/ARTICLE/10.1007/S12027-021-00664-8](https://link.springer.com/article/10.1007/s12027-021-00664-8)
  
- **COMPARATIVE EXPERIENCE**
  - ILO, PAY TRANSPARENCY LEGISLATION: IMPLICATION FOR EMPLOYERS' AND WORKERS' ORGANISATIONS, 2022, [HTTPS://WWW.ILO.ORG/WCMSP5/GROUPS/PUBLIC/---ED\\_PROTECT/---PROTRAV/---TRAVAIL/DOCUMENTS/PUBLICATION/WCMS\\_849209.PDF](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_849209.pdf)
  - IN SLOVENIA IN THE LAST DECADE, ONLY VDSS PDP 448/2019, RETURNED TO 1ST LEVEL
  
- **PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL TO STRENGTHEN THE APPLICATION OF THE PRINCIPLE OF EQUAL PAY FOR EQUAL WORK OR WORK OF EQUAL VALUE BETWEEN MEN AND WOMEN THROUGH PAY TRANSPARENCY AND ENFORCEMENT MECHANISMS, COM/2021/93 FINAL. IN DECEMBER 2022, PROVISIONAL AGREEMENT FROM INTERINSTITUTIONAL NEGOTIATIONS.**
  - COMMISSION RECOMMENDATION 2014/124/EU ON STRENGTHENING THE PRINCIPLE OF EQUAL PAY BETWEEN MEN AND WOMEN THROUGH TRANSPARENCY
  - IN JUNE 2019, THE COUNCIL CALLED ON THE COMMISSION TO DEVELOP CONCRETE MEASURES TO INCREASE PAY TRANSPARENCY. IN MARCH 2020, THE COMMISSION PUBLISHED ITS GENDER EQUALITY STRATEGY 2020-2025 SETTING OUT ACTIONS TO CLOSE THE GENDER PAY GAP.
  
- DIRECTIVE 2019/1158/EU ON **WORK-LIFE BALANCE FOR PARENTS AND CARERS** AND REPEALING COUNCIL DIRECTIVE 2010/18/EU
  
- DIRECTIVE 2022/2381/EU ON IMPROVING THE **GENDER BALANCE AMONG DIRECTORS** OF LISTED COMPANIES AND RELATED MEASURES
  - AT LEAST 40 % OF NON-EXECUTIVE DIRECTOR POSITIONS; AT LEAST 33 % OF ALL DIRECTOR POSITIONS, INCLUDING BOTH EXECUTIVE AND NONEXECUTIVE DIRECTORS.

22

**PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL TO STRENGTHEN THE APPLICATION OF THE PRINCIPLE OF EQUAL PAY FOR EQUAL WORK OR WORK OF EQUAL VALUE BETWEEN MEN AND WOMEN THROUGH PAY TRANSPARENCY AND ENFORCEMENT MECHANISMS, COM/2021/93 FINAL. IN DECEMBER 2022, PROVISIONAL AGREEMENT FROM INTERINSTITUTIONAL NEGOTIATIONS.**

• **EQUAL WORK AND WORK OF EQUAL VALUE**

- MEASURES TO ENSURE THAT EMPLOYERS HAVE PAY STRUCTURES ENSURING EQUAL PAY
- MEASURES ENSURING THAT ANALYTICAL TOOLS OR METHODOLOGIES ARE MADE AVAILABLE AND ARE EASILY ACCESSIBLE TO SUPPORT AND GUIDE THE ASSESSMENT AND COMPARISON OF THE VALUE OF WORK, ALLOWING TO EASILY ESTABLISH AND USE GENDER NEUTRAL JOB EVALUATION AND CLASSIFICATION SYSTEMS
- PAY STRUCTURES SHALL ENABLE THE ASSESSMENT OF WHETHER WORKERS ARE IN A COMPARABLE SITUATION IN REGARD TO THE VALUE OF WORK ON THE BASIS OF OBJECTIVE, GENDER-NEUTRAL CRITERIA, SUCH AS SKILLS, EFFORT, RESPONSIBILITY AND WORKING CONDITIONS, AND, IF APPROPRIATE, ANY OTHER FACTORS RELEVANT TO THE SPECIFIC JOB OR POSITION
- COMPARISON NOT LIMITED TO THE SAME EMPLOYER, BUT TO A SINGLE SOURCE ESTABLISHING PAY CONDITIONS; NOT LIMITED TO WORKERS EMPLOYED AT THE SAME TIME

• **PAY TRANSPARENCY PRIOR TO EMPLOYMENT**

• **TRANSPARENCY OF PAY SETTING AND CAREER PROGRESSION POLICY**

• **RIGHT TO INFORMATION ABOUT PAY AVERAGES (SAME WORK OR WORK OF EQUAL VALUE) BROKEN DOWN BY SEX**

• **REPORTING ON PAY GAP BETWEEN FEMALE AND MALE WORKERS**

• **JOINT PAY ASSESSMENT (<5 % DIFFERENCE OF AVERAGE PAY BETWEEN MALE AND FEMALE WORKERS, NO OBJECTIVE JUSTIFICATION AND NOT REMEDIED WITHIN 6 MONTHS OF THE PAY REPORTING SUBMISSION)**

23

**PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL TO STRENGTHEN THE APPLICATION OF THE PRINCIPLE OF EQUAL PAY FOR EQUAL WORK OR WORK OF EQUAL VALUE BETWEEN MEN AND WOMEN THROUGH PAY TRANSPARENCY AND ENFORCEMENT MECHANISMS, COM/2021/93 FINAL. IN DECEMBER 2022, PROVISIONAL AGREEMENT FROM INTERINSTITUTIONAL NEGOTIATIONS.**

**REMEDIES AND ENFORCEMENT**

- EASILY ACCESSIBLE CONCILIATION, JUDICIAL PROCEDURES
- PROCEDURES ON BEHALF OR IN SUPPORT OF WORKERS
- RIGHT TO REAL AND EFFECTIVE FULL COMPENSATION OR REPARATION
- COURT OR OTHER COMPETENT AUTHORITIES' ORDER + NON-COMPLIANCE SUBJECTED TO A RECURRING PENALTY PAYMENT
- SHIFT OF BURDEN OF PROOF
- LIMITATION PERIODS
- PENALTIES
- PROTECTION FROM VICTIMISATION AND PROTECTION AGAINST LESS FAVOURABLE TREATMENT
- MEASURES ENSURING COMPLIANCE IN THE PERFORMANCE OF PUBLIC CONTRACTS OR CONCESSIONS

**HORIZONTAL PROVISIONS**

- MONITORING AND AWARENESS-RAISING, ANNUAL (STATISTICAL) DATA, TRANSPOSITION, REPORTING AND REVIEW

• **SHORTCOMINGS**

24

