SEX DISCRIMINATION IN EMPLOYMENT: AZERBAIJAN AND THE EUROPEAN UNION

ALS LAW BLOG, SEPTEMBER 2026 **INJI ACHAK**

Summary: Discrimination based on sex in workplaces constitutes a hot topic in the legal world. Many jurisdictions have created their own mechanisms to minimize any discrimination in a professional environment. The article will analyze the current approach of Azerbaijan's and the European Union's (hereinafter – EU) regulations and refer to court practice when accessible.

"Discrimination based on gender" is a very broad notion. This kind of discrimination can be observed in various stages of employment. For example, in recruitment procedures, in offices, in vacation policies, in salaries, etc. The article discusses not only the general notion of sex discrimination, but specifically potential inequalities in job opportunities.

Before the main points, a general legal framework of the topic must be explained. Both in Azerbaijan and in the EU, discrimination based on gender is strictly prohibited. Azerbaijan Republic's Labor Code (hereinafter – Code)[1] and Directive 2006/54/EC (hereinafter – Directive) ban all types of discrimination in the workplace.[2] However, both jurisdictions consider the possibility of failure to remove all inequalities; therefore, they include exceptions to this rule.

Interpretation of Article 16 of the Code[3] states that some factors like a person's professionalism, knowledge, experience, workplace conditions, and the nature of the work may result in gender discrimination. This different treatment is legal if the reason behind a preference is carefully and proportionally justified. For example, for physical work in mine fields, the employer may prefer his employees to be male and reject female applicants. The employer will need to justify this decision by referring to how the work's nature and working conditions are not suitable for female employees. The "discrimination" serves as a protection for a group. A similar case may happen in the EU, and Article 14.2 of the Directive[4] may give ground to dismiss a potential discriminatory violation because the article allows an exception to the principle of equality of men and women based on nature or context. Sometimes, cases which may seem like positive discrimination or a protection may silently be an illegal form of

[1] Labour Code of the Republic of Azerbaijan, 1999, art. 16.1.
[2] Directive 2006/54/EC of the European Parliament and of the Council 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), [2006] OJ L204/23.
[3] Labour Code of the Republic of Azerbaijan, 1999, art. 16.
[4] Directive 2006/54/EC, art. 14.2.

inequality in the workplace. The outcome of such cases will highly depend on the approach and interpretation of courts.

To demonstrate such differences, a case must be analyzed. For example, in *Tanja Kreil v Bundesrepublik Deutschland* (2000),[5] the European Court of Justice (from now on, ECJ) elaborated on inequalities in job offers and opportunities. Case happened between Tanja Kreil, a German woman, and the Bundeswehr, the German army of Germany. Tanja wanted to work in a position that involved close contact with weapons (as a weapons electronics technician); however, she was rejected. At the time, a constitutional provision prevented women from working in the army, with exceptions for roles related to music and healthcare. In all other positions, the Constitution of Germany allowed only men to work. When Tanja took this case to the court, the national courts of Germany defended this decision by referring to the harsh character and conditions of weaponary work and justified this discrimination on the grounds of national defense. However, Tanja decided to take her case further to the ECJ. She relied on the Council Directive 76/207,[6] because the EU Equal Treatment Directive banned inequalities between men and women in workplaces. The Court took upon itself to interpret and explain the legal mechanism behind the Directive, referring to a proportionality test. ECJ said that exceptions to equality between men and women in work are acceptable if it is purely because the job itself requires it. However, prohibiting women from all spheres of weapon-handling roles based solely on gender was not justified enough by the national courts. A blanket exclusion of a certain gender from all types of work in a certain workplace was not deemed to be a legal discrimination as the exclusion went too far.[7]

Unfortunately, there is limited to none court judgements by Azerbaijani Courts that deliver an opinion on the interpretation of this equality principle[8] in Azerbaijan. If a similar legal issue which happened in Germany occurred here, national courts may go one of two ways. First, they may adapt a softer approach while interpreting and rule that blanket exclusions and total bans can be justified more easily and the interest behind such discriminations are solely due to protection of a group. Second, they may follow a likely path to ECJ and support a stricter interpretation of the principle to keep workplaces as gender neutral as possible while giving both genders equal opportunities. A core factor which could influence the judgement would be the needs, interests, and character of society. There must be demands and petitions coming from

[5] C-285/98, *Tanja Kreil v Bundesrepublik Deutschland*, [2000] ECR I-69, ECLI:EU:C:2000:2.
[6] Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, [1976] OJ L39/40.
[7] See, *Tanja Kreil v Bundesrepublik Deutschland*.
[8] Labour Code of the Republic of Azerbaijan, 1999, art. 16.1.

the discriminated gender regarding job opportunities, so the legal question gets spotlight. Although there is a growing trend in discussion of such principles, our courts are yet to deliver relevant judgements.

The main idea behind this article is not arguing the legality or logic of interpretations, or choosing which way is better, but showing that very similar material laws can be implemented totally differently from one place to another.