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NEWS REPORT

Country:	Hungary
Title:	Supreme Court confirms burden falls on employer to prove it met rules on equal pay for equal work
Date:	24 August 2015
Expert:	Beata Nacsa
<u>Context</u>	
Issue at stake:	Burden of proof in discrimination cases
Ground of discrimination:	Sex
Source:	National court decision, Supreme Court decision No. Mfv.I.10.630/2014
Field:	Employment; equal pay; pregnancy and maternity; parental leave
Applicable law:	Directive 2010/18; Act of CXV of 2003 (Equality Act); Act I of 2012 (Labour Code)

Content

Case: Following maternity and parental leave, the claimant, an employee in a managerial position, was told by her employer that she could not continue working in the same position. She was instead offered a lower level position, which she did not accept. The claimant was subsequently dismissed from employment.

The claimant brought a claim before the court of first instance, claiming that she had been discriminated against on the ground of sex, and that she was not provided with equal pay for equal work since her return from parental leave.

During the procedure, the employer did not fulfil the obligation to provide evidence: the evidence provided was misleading as it contained a calculation error, and some evidence was not filed because the employer claimed he had difficulties in gathering the requested data.

The court of first instance dismissed the case because the employee could not prove that she was discriminated against during the dismissal; and that when the employer increased her salary following her return from parental leave, it was not equal to the salary of a male employee in the same position. The court of second instance partly upheld the claim in regard of the equal pay claim. The claimant then took the case to the Supreme Court (*Curia*).

Decision of the Court: The Supreme Court overturned the decision of the court of second instance, because the court did not correctly apply the rules on the burden of proof in discrimination cases. The Court pointed out that the employer must prove it met the rules on equal treatment and on equal pay for equal work. The Court also stated that in cases in which the employer fails to provide proper evidence, the claimant's claim must be upheld. The court of second instance was obliged to re-adjudicate the case on

the basis of the guidance provided by the Supreme Court.

Key points of analysis: This case reveals how lower level courts often do not apply the special rules on the burden of proof in equal treatment cases. It is hoped that the publication of this Supreme Court ruling will provide guidance to the lower level courts in this regard.

Internet link source: Report on the case available at:

<http://www.lb.hu/hu/sajto/tajekoztato-kuria-mi-tanacs-a-altal-targyalason-kivul-elbiralt-mfvi106302014-szamu-ugyrol>, accessed 23 August 2015.

The full decision has not been published.