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NEWS REPORT

Country:	Romania
Title:	Protection from dismissal of women returning from parental leave
Date:	9 April 2015
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<u>Context</u>	
Issue at stake:	The dismissal of women returning from parental leave is forbidden by Romanian law, but what evidence is needed. to establish <i>prima facie</i> discrimination on the ground of sex and maternity status in these cases?
Ground of discrimination:	Sex, maternity status
Source:	Court of Appeal of Bucharest, Civil Judgment 1858 of 11 June 2014
Field:	Employment; pregnancy and maternity; parental leave.
Applicable law:	Law 202/2002 on equal opportunities between women and men (Gender Equality Law), Government Ordinance 137/2000 on the prevention and sanctioning of all forms of discrimination (Anti-Discrimination Law), Government Emergency Ordinance 111/2010 on parental leave and allowance

Content

Case law development: The facts of the case are the following: the claimant, a female employee at an NGO from Bucharest, temporarily vacated work in order to take parental leave. During this time, her employer internally reorganised a number of positions within the financial department due to economic reasons. The claimant's position (Financial Director) and one position of Project Manager were cut and replaced by the position of Economic Director and several positions of Financial Officer. A male employee took the position of Economic Director. Upon her return to work from parental leave, the claimant was offered the lower position of Financial Officer with a lower salary. The claimant refused and was subsequently dismissed. She filed a complaint to the National Council for Combating Discrimination (NCCD), alleging discrimination on the grounds of sex and maternity status. On 4 September 2013, the NCCD made a finding of discrimination on the grounds of sex and maternity status. The employer appealed this decision before the Court of Appeal of Bucharest.

Decision of the Court: On 11 June 2014, the Court of Appeal of Bucharest upheld the NCCD's decision. The Court dismissed the economic reasons for internal reorganisation and subsequent dismissal. It applied the strict legal provisions that prohibit an employer from discontinuing labour relations with an employee when that employee is on parental leave, which also applies for a period of time after return from parental leave. The Court acknowledged the legal obligation of the employer "to take into account the special

situation of a woman employee” who is on parental leave or returns from parental leave, and to refrain from discontinuing the labour relations “even when there are objective reasons for dismissal unrelated to the respective woman”. However, the decision is not final; on 8 December 2014, the employer introduced a second appeal that will be examined by the High Court of Justice and Cassation.¹

Key points of analysis: The violation of the special legal protection for parents against dismissal during parental leave or upon return from parental leave may constitute discrimination based on “parental status” under the Romanian legislation that covers an open-ended list of protected grounds. However, in order to find discrimination on the ground of sex and maternity, the NCCD and the Court of Appeal of Bucharest should establish facts from which it can presume the existence of discrimination against women, more than simple allegations of sex discrimination.

¹ Court of Appeal of Bucharest, File No.394/2/2014, available at http://portal.just.ro/2/SitePages/Dosar.aspx?id_dosar=200000000311240&id_inst=2, accessed 9 March 2015.