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FLASH REPORT

Country:	Hungary
Title:	Curia rules on a case regarding protection from discrimination during probationary period
Date:	15 February 2018
Expert:	Lídia Hermina Balogh
<u>Context</u>	
Issue at stake:	Application of the shift of burden of proof in discrimination cases related to employment, especially in situations during probationary period
Ground of discrimination:	Sex
Source:	National court decision (judgment no. Kfv.III.37.585/2017 of the Curia of 5 June 2018, adopted as decision in principle no. 23/2018 in administrative law
Field of application:	Employment, Pregnancy and maternity
Applicable law:	Act I of 2012 (Labour Code), Article 79; Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (ETA), Articles 8 and 19

Content

Case: The complainant of the case filed a complaint with the Equal Treatment Authority against her former employer (respondent) claiming that her employment was terminated with immediate effect during her probation period as a result of her pregnancy. The complainant, who worked as a R2R (finance and accounting) specialist for the respondent, stated that during the probationary period she notified her direct supervisor about her pregnancy who ensured her that she was not going to suffer any disadvantage because of her pregnancy because the supervisor was very satisfied with her performance. Towards the end of the probationary period, while being on sick leave, her direct supervisor notified her that her employment had been terminated with immediate effect because of her inadequate performance and because she had failed to inform her employer during the job interview that she had been undergoing IVF treatment. The Equal Treatment Authority concluded that the respondent directly discriminated the complainant by terminating her employment during the probationary period based on her pregnancy. The Equal Treatment Authority ordered the respondent to refrain from the illegal practice in the future and to make the decision publicly available for a period of 30 days. It also ordered the respondent to pay a public interest fine of approximately EUR 1 500 (HUF 500 000). The respondent sought judicial review against the administrative decision of the Equal Treatment Authority. The court overturned the decision and ordered the Equal Treatment Authority to re-adjudicate the case reasoning that the legality of the dispute should be reviewed with regards to the reasons of the termination, and that it was in accordance with the Labour Code to terminate the employment with immediate effect during the probationary period. At this point, the Equal Treatment Authority sought a judicial review with the Curia (supreme court of Hungary).

Decision of the Court: The Curia overturned the decision of the court, because the court did not review the case under the anti-discrimination legal framework. The Curia reiterated that in discrimination cases the burden of proof shifts, and the respondent must prove that it observed the rules on equal treatment or that the difference in treatment was objectively justified and allowed by law. The Curia stated that while the complainant demonstrated that her contract was terminated and that she was pregnant at the time of the termination, the respondent failed to prove that the pregnancy of the complainant did not play any role in the immediate termination of her employment.

Key points of analysis: The fact that the labour regulations allow the immediate termination of an employment during a probationary period, does not provide a lower level scrutiny for evidence under the anti-discrimination framework, and therefore does not derogate the obligation of the employer to observe the requirement of equal treatment.

Internet link source:

<https://kuria-birosag.hu/hu/elvhat/232018-szamu-kozigazgatasi-elvi-hatarozat>
(summary);

https://ukp.birosag.hu/portal-frontend/stream/birosagKod/0001/hatarozatAzonosito/Kfv.37585_2017_4/ (full text) (accessed 8 February 2019).