

SUMMARY

## **2010/50: More valuable meal vouchers for workers in head office not discriminatory (HU)**

***&lt;p&gt;Varying a fringe benefit according to place of work and use will not be deemed a breach of the equal treatment doctrine.&lt;/p&gt;***

### **Summary**

Varying a fringe benefit according to place of work and use will not be deemed a breach of the equal treatment doctrine.

### **Facts**

The plaintiffs claimed financial compensation in respect of meal vouchers for the period 1 January - 30 September 2006 in the amount of approximately EUR 150 per month each, arguing that the employer had discriminated between its employees depending on their place of work. Employees who worked at the employer's headquarters were entitled to meal vouchers of approximately EUR 32 per month whereas the remaining employees were entitled to meal vouchers of only EUR 16 per month. In the plaintiffs' opinion this difference constituted discrimination between employees based on place of work, deriving from the general prohibition of discrimination set out in Article 8(t) of Act CXXV of 2003 on Equal Treatment and Enhancement of Equal Opportunities (hereinafter the "Equal Treatment Act").<sup>1</sup>

The court of first instance rejected the plaintiffs' claim, pointing out that the meal vouchers given to the employees working at the headquarters were restricted, in that they could only be used at the local canteen, whereas the plaintiffs could redeem their vouchers anywhere in the country. This distinction is relevant in the light of the Equal Treatment Act (which implements EU Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation), which allows discrimination such as this to be justified. The court of first instance reasoned that (i) the employer had a legitimate reason for

treating both groups of employees differently and (ii) its method of achieving its aim was proportionate, given that the higher-value meal voucher was limited in respect of where it could be used (being redeemable only at the headquarters), so that the benefit was limited for both groups of employees.

The appellate court upheld the lower court's decision based on the same reasoning. The plaintiffs appealed to the Supreme Court.

### **Judgment**

The Supreme Court upheld the decision of the lower courts. According to its decision, the employer did not differentiate between employees on the basis of unjustified or disproportionate reasons, the only difference that existed between eligibility to the benefits being an objective one, namely, place of work. Given that the restrictions (lower value on the one hand and limited redeemability on the other) were equally "balanced", the employees were deemed to have been treated equally in respect of fringe benefits.

According to its reasoning, which is in line with Article 22(1)(a) of the Equal Treatment Act, it will not be deemed as a breach of the equal treatment principle if different treatment is based on the different type and nature of the work of the employees and is proportionate in all the circumstances. Therefore, the Supreme Court pointed out, the employer made a proportionate differentiation between its groups of employees in relation to the different nature of their work (i.e. the different place of work). Moreover, the Supreme Court also considered the fact that the plaintiffs expressly admitted that they would not have been able to use the EUR 150 meal vouchers, as they did not work at the headquarters.

### **Commentary**

This judgement highlights the fact that the equal opportunity principle should not be examined *per se*, without analysing the circumstances surrounding the employer's decision, i.e. the facts that lead an employer to impose a restriction on a particular group of employees. In addition, it is also important to note that any restriction must be considered in its full context, and not only in relation to its monetary value.

### **Comments from other jurisdictions**

*Germany (Paul Schreiner)*: In Germany a claim based on the principle of equality always requires a different treatment of a single employee or a group of employees versus another group of employees. If such different treatment can be found, a German court would ask whether there is a sufficient reason for making the distinction. If a valid reason can be found,

the unequal treatment is justified and the employee has no claim. However, in the case at hand, the reasons of the employer seem plausible and therefore a German Court would most likely also have ruled that the different treatment was justified.

**Footnote**

<sup>1</sup> The Equal Treatment Act prohibits treating similar situations or characteristics differently, not only on the grounds of race, gender, age, disability, etc. but on **any** grounds.

**Subject:** Others forms of discrimination

**Parties:** unnamed plaintiffs (employees) - v - unnamed defendant (employer)

**Court:** Hungarian Supreme Court (in Hungarian: "*Legfelsőbb Bíróság*")

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**Creator:** Kuria (Hungarian Supreme Court)

**Verdict at:**

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