

Equal Treatment Authority

Case No.:EBH/1201/2008

At the request of the Appellant, the Equal Treatment Authority of Hungary (“ETA”) has entered the following

DECISION

against the Southern Dunantul Regional Public Administration Office of 7400 Kaposvár, Csokonai u. 3. (“Respondent”) for the violation of the rules of equal treatment. against the Southern Dunantul Regional Public Administration Office of 7400 Kaposvár, Csokonai u. 3. (“Respondent”) for the violation of the rules of equal treatment

The ETA has determined that **Respondent violated the requirements of equal treatment** by terminating the Appellant’s employment during the probation period due to her pregnancy.

The ETA prohibits the Respondent from acting in such unlawful manner in the future and orders the publication of this Decision www.egyenlobanasmod.hu on its homepage and on the Respondent’s www.ddrkh.hu homepage for a period of 90 days in an anonymous format, as prepared by the ETA.

This decision shall not be appealed within a public administrative proceeding.

This decision may be appealed within 30 days of its delivery by a claim addressed to the Metropolitan Court of Budapest but submitted to the ETA. Filing of the claim shall not delay the enforcement of the decision, however, the Respondent may request a suspension of the enforcement in the claim. Respondent may request that a three member judicial panel adjudicate the claim.

No procedural fees were incurred during the proceeding.

JUSTIFICATION

Appellant submitted a complaint to the ETA on 10 June 2008 stating that she started (the Respondent) on 1 January 2008. The Appellant worked as an official advisor public employment with the Southern Dunantul Regional Public Administration Office at agency No. 1 of the Respondent.

The Appellant applied for the above job in November of 2007 and won the position in mid-December following a complex admission procedure as the only person out of seven Appellants.

The Appellant was advised on 20 December 2007 that her application was successful and she agreed on an appointment with the HR department for the following day to sign the paperwork. The Appellant learned that she was 6 weeks pregnant on the same day. The Appellant was advised by her physician that the risk of miscarriage in the first trimester, i.e. the first 12 weeks of pregnancy, is much greater than later on during pregnancy, so she decided to only notify her close family and not her employer of her pregnancy.

The Appellant was employed from 1 January 2008 for a fixed term during the absence of another employee, with a six months probation period.

The Appellant met her department head at Agency 1 who told her that the colleague she was to substitute for a definite time had not worked since the previous November. The settlements she had inspected had been divided among the legal supervisors, but he promised the Appellant the the

settlements would be redivided within a few weeks, she would be able to work. He asked the Appellant to study the legal regulations until the redevison.

At the beginning of Feruary 2008 the Appellant told her department head that she was pregnant when he said "You have beautifully trapped us." The Appellant thought her pregnancy was problematic for her superiors because they had to inform the CEO of the office about her pregnancy and thez could have been deprived of the right of interviewing people.

The CEO of the Office visited the Agency of the Appellant, she met her for a short while, and she assured her she could stay as long as she wanted to. She asked the department head what the CEO had meant and he said the Appellant could stay as long as she could work most probably until April.

In the meantime the Appellant applied for a bar exam and requested time off from the director of the Agency and also asked what would happen with her civil servant status. She was informed that her sick leave would not burden the Agency, however, it did not look good that the Appellant, who was hired to replace an employee on maternity leave, would also be taking maternity leave.

At this time the Appellant also inquired whether she would finally get some substantive work, but the director advised her that it would not be worth it to give her any responsibilities for the little time that was left.

The Appellant was on holiday for three weeks and when she went back to work she tried to head of the department, nor the head of the branch informed the Appellant about this fact. When she went to the head of the branch, he told her that she should have informed her speak to the CEO of the Office but she did not succeed.. She wrote her a letter asking about her employment as a civil servant. She did not get any reply but she learnt it in an indirect way that the way of her employment had been decided. On 22 April 2008 she received the notification about the termination of her employment on probation on 30 April. Neither the would-be employzer about her pregnancz before she was going to work as a civil servant and because she did not do so she violated the obligation of cooperation. In addition, he said, the employment can be terminated on probation without any reasoning.

