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Country report

Gender equality



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Country report

Gender equality

How are EU rules transposed into
national law?

Slovakia

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Reporting period 1 April 2016 – 31 December 2016

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1. Introduction

1.1 Basic structure of the national legal system

The Slovak Republic is one of the two (the other is Czech Republic) successor states established after the political change on 1 January 1993, based on Constitutional Act No. 542/1992 Coll. on the Dissolution of the Czech and Slovak Federal Republic. Slovakia is a unitary state, divided into eight regions. The Slovak political system is a parliamentary democracy and the legal system is continental with a statutory law system.

The sole constitutional and legislative body is the National Council of the Slovak Republic (Parliament) and the supreme body of the executive power is the Government. The judicial power is executed by general courts and a special court, which is the Constitutional Court. The Constitutional Court of the Slovak Republic is an independent judicial body protecting the constitutionality. In addition to deciding on the conformity of lower legal norms with higher legal norms, the Constitutional Court also decides competence conflicts between the central bodies of state administration unless the law stipulates that another state authority shall decide in these disputes. The Constitutional Court also decides on various complaints, and interprets the Constitution or constitutional statutes in disputed issues.

The Slovak Republic has a two-level general court system, which is composed of the Supreme Court, 8 regional courts and 54 district courts. District courts are competent to try proceedings in the first instance. Regional courts hear cases as appeal courts. The Supreme Court has the function of an appellate review court and, being the supreme judicial body, never acts as a first instance court. The courts decide in civil (including labour) and criminal cases, they also review the lawfulness of decisions by administrative bodies, in electoral and referendum matters, and matters related to political parties.¹ The courts also decide on other matters stated by law, the legally binding Act of European Communities and European Union or international treaties to which the Slovak Republic is party.²

According to the Antidiscrimination Act³ all equal treatment proceedings are governed by the Civil Dispute Act⁴ and the cases are decided by the civil courts. There are no special labour courts for discrimination cases in the area of employment.

1.2 List of main legislation transposing and implementing Directives

The following is a list of the main relevant national legislation on gender equality/prohibition on sex discrimination.

All of the following Acts are available at <http://www.zakonypreludi.sk/>, accessed 10 March 2017.

- Act No. 460/1992 Coll. Constitution of the Slovak Republic (*Ústava Slovenskej republiky*);
- Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination and on Amendment of Certain Acts (Antidiscrimination Act), as amended;
- Act No. 311/2001 Coll. on the Labour Code (*Zákonník práce*);
- Act No. 5/2004 Coll. on Employment Services (*Zákon o službách zamestnanosti*);
- Act No. 2/1991 Coll. on Collective Bargaining (*Zákon o kolektívnom vyjednávaní*);

¹ Article 2 Section 1(c) of Act No. 757/2004 Coll. on the courts.

² Article 2 Section 1(d) of Act No. 757/2004 Coll. on the courts.

³ Article 11 Section 3 of Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination and on Amendment of Certain Acts (Antidiscrimination Act).

⁴ Act No. 160/2015 Coll. Civil Dispute Act.

- Act No. 552/2003 Coll. on Works Performed in the Public Interest (*Zákon o výkone práce vo verejnom záujme*);
- Act No. 400/2009 on State Service (*Zákon o štátnej službe*);
- Act No. 73/1998 Coll. on State Service Covering Members of the Police Force, Slovak Intelligence Service, Corps of Prison and Court Guard of the Slovak Republic and Railroad Police (*Zákon o štátnej službe príslušníkov Policajného zboru, Slovenskej informačnej služby, Zboru väzenskej a justičnej stráže Slovenskej republiky a Železničnej polície*);
- Act No. 200/1998 Coll. on the State Service, Covering Customs Officers (*Zákon o štátnej službe colníkov*);
- Act No. 315/2001 Coll. on the Fire Fighting and Rescue Corps (*Zákon o Hasičskom a záchrannom zbore*);
- Act No. 281/2015 Coll. on the Civil Service, Covering Professional Soldiers in the Armed Forces (*Zákon o štátnej službe profesionálnych vojakov ozbrojených síl*);
- Act No. 461/2003 Coll. on Social Insurance (*Zákon o sociálnom poistení*);
- Act No. 455/1991 Coll. on Licensed Trades (Small Businesses Act; *Živnostenský zákon*);
- Act No. 39/2015 Coll. Insurance Act (*Zákon o poisťovníctve*);
- Act No. 250/2007 Coll. Consumer Protection Act (*Zákon o ochrane spotrebiteľa*);
- Act No. 43/2004 Coll. on Old-Age Pension Savings (*Zákon o starobnom dôchodkovom sporení*);
- Act No. 650/2004 Coll. on Additional Pension Savings (*Zákon o doplnkovom dôchodkovom sporení*);
- Act No. 571/2009 Coll. on Parental Allowance (*Zákon o rodičovskom príspevku*);
- Act No. 125/2006 Coll. on Labour Inspection (*Zákon o inšpekcii práce*);
- Act No. 124/2006 Coll. on Work Safety and Health (*Zákon o bezpečnosti a ochrane zdravia pri práci*);
- Act No. 160/2015 Coll. Civil Dispute Act (*Civilný sporový poriadok*);
- Act No. 757/2004 Coll. on the courts (*Zákon o súdoch*).

