

# Supreme Court on hairstyles and discrimination

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## Facts

### First-instance decisions

### Supreme Court decision

The Supreme Court recently ruled that it may be discriminatory for employers to require employees to have certain hairstyles.<sup>(1)</sup>

## Facts

An employee applied for a job with a temporary staffing agency. He was meant to work for a catering company which serviced Austrian Federal Railways. However, his application was denied because he had long hair. The employer stated that it had strict requirements concerning its employees' outer appearance which prohibited male employees from having long hair.

The employee sued for €1,000 in damages and compensation for gender discrimination under the Act on Equal Treatment, which prohibits differing treatment of men and women in the workplace without objective reasons.

## First-instance decisions

The employee lost his case in the first instance, as the trial court concluded that the temporary staffing agency's rejection letter was based on a misinterpretation of a previous incident in which another male employee had refused to wear his long hair tied back while on duty. Further, the defendant asserted that it employed long-haired males and therefore could evidence to the court that it did not discriminate. Rather, the defendant argued that the case at hand was an unfortunate misunderstanding.

The employee appealed.

Shortly after the relevant labour court handed down its decision, the plaintiff learned that the defendant had an employee handbook which contained set of rules concerning employees' conduct and outer appearance. According to the handbook, female employees had to keep their hair "freshly washed, neatly styled and without visible re-growth". Female employees could not dye their hair "in loud colours like red, blue, yellow or green" and, if they had longer hair, they had to keep it "tied back or pinned up". On the other hand, male employees had to keep their hair "recently washed, short-cropped and well-kempt".

When the employee discovered the handbook, he sued the staffing agency again. This time, both the labour court and the appeals court upheld the complaint.

## Supreme Court decision

The Supreme Court confirmed their rulings.

Although the Supreme Court did not finally rule on the discrimination issue on retrial, it clarified that the trial court would likely have reached a different decision in the first-instance proceedings had it known about the employee handbook. The Supreme Court therefore indicated that the employee handbook constituted *prima facie* evidence of gender discrimination because its content shed new light on the entire case.

It is now for the trial court to decide whether the restrictions on long hair for male employees (as contained in the employee handbook) should be upheld. However, this appears unlikely. Any objective reason (eg, hygiene) would most likely also apply to female employees and a 'neat' hairstyle – or what is deemed as such – is hardly an objective reason for a difference in treatment.

In addition, an earlier Supreme Court decision (9 Oba 82/15x) has already clarified that employees'

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"outer appearance is their private affair" (for further details please see "[Supreme Court on pink ribbons](#)").

Thus, the test that the employer in this case would have to pass in order to avoid a judgment granting compensation for discrimination appears insurmountable.

Consequently, the notion of male and female hairstyles appears to have been effectively abolished in Austria – at least from a legal perspective.

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## **Endnotes**

(1) OGH 9 Oba 4/19g.

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