Based on the above contradictions the ETA found the complaint based, the Respondent had terminated the Appellant's probation period because of her pregnancy.

These facts are sustained by the declaration of the CEO of the Respondent in June 2008 when she found it a grievance that the Appellant did not inform the Respondent that she was pregnant, neither did she mention that she was going to start her preparation for the bar exam. The Respondent recognized that she inquired about the family planning of her young colleagues, she was going to learn how many children they had planned to have. As the Appellant was present at this talk and she knew that she was pregnant she should have announced it. As a matter of fact the Appellant should not have announced her pregnancy because she had not needed to change her terms of employment. It was unacceptable for the ETA that the Appellant's probation period was terminated because she had been unsuitable to meet the requirements of her job because this fact could not be concluded from the presented dovúdocuments. The Appellant had not been informed about the evaluation of her work, her termination was given to her by an HR executive not her superior.

The Appellant requested that the ETA commence this proceeding because she believes that the Respondent violated Section 21 c) of Act No. CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities (the "ETPE Act") due to her protected status under Section 8 l) of the ETPE Act.

In her complaint the Appellant also complained that she went to work from the city of , but did not receive any travel allowance. Appellant believes that this also violates the principle of equal treatment as the employer did not pay such allowance to new entrants.

The ETA conducted thorough evidentiary proceedings, including testimonies from the Appellant's direct supervisor, the head of the L Department, the head of Agency No 1 and Agency No 2 of the Respondent, the Appellant, as well as the Appellant's mother.

The ETA received the Respondent's by-laws of civil service as well as the minutes of the order of activity evaluation at the managers' meeting, the viewpoints of the evaluation and the evaluations of those civil servants who were employed after January 1 2008 and the complex activity evaluations of the civil servants employed at Agency 1, the statistics of those who were on child care leave, the applications for the jobs of civil servants of Agency 1 and the admission procedures, the copies of the records, the records of the department about the staffing and changes between January 1 and June 30 2008.

The ETA also received all the work the Appellant had done between January 1 and June 30 2008 as well as her job description.

The ETA received information how travel costs are paid for civil servants at the employer and the procedure of their clearing along with the orders of duty and remission to find out the basis of the payment of travel costs.

At the request of the ETA the Respondent made a detailed written statement stating that it had terminated the Appellant's employment on line with Section 81 (3) of the Labour Code and Section 11/B (3) of the Act on the Status of Public Servants.

The Respondent asserted that discrimination on the basis of Section 8 of the ETPE Act is not possible as the Respondent has no comparable employee.

The Respondent introduced a practice whereby there is a complex evaluation of public servants during the probation period along particular competencies the purpose of which is to determine whether the employee is suitable to perform the higher requirements of public service. The evaluation is not a classification but serves to help management decisions.

The Respondent decided to introduce the above evaluation on 24 January 2008 and submitted the related executive memorandum. Its position is that the employees were informed of this, as it was also published on the intranet.

The Appellant was evaluated by her right superior on April 4 2008 , the head of the Agency also received the evaluation and he concluded that the Appellant was unable to work on the expected professional level and commitment.

To the evaluation the plans and the worksheets the Appellant had done were used and the employer thought that her knowledge of legal rules and regulation was deficient, her commitment and independence did not meet the expectations and she had her colleagues make her duties, she kept emailing her request to them.

The Respondent said that the job the Appellant had filled in required a good knowledge to be able to check the work of the local governments, which involves the knowledge of their legal regulations, the ability to recognize their violation and illegal decisions and procedures or shortcomings and to act efficiently.

The Respondent called the attention of the ETA that the Appellant had violated the obligation of cooperation of Section 1)3 of the Labour Code when she did not speak about her pregnancy and did

not inform the employer about the beginning of her bar exam. Besides that she had been on sick leave several times and it had only turned out subsequently why he had not appeared at work. Disciplinary proceedings could have been started against her. The Respondent said that the termination of the Appellant's probation period was not because of her pregnancy if it had been so she could have been dismissed on February 12 when she announced she was pregnant. The reason was that she seemed unsuitable to do the job. The Appellant's job was not advertised, it had not been filled in. The travel costs of the Appellant's had not been refunded partly because partly she had not presented her monthly ticket at the end of the month, partly prior to her admission she said she could move to her parents from P. to S.