2. General legal framework

2.1 Constitution

2.1.1 Does your national Constitution prohibit sex discrimination?

Yes, in Article 12 of the Constitution.

The principle of equality and the prohibition of discrimination are laid down in Article 12 of the Constitution,⁵ which states in Section 1 'that people are free and equal in dignity and rights' and in Section 2 that 'fundamental rights and freedoms are guaranteed to everyone in the territory of the Slovak republic regardless of sex, race, colour of skin, language, belief and religion, political affiliation or other conviction, national or social origin, nationality or ethnic origin, property, descent ('rod' in Slovak) or other status. No one may be harmed, preferred or discriminated against on these grounds.'⁶

2.1.2 Does the Constitution contain other Articles pertaining to equality between men and women?

No, but for women, minors, and disabled persons Article 38 of the Constitution guarantees more extensive health protection and special working conditions. According to Article 41, Section 2, pregnant women shall be entitled to special treatment, terms of employment, and working conditions.

2.1.3 Can the Article(s) mentioned in the two previous questions be invoked in horizontal relations (between private parties)?

No. In Section 13 of the finding PL. ÚS 8/04-202 of October 2005 the Constitutional Court stated: 'The basic aim of Article 12 Section 1 and 2 of the Constitution is protection of persons (both legal and natural) against discrimination from the side of public authorities. This article of the Constitution does not have direct horizontal effect, which means, that it will not apply in relations between persons of private law.'⁷

2.2 Equal treatment legislation

2.2.1 Does your country have specific equal treatment legislation?

Yes, and it prohibits sex discrimination.

The Antidiscrimination Act⁸ is a general Act on equal treatment in public and private relationships and protection against discrimination. Antidiscrimination Act in Article 2 Section 1 prohibits discrimination on the following grounds: sex, religion or belief, race, nationality or ethnic origin, disability, age, sexual orientation, marital or family status, colour, language, political affiliation or other conviction, national or social origin,

⁵ Act No. 460/1992 Coll.

⁶ The translation comes from the website of the Constitutional Court of the Slovak Republic <https://www.ustavnysud.sk/ustava-slovenskej-republiky> accessed 10 March 2017 and the same translation is also on the website of Public Defender of Rights, <http://www.vop.gov.sk/constitution-of-the-slovak-republic>, accessed 10 March 2017.

⁷ <http://merit.slv.cz/PL.US8/04>, accessed 10 March 2017, http://www.google.sk/url?url=http://miris.eurac.edu/mugs2/do/blob.doc%3Ftype%3Ddoc%26serial%3D1148459524821&rct=j&frm=1&q=&esrc=s&sa=U&ved=0ahUKEwi-oKaN_b3LAhWEqnIKHRhQAKAQFggTMAA&sig2=7VCpSpdcjvklDoayKh2MCw&usq=AFOjCNGzjt3tC2x3T7u6HfyJmF9wFIJdg available in English, accessed 10 March 2017 p. 11.

⁸ Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination and on amendment of certain Acts (Antidiscrimination Act), as amended.

property, lineage ('rod' in Slovak) or any other status or on grounds of reporting of crime or any other wrongdoing.⁹

The Labour Code¹⁰ in Article 1 of the Fundamental principles and Article 13 Section 2 prohibits discrimination on the grounds of sex, marital status and family status, sexual orientation, race, colour of skin, language, age, unfavourable state of health or disability, genetic traits, belief and religion, political or other conviction, trade union activity, national or social origin, national or ethnic group affiliation, property, lineage ('rod' in Slovak), or other status.¹¹

⁹ The translation comes from the website of the Slovak National Centre for Human Rights, which is the equality body, http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf, accessed 10 March 2017.

¹⁰ Act No. 311/2001 Coll. Labour Code.

¹¹ The translation comes from the website of the Ministry of Labour, Social Affairs and Family, <http://www.employment.gov.sk/files/slovensky/uvod/legislativa/pracovna-legislativa/zakonnik-prace-anglicka-verzia-labour-code-full-wording-2013.pdf>, accessed 10 March 2017.

3. Implementation of central concepts

3.1 Sex/gender/transgender

3.1.1 Are the terms gender/sex defined in your national legislation?

No. The terms sex and gender are not defined in national legislation. Neither the Antidiscrimination Act nor the Labour Code defines any of the prohibited grounds of discrimination listed in it.

The term 'gender' is translated into Slovak as 'rod'. The Slovak term 'rod' is also used as the translation of 'descent'¹² and 'lineage'.¹³

Some institutions translate the Slovak term 'rod' as 'gender' and as a result identify not only sex, but also gender, understood as socially constructed differences between sexes, as grounds of prohibited discrimination that is expressly stated in the Constitution and other laws.¹⁴

For example the translation of the Antidiscrimination Act¹⁵ uses the term 'lineage' in Article 2 Section 1,¹⁶ and also the term 'gender' in Article 2a Section 11¹⁷ and Article 8a Section 1 to translate the Slovak term 'rod'.¹⁸

3.1.2 Is discrimination due to gender reassignment explicitly prohibited in your national legislation?

Yes. According to Article 2 Section 11/a of Antidiscrimination Act discrimination due to sex shall also mean the discrimination due to pregnancy or motherhood and the discrimination due to sex or gender identification.

