HR Legal Alert

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Judgment of the Supreme Court of the Czech Republic on the matter of equal remuneration of employees of one employer in different regions

The Supreme Court of the Czech Republic ("Supreme Court") in its judgment of 20 July 2020, File No. 21 Cdo 3955/2018, dealt with the unequal remuneration of employees performing the same work for one employer in different regions.

Facts

An employee who worked for the defendant as a driver in the Olomouc region discovered that, although the description of the basic work activities of all employees of the defendant in the same type of driver position was the same regardless of their placement in individual regions, the plaintiff's basic tariff wage was CZK 18,080 and a performance-based wage of up to CZK 1,810. Another driver working in the Prague region was assigned a tariff wage of CZK 21,260 and a performance wage of up to CZK 2,130 and after his transfer to the same job position in the Brno region, the tariff and performance wage was reduced for this employee so that it corresponded with the plaintiff's salary in the Olomouc region.

The employee considered the non-uniform wages in the Prague region and other regions as unequal treatment in remuneration, which according to the employee was in conflict with the principle of fair remuneration according to the provisions of Section 1a (1) (c) of the Labour Code ("LC"), with the employer's obligation to ensure equal treatment of all employees within the meaning of Section 16 (1) LC and further with the principle according to which all employees are entitled to receive equal wage for the same work in accordance with Section 110 (1) LC.

The employee demanded that the employer reimburse him for the difference between the wage paid to him and the wage paid to the defendant's employees performing the driver's job in the same type of position in the same tariff level in the Prague region for a specified period.

The employer claimed that working as a driver in the Prague region is characterized by higher complexity, responsibility and effort with regard to the size of the region, location of service to several parts and buildings, higher frequency of stops and more frequent working hours during non-working days and work at night. Furthermore, the employer stated that the remuneration of employees also takes into account the real amount of wages with regard to the significantly higher living costs in Prague and its surrounding.

Decisions of lower courts

The District Court for Prague 1 came to the conclusion that the driver's work in Prague is essentially the same as the driver's work in a type-identical position in Olomouc. According to the court, the employer *"has not proved that the work of drivers in Prague would be more demanding and justify a different valuation of the same work for the same employer"*. The Court of First Instance thus concluded that the employer had not complied with the principle of equal treatment in determining the employee's wage for the driver work.

The Municipal Court in Prague agreed with the conclusions reached by the District Court for Prague 1 and upheld the decision of the Court of First Instance on the employer's appeal.

Proceedings before the Supreme Court

The employer lodged an appeal against the judgment of the Court of Appeal, seeking to resolve the question of whether it is appropriate to assess the real amount of wages provided and not only their nominal value when assessing unequal treatment of employees' remuneration. The employer argued that reducing the nominal wages of employees in the Prague region to the level of nominal wages in other regions would lead to employees in Prague being "in fact poorer", given that due to higher price levels

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in Prague, their purchasing power would decrease compared to employees with the same nominal wage in the remaining regions. Should the meaning and purpose of the legal regulation specified in the provisions of Section 16, Section 109 (1) and Section 110 LC be to ensure equal treatment and fair remuneration for work, the employer found no reason to prioritize over the real equality of employees only the fictitious equality expressed in the nominal amount of wages paid.

The Supreme Court disagreed with the opinion of the employer who found the reasons for the different remuneration of employees in the costs for satisfying living needs in different regions. **The Supreme Court pointed out that the LC contains its own definition of the aspects according to which the "difficulty of working conditions" is to be assessed. Pursuant to provision of Section 110 (4) LC, working conditions shall be assessed with regard to effort involved in patterns of working time, arising from the organization of working hours, e.g. into shifts, involving work falling on days of rest, night work and/or overtime, and with regard to harmfulness or arduousness caused by other negative effects of the working environment and with regard to risky aspects of the working environment. It is an exhaustive list of aspects relating exclusively to the (internal) conditions under which the work is performed by the employer, which directly affects its performance, according to which, for the purposes of assessing whether it is the same work or work of equal value, it is possible to assess the "difficulty of working conditions" within the meaning of Section 110 (2) LC. The legislator does not take into account other aspect concerning the external conditions in which the employer operates and the employee performs work for him, which does not affect the actual performance of work. Therefore, any extensive interpretation beyond the given legal framework cannot be accepted.**

Conclusion

The Supreme Court unequivocally declared that from the point of view of the principle of equal remuneration according to the provision of Section 110 LC, socio-economic conditions and the corresponding level of costs for satisfying living needs in the place where the employee performs work on the basis of an employment contract for the employer, including other general price (value) of work in a certain area, are not relevant in assessing whether the work in question is the same work or work of the same value.

In conclusion, it should be noted that this decision of the Supreme Court could potentially act to ignite litigation due to the unequal remuneration of employees in the same position in different regions by employers with workplaces in different regions.

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