At the hearing the Appellant said that no one had informed her that her work would be evaluated during the probation period, neither had anyone criticized her work. The first time she heard about the evaluation of her direct superior was the hearing. She At the hearing the Appellant said she had not been informed her work would be evaluated during the found it strange that the negative evaluation of her work was written on April 4 but she was given an important work of inspection after this date She had not applied for travel costs because the HR executive had told she could not get any. She had been on sick leave only once for a week when she was feeling sick one afternoon when the head of the Agency let her go home. The following day her mother reported her illness at the Agency then she reported it on phone. As for the preparation time to her bar exam, she spent her ordinary holiday preparing for it. She was advised about the time of the bar exam in February 2008. In January when she was supposed to present her holiday plans, she did not know about the time of the bar exam.

She had not received work from her superiors, it was usually her colleagues who gave her work and she only found it out at the hearing that her department head had corrected her work, he had not let her know about the corrections or the mistakes. It was natural for her to ask her colleagues for help by emails, no one had told her it was wrong.

She wished to inform her employer about her pregnancy on February 5 2008, but the head of the Agency asked her to change the date for February 8 as the CEO of the Employer was going to visit the Agency that day and the head of the Agency did not want the CEO to believe that he did not inform her about the pregnancy of the Appellant right away.

The Appellant said she had not breached the obligation of cooperation when she reported her pregnancy at the end of the third month because the employer still had half a year until she was going to leave.

The direct superior of the Appellant said in the quality of a witness what sort of tasks she had been given. He said that the Appellant had never talked to him about the completed tasks, it was always her colleague who had informed him. The witness said he had corrected the Appellant's works. There were letters and records that had not been sent because sometimes the tasks had been solved in a different way, sometimes a colleague of the Appellant's gave the final form of the Appellant's records of an inspection which had been sent.

The inspection the Appellant referred to was one of the four big localities the Appellant was to check by herself based on the draft records she had made to the work. As her probation period was terminated, she had not met the corrected version of her work. This work would have been the inspection of the public service of the Local Government of T. Town.

The witness thought the Appellant was not motivated, she had rarely asked for his help. The head of the Agency informed the witness in February 2008 that he had to write evaluations of the employees on probation and contracts for definite times. The witness could not say where he had

been able to get information to the evaluation, the head of the Agency had informed him in words. The witness had not evaluated other employees in writing, another employee who started to work in September 2007 had been evaluated orally. He had not informed the Appellant about the evaluation because he had not been authorized to do so.

The witness learned that the Appellant was pregnant in February 2008 when the Appellant told him.

The witness said that they had presented the ETA those works of the Appellant which had not met the requirements. The witness did not only correct the work of the Appellant, he made minor corrections in the works of other employees, too but the Appellant's mistakes were basic. The witness emphasized that the mistakes the Appellant made in January 2008 were judged as natural misunderstandings of a beginner but in April, the middle of the probation period it was possible to judge if she would be able to inspect the localities that belonged to her. That was the time when she received an important work as she had majored in labour law, it was the complex inspection of a settlement for civil service. The witness said that the other colleagues who did similar inspections made acceptable records that did not need basic correction. In August 2008 the CEO of the Respondent wrote in his declaration to the ETA that the records of the evaluation of the Appellant's work had not been completed but he had not approved the work.

The Appellant remarked that her former colleague whose help she had regularly asked for had been working at the employer for a long time and she had been able to give her the necessary assistance. The Appellant thought it was a grievance that each of her legal inspector colleagues had been given a settlement to inspect except for her although it had been promised to her.

The head of Agency 1 said that among the employees who had been evaluated in writing only the Appellant and another civil servant had worked at the Agency, both of them had had a contract for a definite time with a six months probation period. The other civil servant had been evaluated two days earlier than the Appellant. The written evaluation of the employees on probation was introduced on April 2 2008, they had been evaluated orally before. The head of Agency 2 said that the written evaluation was introduced so that the CEO could decide who he should choose to work with.