3.2 Direct sex discrimination

3.2.1 Is direct sex discrimination explicitly prohibited in national legislation?

Yes. Direct discrimination is prohibited in Article 2 Section 1 and Article 2a Section 2 of the Antidiscrimination Act.

According to Article 2a Section 2 of the Antidiscrimination Act 'Direct discrimination shall mean any action or omission where one person is treated less favourably than another person is, has been or would be treated in a comparable situation.'

¹² The translation comes from the website of the Constitutional Court of the Slovak Republic <https://www.ustavnysud.sk/ustava-slovenskej-republiky>, accessed 10 March 2017 and the same translation is also on the website of the Public Defender of Rights, <http://www.vop.gov.sk/constitution-of-the-slovak-republic>, accessed 10 March 2017.

¹³ The translation comes from the website of the Slovak National Centre for Human Rights, which is the equality body, http://www.snsip.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf, accessed 10 March 2017.

¹⁴ See: Debrečéniová, J. *Antidiskriminačný zákon. Komentár* (Antidiscrimination Act - Commentary), Občan a demokracia, Bratislava: 2008, pp. 11-12, National Strategy for Human Rights Protection and Promotion in Slovakia p .6, <http://www.coe.int/t/commissioner/source/NAP/Slovakia-National-Action-Plan-on-Human-Rights.pdf>, accessed 10 March 2017.

¹⁵ The translation comes from the website of the Slovak National Centre for Human Rights, which is the equality body, http://www.snsip.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf, accessed 10 March 2017 .

¹⁶ Article 2 Section 1 prohibits discrimination on the following grounds: sex, religion or belief, race, nationality or ethnic origin, disability, age, sexual orientation, marital or family status, colour, language, political affiliation or other conviction, national or social origin, property, lineage ('rod' in Slovak) or any other status or on grounds of reporting a crime or any other wrongdoing.

¹⁷ According to Article 2a Section 11/a discrimination due to sex shall also mean discrimination due to pregnancy or motherhood and discrimination due to sex or gender ('rod' in Slovak) identification.

¹⁸ Article 8a Section 1 allows adopting temporary equalizing measures to eliminate disadvantages imposed also on the grounds of gender ('rod' in Slovak) or sex.

The definition of direct discrimination is in compliance and almost identical to the definition taken from the Directive. Direct discrimination is defined not only as an action but also an omission that causes one person to be treated less favourably than another is, has been or would be treated in a comparable situation.

3.2.2 Are pregnancy and maternity discrimination explicitly prohibited in legislation as forms of direct sex discrimination?

Yes. In connection with the prohibited grounds mentioned in Article 2 Section 1 of the Antidiscrimination Act according to Article 2a Section 11/a 'discrimination due to sex shall also mean the discrimination due to pregnancy or motherhood and the discrimination due to sex or gender identification'.

The provision complies with Article 2(2)(c) of Directive 2006/54. Article 2a Section 1 of the Antidiscrimination Act stipulates that discrimination shall also mean not only an instruction to discriminate but also an incitement to discrimination. The instruction to discriminate usually abuses the subordinate position of an individual to discriminate against a third party. Incitement to discriminate is persuading, affirming or inciting a person to discriminate against a third person and the relevant prohibition applies in all types of relations in areas where discrimination is prohibited.

3.2.3 Are there specific difficulties in your country in applying the concept of direct sex discrimination? If so, please explain these difficulties, with reference to legislation and/or (national) case law if relevant

No.

3.3 Indirect sex discrimination

3.3.1 Is indirect sex discrimination explicitly prohibited in national legislation?

Yes, indirect discrimination is prohibited in Article 2a Section 3 of the Antidiscrimination Act.

According to Article 2a Section 3 'Indirect discrimination shall mean an apparently neutral provision, decision, instruction or practice which put a person at a disadvantage compared with the other person; indirect discrimination shall not mean provision, decision, instruction or practice objectively justified by a legitimate aim if such provision, decision, instruction or practice is appropriate and necessary for achieving of such aim.'

The Antidiscrimination Act applies an individual rather than a collective principle to the definition of indirect discrimination. According to Article 2a Section 3 indirect discrimination shall mean an apparently neutral provision, decision, instruction or practice which put a 'person' at a disadvantage compared with the other 'person', in comparison with Recast Directive 2006/54, which contains the plural - 'persons'. In comparison with the Directive the Antidiscrimination Act only requires a 'disadvantage' not a 'particular disadvantage', so the judicial interpretation could be easier. Until the adoption of the amendment of the Antidiscrimination Act that has been in effect since 1 April 2013, the definition deviated from the definition contained in the Directive by permitting only actual, not potential discrimination. The current definition is almost identical to the definition contained in the Directive.

3.3.2 Is statistical evidence used in your country in order to establish a presumption of indirect sex discrimination? Please provide some examples of cases, if available.

