

# Angestelltenbetriebsrat der Wiener Gebietskrankenkasse v Wiener Gebietskrankenkasse C-309/97

## 1) Reference Details

Jurisdiction: European Court of Justice (ECJ), reference for a preliminary ruling from the Higher Regional Court in Austria

Date of Decision: 11 May 1999

Link to full case:

[http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!CELEXnumdoc&numdoc=61997I0309&lg=en](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&numdoc=61997I0309&lg=en)

## 2) Facts

Graduate psychologists employed as psychotherapists claimed that collective agreements fixing minimum salaries for them and doctors engaged in psychotherapy, were indirectly discriminatory, allowing doctors, more of whom were men, to obtain higher remuneration for comparable work.

Psychologists qualified to practice in their professions would receive a basic net remuneration of between ATS 24,796 and ATS 51,996. Doctors qualified to practice as psychotherapists would receive a basic net remuneration of between ATS 42,197 and ATS 73,457.

## 3) The Law

*European Community Law*

- Article 119 of the EC Treaty
- Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women

## 4) Legal Questions Referred to ECJ

1. Where people with different qualifications are engaged in carrying out the same tasks, do the terms “same work” and “same job” apply for the purposes of Article 119 of the EC Treaty and Directive 75/117/EEC?
2. In determining whether there is discrimination under these provisions, is it relevant that:
  - a. the pay in question is determined by parties to an employment contract who are at liberty to incorporate terms of collective agreements into those contracts; or that
  - b. collective agreements fix the minimum rates of pay for all employees in a particular sector; or that
  - c. the pay in question is governed by mandatory collective agreements?
3. If a collective agreement specifically states differing rates of pay for the same work or work of equal value depending on the basic qualifications held by the professionals carrying out that work, when groups are selected for comparison to determine whether a measure creates discrimination, must reference be made to:
  - a. the persons employed in that work;

- b. the employees working in the sector covered by the collective agreement; or
  - c. all those who are qualified to work in that occupation?
- 4. In the cases of questions 2 and 3, must the proportion of men and women only be taken into account for the disadvantaged group or for both groups?
- 5. If the tasks which constitute the same work in both groups are only some of the tasks carried out by those with the professional qualifications in question, must account be taken of:
  - a. all persons who are employed in the situation who have professional qualifications in questions;
  - b. all persons who are entitled to perform the duties in question; or
  - c. only those people who carry out those duties?
- 6. If staff are performing the same duties, can different training between the staff constitute a factor justifying lower pay to some of those staff. Is having a broader professional qualification an objective factor justifying different pay, regardless of the work which is carried out? So is the important factor:
  - a. whether the group who are more highly paid can also be called on to perform other tasks which the lower-paid group cannot carry out?
  - b. whether the group who are more highly paid were actually called upon to perform those other tasks.
- 7. Does it follow from the EC Treaty that any right to pay under a collective agreement between the same parties only exists when the Court of Justice rules that such a right exists?

### **5) Decision**

Regarding question one the Court held that the term “the same work” does not apply, for the purposes of Article 119 of the EC Treaty (now, after amendment, Article 141 EC) or Council Directive 75/117/EEC, where the same activities are performed over a considerable length of time by persons the basis of whose qualification to exercise their profession is different.

When determining whether work done by different people is “same work” for the purposes of Article 119 of the EC Treaty, it is necessary to decide whether these people are in comparable situations. Factors such as the nature of the work and training requirements will be relevant here.

Even though work may appear to be identical, if it is carried out by people with different training or professional qualifications it becomes necessary to look at the tasks that may be assigned to each group, the training requirements for the performance of those extra tasks and the working conditions under which they are performed.

Psychologists and doctors employed as psychologists in this situation rely on different knowledge and skills which is acquired in different situations. Furthermore, doctors are also qualified to perform other tasks in the field which psychologists cannot.

In this situation therefore, the two groups of persons cannot be regarded as being in a comparable situation.

In providing this answer to question one the court declined to consider the other questions referred.