The ETA requested the Respondent to enclose each task the Appellant had been given along with the appointment of the other civil servant and a declaration to find out if the other civil servant had also been evaluated before his appointment. The other civil servant's probation period expired on July 1 2008 and his work was evaluated only on April 2, before the probation period expired. The head of the Agency informed the CEO that the civil servant's probation had been successful.

By the end of the procedure the ETA came to the following conclusions:

The Appellant entered civil service at the Southern Dunantul Public Administratio Office's Agency 1 for a definite time until one of their employee returns from her child care leave. The appointment started with a six month probation period. that was to expire on June 30 2008. The Appellant was chosen from seven applicants to fill in the job of a legal inspector.

The Respondent terminated the Appellant's probation period on April 30 2008 without giving any reasons for this act. After the ETA had started a procedure against the Respondent did the Appellant come to learn that her work had been evaluated by her direct superior during the probation period on April 4 2008. There were several negative statements in the evaluation.

The Respondent said in its defense the Appellant's pregnancy, her protected characteristic, the disadvantage she suffered when her probation period was terminated were not a chain of causation,

it happened because the employer was dissatisfied with her work. The Appellant was not informed that her work had been evaluated, neither had she known what the evaluation had contained.

The Memorandum of January 24 2008 that the Appellant presented to the ETA is worded as follows:

Point 5: Before the probation period expires and contracts for a definite time are changed for contracts for indefinite time there should be a complex system to scrutinize the preparedness, the problem solving ability, the fidelity and the quality of the employee's work so that the CEO will be able to take important decisions of labour law.

The records shall be made by department heads and other superiors of the employee with the approval of the heads of the agencies. This materials shall be closed and they shall be filed at least two weeks before decisions of labour law.

These viewpoints of evaluation were compiled on February 14 2008, they were approved by the CEO of the Office and they were to prove that the employee's probation period had been successful. The direct superior of the employee, the head of his/her department and a civil servant participate in the evaluation.

The Appellant was evaluated only by her department head who did not evaluate anybody else. She was not informed about the evaluation, neither was she informed when her probation was terminated.

The ETA came to the conclusion that the above viewpoints of evaluation had not been applied consistently, another employee was on probation at another agency of the Office about the same time as the Appellant whose work was evaluated satisfactory after three month of probation. This employee, however, was not evaluated two weeks before his probation expired. According to the evaluation system of the Respondent another employee has to be involved in the evaluation. The evaluation has to be prepared prior to the expiry of the probation period. Written records have to be taken at least two weeks before the decision.

The Respondent presented other evaluations of some employees who worked at other agencies as well, two civil servants were evaluated right before the expiry of their probation, four civil servants were evaluated right before the definite time of their contracts became indefinite, in the case of another civil servant the person who evaluated him did not suggest to alter the terms of employment, neither was the termination recommended.

Based on the above fact the ETA concluded that the employees on probation or on a contract for indefinite time could have been evaluated at the Respondent in any time, not necessarily before the decision. The civil servant does not know about the evaluation even if this is the basis of the termination of his/ her contract.

The Respondent presented those works of the Appellant's they were satisfied with at the request of the ETA, at the hearing only the corrected works were presented.

It had happened several times that the corrected works had not been shown to the Appellant because the task had been completed with differently organized work or the CEO of the Office had not approved them. The Respondent told the ETA on August 29 2008 that it had happened that the CEO had refused to accept any parts of the records, the works of several civil servants. There were several works of the Appellant's with minor mistakes that had been corrected. The mistakes that were made one week after the employment of the Appellant came from her lack of experience.

The Appellant said at the hearing that the hearing was the first time she saw her corrected works.

Her direct superior did not say either that the Appellant's attention had ever been called on her mistakes.

The direct superior of the Appellant and the head of the Agency said at the hearing that she had not been given the major work she had asked for because meanwhile she had reported her pregnancy and after June another person should have been assigned for the task.