The individual principle may allow more favourable conditions for proving indirect discrimination. The legislation does not regulate statistical evidence as a condition for

proving indirect discrimination. There are no available judgments concerning the application of statistical evidence in indirect sex discrimination. This tool is used very scarcely by NGOs representing cases of discrimination on the ground of race.

3.3.3 Is in your view the objective justification test applied correctly by national courts? Please provide some examples of cases, if available.

There are no available judgments containing a judicial interpretation.

3.3.4 Are there specific difficulties in your country in applying the concept of indirect sex discrimination? If so, please explain these difficulties, with reference to legislation and/or (national) case law if relevant.

There is no available information on the application.

3.4 Multiple discrimination and intersectional discrimination

3.4.1 Is multiple discrimination – i.e. discrimination based on two or more grounds simultaneously – and/or intersectional discrimination – i.e. discrimination resulting from the interaction of grounds of discrimination which interact to produce a new and different type of discrimination – explicitly addressed in national legislation?

No.

There is no legislation explicitly defining the term of multiple (cumulative) discrimination. The Antidiscrimination Act¹⁹ stipulates the different grounds of discrimination, but it does not exclude the application of the definition in cases where several grounds are accumulated.

No specialized discussion devoted to the issues of multiple discrimination has taken place yet. There are no specific strategies aimed at multiple discrimination, at the level of both the ministries and the Slovak National Centre for Human Rights as equality body.

Only one study aimed at cases of multiple discrimination has been implemented in Slovakia. During the project 'Increasing awareness about discrimination and human rights among the public actors working with disadvantaged groups',²⁰ which was realised between March 2009 and February 2010 by a Non-Governmental Organization – the Institute for Public Affairs – seminars were organised,²¹ research conducted and analytic activities focused on deeper understanding of multiple discrimination. Research published in 2010 and named 'Discrimination and multiple discrimination. The public view of discrimination, equality and equal treatment'²² has shown that the interaction between gender, age and ethnicity constitutes an essential predisposition for disadvantages in society and discriminatory practices. Research has identified the particular cross-cutting nature of gender and age, which means impaired status and the threat of discrimination especially for mothers with small children or for older women. The combination of ethnicity and gender, particularly in the Roma minority, has proved to be a dominant disadvantage.

¹⁹ Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination and on the amendment of certain acts (Antidiscrimination Act).

²⁰ <http://www.ivo.sk/5654/en/projects/increasing-awareness-about-discrimination-and-human-rights-among-the-public-actors-working-with-disadvantaged-groups>, accessed 10 March 2017.

²¹ <http://www.ivo.sk/6150/en/news/a-seminar-on-multiple-discrimination->, accessed 10 March 2017.

²² <http://www.ivo.sk/6116/sk/publikacie/diskriminacia-a-viacnasobna-diskriminacia>, available only in Slovak, accessed 10 March 2017.

3.4.2 Is there any case law that addresses multiple discrimination and/or intersectional discrimination (where gender is one of the grounds at stake)?

No, not explicitly.

At present, only a small number of court decisions concerning cases of gender discrimination is known. Only a few of them include multiple discrimination.

In some cases in 2009,²³ the Slovak National Centre for Human Rights as equality body represented the injured parties – Romany women who had been discriminated against at work on the ground of both their gender and ethnic origin. However, in all cases it based the formulation of the action for breach of the principle of equal treatment on the racial ground only.

Most of the court decisions concern cases involving discrimination on the ground of race, particularly in the area of supply of services and access to employment. The citizens' association *Poradňa*²⁴ that specializes in litigation and has represented the clients in many of such cases provides legal representation to women in cases of racial discrimination as well as multiple discrimination (on a ground of race and gender). These cases have targeted discrimination of Romany women in the access to public accommodation, employment and social benefits, as well as segregation of Roma children (including girls) in education. In 2012 *Poradňa* also collected court judgments concerning discrimination that were decided in previous years and comprehensively analysed Slovak courts' decision-making work in cases of discrimination since the adoption of the Antidiscrimination Act in 2004. Based on their analysis as well as their own legal experience in courts *Poradňa* state that the implementation of the provisions of the Antidiscrimination Act by courts in cases of gender and multiple discrimination remains inconsistent and often flawed.²⁵

3.5 Positive action

3.5.1 Is positive action explicitly allowed in national legislation?

Yes.

Since 1 April 2008, repeated attempts have been made to introduce positive action (literally 'temporary balancing measure', as translated from Slovak) into the Antidiscrimination Act.

During the adoption process, Parliament refused to include temporary balancing measures on the grounds of sex and ethnic or racial origin. Instead it replaced these grounds by 'social and economic disadvantage'. The amendment to the Anti-Discrimination Act adopted in 2013 extended the grounds on which certain persons may be discriminated: not only on the ground of age and disability, but also on the ground of their racial or ethnic origin, membership of an ethnic minority, gender and sex.

According to Article 8a Section 1 'the adoption of temporary balancing measures by state administrative bodies or other legal persons targeted to eliminate disadvantages imposed on the grounds of racial or ethnic origin, belonging to national minority or ethnic group, gender or sex, age or disability, which aim is to ensure equal opportunities in practice, is not considered as discrimination'.