Regarding the contradictions of the case the ETA concluded that the complaint was based, the Respondent had discriminated the Appellant when her probation period was terminated because the Appellant's pregnancy had made the Respondent come to this decision.

The facts above are supported by the declaration the CEO of the Respondent wrote to the ETA in June 2008. She found it damaging that the Appellant had not announced that she was pregnant, neither had she spoken about the beginning of her bar exam period. The Respondent admitted that she had inquired about the family planning of the young colleagues. The Appellant had participated in this talk, she should have announced her pregnancy. As the Appellant was able to meet the terms of employment that time, it was not necessary to speak about her pregnancy.

It was unacceptable for the ETA that the probation period of the Appellant had been terminated because she had been unable to meet the requirements, the presented documents did not clearly indicate this. This why the Appellant was not informed about her evaluation, the termination of her contract was not handed over to her by her principal but it was done by an HR executive. The ETA did not find the Appellant's complaint about her travel costs based and no interrelation was found between the termination of her contract and the travel costs. It was right of the Respondent to cite the regulation of civil service. The Appellant admitted that she had not presented her monthly tickets and she had not applied for travel costs.

The ETA only examined if the disadvantage she had suffered had been for her protected characteristic according to Section 8 1) of Act No CXXV the evidence was evaluated from this viewpoint and concluded the consequence that the Respondent had violated Section 21 c) of ETPE Act.

The Respondent presented only seven tasks of hers and it was not proved that the Appellant's contract had been terminated because she did not meet the professional requirements. Among the corrections not all were fundamental. The Appellant's principal said at the hearing that he printed the documents from the Appellant's computer and presumably subsequently corrected them not after they were completed. The corrections that were presented at the hearing in July 2008 were different from the ones presented by the CEO of the Respondent in September 2008.

When making the decision the ETA considered Judgement C-460/06 of the EU Court in the Nadine Paquay case according to which *pregnancy is a protected time when an employee's contract can only be terminated if the cause of the termination not the pregnancy and it is reasoned by the employer in writing.*

According to the ETA the statement above means that even if the employer is not bound to give any reasons for the dismissal of an employee on probation, he/she shall not terminate her contract unless he/she can prove the unsuitability at the termination.

In the decision of Tele-Danmark A/S (Case C-109/00) the European Court stated in 2001 that according to Directives 92/85/EC (about the protection of pregnant employees) and 76/207/EEC (equal treatment) the employment of a pregnant woman cannot be terminated even if she was employed for a definite time and her pregnancy prevented her to complete her contracted time or she

did not inform her employer about her pregnancy.

During the procedure the Respondent himself said that he enquired about the family planning of the new employees. The ETA calls the Respondent attention that the employees shall not be asked such questions in the future and based on the viewpoints of the Advisory Board of ETA1/2007 those questions that cannot be asked at the interview, can neither be asked during the employment. If they are asked, the employee can deny the answer without any unfavourable consequences.

The Appellant was selected from seven applicants as the most suitable candidate before bar exam, at the beginning of her career, three months of her probation period had passed but two weeks of it had been a preparation time for her bar exam when she was evaluated after a very short period. The Respondent's plea that the Appellant had not informed her employer about the time of her bar exam was not accepted because unlike her pregnancy the time of the bar exam could have been asked by the interviewer. On the other hand, the Appellant informed the employer when she learned the time of the exam.

When the ETA ordered to make its decision public on the websites of the Respondent and on that of the ETA, our target is to give comprehensive information to both the employers and employees about the criteria that shall be observed when a pregnant woman is on probation. The publicity targets the prevention of illegal termination of employments.

Sections) and b), 7, 8 o), 16 and 17 of the ETPE Act, Act CXL of 2004 on the General Rules of Public Administrative Proceedings and Services and Government Decree 362/2004 (XII. 26.) on the Equal Treatment Authority and its Proceedings are applicable to the proceeding and jurisdiction of the ETA.

Section 17 (1) of the ETPE Act prohibits appeal against this Decision.

Judicial review of the Decision is allowed by Section 17 (3) of the ETPE Act.

9 October 2008

Dr. Judit Demeter
President