²³ <http://www.snslp.sk/files/report-observance-hr-2009-en.pdf>, accessed 10 March 2017.

²⁴ *Poradňa pre občianske a ľudské práva* (The Center for Civil and Human Rights).

²⁵ Written comments concerning Slovakia to the Committee on the Elimination of Discrimination against Women (CEDAW) for consideration at its 62th session in November 2015, available in English, <http://www.poradna-prava.sk/en/documents/written-comments-for-the-un-committee-on-the-elimination-of-discrimination-against-women/>, accessed 10 March 2017.

Such temporary compensatory measures, in particular, are measures:

- a) aimed at the elimination of social or economic disadvantages, by which members of disadvantaged groups are disproportionately affected;
- b) consisting in encouraging the interest of members of disadvantaged groups in employment, education, culture, healthcare and services;
- c) aimed at the creation of equal access to employment, education, healthcare and housing, especially through targeted training programmes for members of disadvantaged groups or by spreading information on these programmes or on opportunities to apply for jobs or jobs in the education system.

Yes, the definition is in compliance with the EU definition, but the application is not satisfactory. In its annual reports, the Slovak National Centre for Human Rights, frequently criticises the fact that temporary balancing measures have hardly been implemented in practice by state authorities, but especially by private persons. These reports regularly do not contain information about any temporary balancing measure taken on the ground of sex. It proves that the effectiveness of the law is almost zero.²⁶

3.5.2 Are there specific difficulties in your country in relation to positive action? If so, please explain these difficulties, with reference to legislation and/or (national) case law if relevant.

The discussion relating to the constitutionality of positive action measures started intensively with the adoption of the Antidiscrimination Act in 2004. Temporary balancing measures were regulated in Article 8 Section 8 entitled 'permissible differential treatment' as a result of the implementation of the Racial Equality Directive.²⁷ This provision has been repealed by the decision of the Constitutional Court because it contradicts Article 1 Paragraph 1 and Article 12 Section 1 first sentence and Section 2 of the Slovak Constitution. From the reasoning in the decision it follows that the weakness of this provision on temporary balancing measures was its generality and ambiguity.²⁸

3.5.3 Has your country adopted measures that aim to improve the gender balance in company boards?

No.

There are no proposals pending that address the gender balance in company boards.

There are no policy measures aimed at addressing the gender balance in company boards, for instance a charter or media campaign on this issue.

²⁶ A report on the observance of human rights including the observance of the principle of equal treatment in the Slovak Republic for the year 2013 is available in English at http://snslp.sk/CCMS/files/REPORT_ON_THE_OBSERVANCE_OF_HUMAN_RIGHTS_INCLUDING_THE_PRINCIPLE_OF_EQUAL_TREATMENT_AND_THE_RIGHTS_OF_THE_CHILD_IN_THE_SLOVAK_REPUBLIC_FOR_THE_YEAR_2013.pdf and for the year 2014 http://www.snslp.sk/CCMS/files/komplet_prekald_spravy_AJ_final.pdf, also available in English, accessed 10 March 2017.

²⁷ This provision resulted in perhaps the most serious controversies in relation to the concept of equality in Slovakia and caused turbulent political discussions. Immediately after its adoption, in October 2004 the Ministry of Justice initiated proceedings before the Constitutional Court to establish whether this provision was in conformity with the Constitution. The submission of the said petition to the court created a rather peculiar situation, because only a few months earlier the same Government had adopted a set of affirmative measures aimed at achieving equality and integration among the Roma minority.

²⁸ <http://merit.slv.cz/PL.US8/04>, accessed 10 March 2017.
http://www.google.sk/url?url=http://miris.eurac.edu/mugs2/do/blob.doc%3Ftype%3Ddoc%26serial%3D1148459524821&rct=j&frm=1&q=&esrc=s&sa=U&ved=0ahUKewi-oKaN_b3LAhWEqnIKHRhQAKAQFggTMAA&sig2=7VCpSpdcjvKLDaoyKh2MCw&usg=AFQjCNGzjt3tC2x3T7u6Hf-fyJmF9wFIJdg available in English, accessed 10 March 2017.

- 3.5.4 Has your country adopted other positive action measures to improve the gender balance in some fields, e.g. in political candidate lists or political bodies? If so, please describe these measures.

No. As in many countries of the former Eastern Bloc, in the socialist era the formal 30 % quota for the participation of women in Parliament also existed in Slovakia, but it mostly applied to women nominated by the Communist Party. Due to these negative experiences²⁹ from the socialist era the current attitudes to quotas are rather negative, which was reflected in the reluctance to introduce quotas in the 1990s.

3.6 Harassment and sexual harassment

- 3.6.1 Is harassment explicitly prohibited in national legislation?

Yes, harassment is prohibited in Article 2 Section 1 and Article 2a Section 4 of the Antidiscrimination Act.

According to Article 2a Section 4 of the Antidiscrimination Act harassment shall mean conduct which creates or may create an intimidating, hostile, shameful, humiliating, degrading, disrespectful or offensive environment and whose intention or consequence is or may be the violation of a person's freedom or human dignity.

The definition of harassment in the Antidiscrimination Act is not fully compatible with the Directive. It does not include an explicit reference to unwanted conduct but in some aspects goes beyond the requirements of the Directive and may guarantee a higher level of protection against harassment than the Directive. In addition to covering the intention or consequence of a violation of an individual's dignity, it permits an actual or potential intervention into a person's freedom. As the Antidiscrimination Act does not define this freedom in detail, it can be widely interpreted as personal freedom, freedom of religious belief, conviction, speech and movement. Unlike the Directive, the definition of harassment in the Antidiscrimination Act does not contain any direct reference to the ground on which the harassment is prohibited. However, from the logical and systematic interpretation it is clear that the prohibition of harassment is relevant only on the grounds as defined in Article 2 Section 1 of the Antidiscrimination Act.

- 3.6.2 Please specify the scope of the prohibition on harassment (e.g. does it cover employment and access to goods and services; is it broader?).

The prohibition of harassment is relevant to all fields defined in Article 3 Section 1 of the Antidiscrimination Act: employment and similar legal relationships, social security, healthcare, access to goods and services and education.

- 3.6.3 Is sexual harassment explicitly prohibited in national legislation?

Yes. According to Article 2a Section 5 of Antidiscrimination Act sexual harassment shall mean verbal, non-verbal or physical conduct of a sexual nature whose intention or consequence is or may be a violation of a person's dignity and which creates an intimidating, degrading, disrespectful, hostile or offensive environment.

The definition of sexual harassment (provided in the Antidiscrimination Act of 1 April 2008) is not fully compatible with the definitions contained in the Directive. It does not include an explicit reference to unwanted conduct. From the interpretation of the definition it is also clear that any potential violation of an individual's dignity should be assessed individually and regardless of whether an intimidating, hostile, degrading, humiliating or offensive environment has been created. The definition of sexual

²⁹ In the socialist era, women occupied about one-third of the seats, but the Communist Party determined the candidates and elections were formal. Women's participation in shaping policies was merely formal, as these policies were adopted in an undemocratic framework.

harassment requires a cumulative fulfilment of the condition of actual or potential violation of an individual's dignity and the creation of an intimidating, hostile, degrading, humiliating or offensive environment without indicating the difference between these two requirements. This means that the definition is restrictive compared to the definition contained in the Directive.

3.6.4 Please specify the scope of the prohibition on sexual harassment (e.g. does it cover employment and access to goods and services; is it broader?).

The prohibition of sexual harassment is relevant to all fields defined in Article 3 Section 1 of the Antidiscrimination Act: employment and similar legal relationships, social security, healthcare, access to goods and services and education.

3.6.5 Does national legislation specify that harassment and sexual harassment as well as any less favourable treatment based on the person's rejection of or submission to such conduct amounts to discrimination (see Article 2(2)(a) of Directive 2006/54)?

Yes. Harassment and sexual harassment are explicitly prohibited under Article 2a Section 1 of the Antidiscrimination Act as a form of discrimination. According to Article 2a Section 1 of the Antidiscrimination Act 'Refusal or endurance of discrimination by a person may not in any way affect the subsequent treatment of this person or behaviour towards this person or constitute the basis for the decision related to this person.'

3.7 Instruction to discriminate

3.7.1 Is an instruction to discriminate explicitly prohibited in national legislation?

Yes. Article 2a Section 1 of the Antidiscrimination Act stipulates that discrimination shall also mean an instruction to discriminate. The instruction to discriminate usually abuses the subordinate position of an individual to discriminate against a third party.

3.7.2 Are there specific difficulties in your country in relation to the concept of instruction to discriminate? If so, please explain these difficulties, with reference to legislation and/or (national) case law if relevant.

No.

3.8 Other forms of discrimination

Are any other forms of discrimination prohibited in national law, such as discrimination by association or assumed discrimination?

No.

4. Equal pay and equal treatment at work (Article 157 TFEU and Recast Directive 2006/54)

4.1 Equal pay

4.1.1 Is the principle of equal pay for equal work or work of equal value implemented in national legislation?

Yes. The principle of equal pay for men and women is generally guaranteed under the Slovak Constitution.³⁰ According to Section 36, all employees have the right to fair and satisfactory conditions at work, in particular the right to remuneration for the work performed and the right of collective bargaining.

The principle of equal pay can also be deduced from Article 6 Section 2b of the Antidiscrimination Act. It provides that the principle of equal treatment applies to employment relationships, including remuneration.

The general principle of equal pay for equal work is laid down in the Labour Code.³¹ The situation has improved in the definition of wages in the amendment of the Labour Code, effective since 1 September 2007. It was an essential reform, in which the definition of wage contained in Article 118 was changed and the principle of equal remuneration for equal work and for work of equal value was laid down in the new Article 119a.

The principle of equal pay covers employees, part-time workers (including job sharing), and workers who perform home-work or telework.

4.1.2 Is the concept of pay defined in national legislation?

Yes, in Article 118 of Labour Code.

Article 118 Section 2 of the Labour Code states: Wage shall be any financial settlement or settlement of a financial value (wages in kind), provided by an employer to an employee for work. The following items shall not be deemed to be wages in particular: wage compensation, severance allowances, discharge benefit, travel reimbursement including non-mandatory travel reimbursement, contributions from a social fund, contributions to supplementary pension saving funds, contributions to an employee's life insurance, revenues from capital holdings (shares) or bonds, a tax bonus, income compensation for an employee's temporary incapacity for work, supplementary sickness insurance, compensation for work standby, monetary compensation under Article 83a Section 4³² and other payments provided to an employee in relation to employment pursuant to this Act, other relevant regulations, a collective agreement or an employment contract which do not have the characteristics of wages.

According to Article 118 Section 2 also considered as wage shall be any settlement provided by an employer to an employee for work on the occasion of his/her work anniversary or personal anniversary, if such is not provided from net profit or from the social fund.

This definition does not comply with the definition of Article 157(2) TFEU. Provisions of the Labour Code state that pay conditions must be agreed without any discrimination on grounds of sex. Women and men shall be entitled to equal pay for the same work or work of equal value. But this condition does not apply to all remuneration for work and

³⁰ Act No. 460/1992 Coll. Constitution of the Slovak Republic.

³¹ Act No. 311/2001 Coll. Labour Code.

³² This covers reasonable monetary compensation for an employee refraining from performing earning activities that have the character of competition with the employer's activity after termination of the employment relationship.

all benefits that are paid in relation to employment. For example, the above-mentioned enumeration of the settlements in Article 118 Section 2 excluded from pay all severance allowances, discharge benefit, non-mandatory travel reimbursement, contributions from a social fund, supplementary payments to sickness insurance benefits, and contributions to supplementary pension saving funds, which does not comply with the definition of Article 157(2) TFEU.

4.1.3 Does national law explicitly implement Article 4 of Recast Directive 2006/54 (prohibition of direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration)?

Yes, in Article 119a of the Labour Code states:

(1) Wage conditions must be agreed without any form of sex discrimination. The provision of the first sentence applies to all remuneration for work and benefits that are paid or will be paid in relation to employment according to the other provisions of this Act's special regulations.

(2) Women and men have the right to equal wage for equal work and for work of equal value. Equal work or work of equal value is considered to be work of the same or comparable complexity, responsibility and urgency, which is carried out in the same or comparable working conditions and produces the same or comparable capacity and results of work in an employment relationship for the same employer.

4.1.4 Is a comparator required in national law as regards equal pay?

No.

4.1.5 Does national law lay down parameters for establishing the equal value of the work performed, such as the nature of the work, training and working conditions?

No.

4.1.6 Does national (case) law address wage transparency in any way?

Yes. According to Article 119a Section 3 of the Labour Code, if the employer implements a system of job valuation, the valuation must be based on the same criteria for men and women without any sexual discrimination. In the valuation of the work of women and men, employers may use other objectively measurable criteria if they can be applied to all employees without regard to sex.

4.1.7 Is the European Commission's Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency applied in your country? If so, how?

Not really.

4.1.8 Which justifications for pay differences are allowed in legislation and/or case law?

None.

4.1.9 Are there specific difficulties related to the application of the principle of equal pay for equal work and work of equal value in practice? For example in case of out-sourcing?

There are no specific difficulties related to this issue.

4.2 Access to work and working conditions

4.2.1 Is the personal scope in relation to access to employment, vocational training, working conditions etc. defined in national law (see Article 14 of Directive 2006/54)?

Yes, in Article 6 of the Antidiscrimination Act, Article 13 of the Labour Code, and Article 14(1) of the Act on Services of Employment.

In conformity with the principle of equal treatment, the Antidiscrimination Act includes a prohibition of discrimination on the grounds of sex in the field of access to employment, occupation, self-employment and job positions including job requirements (which also encompasses job advertisements), and conditions and means of employee selection. The Act also includes a general prohibition of discrimination in the access to vocational training and job selection consultancy agencies. The Antidiscrimination Act also includes a prohibition of discrimination in terms of promotion. The Antidiscrimination Act furthermore refers to the existing laws in the area of employment, self-employment and occupation without making any distinction between legal relationships in the private and the public sector.

The Labour Code already contains more detailed regulations regarding access to employment. In addition to the general equal treatment clause in Article 13 that applies to all employment relationships (including part-time work, job sharing, home-work and telework) from the beginning until the termination of the employment, it contains a special Article on so-called 'Pre-contractual Relations' (Article 41). This Article contains a specific prohibition for a future employer to require information on pregnancy and family relationships and a prohibition to violate the equal treatment principle. This Article also applies to the employment relationships of civil servants and public servants.

In Article 14(1) of the Act on Employment Services³³ the right to access to employment is defined as the right to receive help either in the search for an appropriate job, or in vocational training and preparation for the labour market. The right to access to employment is guaranteed in accordance with the principle of equal treatment. In order to achieve the application of the equal treatment principle in access to employment, the Act also contains a provision in Article 13(z)(a) about the duty of employment agencies to inform job applicants about their right to equal treatment in access to employment. Moreover, the Act contains a specific prohibition in Article 62 that prohibits job advertisements with job offers containing any restrictions or discrimination on the grounds inter alia of sex, marital or family status, or social origin. According to this Article, the criteria for selection of employees must guarantee equal opportunities for all citizens.

According to Article 11 Section 1 'An employee shall be a natural person who in labour-law relations and, if stipulated by special regulation also in similar labour relations, performs dependent work for the employer'.

This definition of a 'worker' reflects the relevant case law of the CJEU.

4.2.2 Is the material scope in relation to (access to) employment defined in national law (see Article 14(1) of the Recast Directive 2006/54)?

Yes, in Article 6 of the Antidiscrimination Act.

According to Article 6 Section 2 of the Antidiscrimination Act the principle of equal treatment shall apply only with regard to the rights of natural persons provided for under separate legal provisions regulating:

³³ Act No. 5/2004 Coll.

- a) access to employment, occupation, other gainful activities or job positions (hereinafter 'employment'), including recruitment requirements and conditions and the manner of carrying out the process of selection for employment;
- b) performance of employment and the conditions of performing the work in employment including remuneration, promotions and dismissal;
- c) access to vocational training, continuing vocational training and participation in programmes of active labour-market measures including access to counselling for employment selection and change of employment (hereinafter 'vocational training'); and
- d) membership and participation in organizations of employees and employers and in organizations associating persons of a certain profession including the benefits provided by the organizations to their members.

This scope is identical to the scope of Article 14(1) of Recast Directive 2006/54.

4.2.3 Has the exception on occupational activities been implemented into national law (see Article 14(2) of Recast Directive 2006/54)?

Yes, in Article 8 Section 1 of the Antidiscrimination Act

According to Article 8 Section 1 of the Antidiscrimination Act:

'Differences of treatment shall not constitute discrimination if they are objectively justified by the nature of occupational activities in employment or the circumstances under which such activities are carried out, provided that such reason constitutes a real and decisive requirement for employment under the condition that the aim is legitimate and the requirement is appropriate.'

The original wording of the concept of different treatment in Article 8 Section 1 of the Antidiscrimination Act as adopted in 2004 was changed in September 2007 to produce a more precise definition, identical to the wording of the Recast Directive.

4.2.4 Has the exception on protection for women, in particular as regards pregnancy and maternity, been implemented in national law (see Article 28(1) of Recast Directive 2006/54)?

Yes in Article 8 Section 7b of the Antidiscrimination Act: Objectively justified differences in treatment on the grounds of sex shall not be deemed to constitute discrimination if their purpose is the protection of pregnant women and mothers.

4.2.5 Are there particular difficulties related to the personal and/or material scope of national law in relation to access to work, vocational training, employment, working conditions etc.?

No.

5. Pregnancy, maternity, and leave related to work-life balance (Directive 92/85, relevant provisions of the Directives 2006/54 and 2010/18)

5.1 Pregnancy and maternity protection

5.1.1 Does national law define a pregnant worker?

Yes, in the Labour Code: the first chapter, General Provisions, under Interpretation of selected terms, Article 40 Section 6.

For the purposes of the Labour Code a pregnant employee shall be an employee who has informed her employer in writing of her condition and who has submitted a medical confirmation of this.

However, the Labour Code does not impose on a woman the obligation to inform the employer about her pregnancy. If a woman does not inform the employer about her pregnancy in writing and does not submit the medical certificate, she will not be entitled to the special legal protection, e.g. as regards the adaptation of working conditions and working hours.³⁴ The prohibition of the termination of the employment relationship within a protected period will not apply in that event.

This definition is consistent with the definition in Article 2 of Directive 92/85.

5.1.2 Are the protective measures mentioned in Articles 4-7 of Directive 92/85 implemented in national law?

Yes, in the Labour Code: in the chapter Working conditions of women and men caring for children in Articles 166-162.

The Labour Code provides that for pregnant women, mothers until the completion of the ninth month after confinement and breastfeeding mothers, working conditions shall be secured that will protect their biological state with respect to pregnancy, childbirth, care for the child after birth, and their special relationship with the child after birth. To these persons the legislator therefore basically grants special protection, which is manifested in the working conditions, adaptation of working hours and prohibition of the termination of the employment relationship within a protected period, maternity or parental leave and childcare, in the individual provisions of the Labour Code.

In the expert's view this is a correct implementation.

5.1.3 Is dismissal prohibited in national law from the beginning of the pregnancy until the end of the maternity leave (see Article 10(1) of Directive 92/85)?

Yes, in Article 64 and 68 of the Labour Code.

An employer cannot give notice³⁵ to an employee within the protected period, also meaning within the period of a female employee's pregnancy, when a female employee is on maternity leave or a male employee caring for a new-born child is on parental leave (with the same scope as maternity leave). If an employee receives notice prior to commencement of a maternity leave in such a way that the period of notice should expire within this period, the employment relationship shall terminate upon expiry of the final day of the maternity leave, except in such cases where the employee announces

³⁴ According to the Labour Code, a woman is not obliged to inform the employer that she is pregnant. If she does not inform the employer, although it is clear that she is pregnant, she is not entitled to special legal protection.

³⁵ An employment relationship may be terminated by agreement, by notice, by immediate termination and by termination during the probation period (Article 59 Section 1 of the Labour Code).

that he/she does not insist on extension of the employment relationship (Article 64 Section 1/d of the Labour Code).

An employer cannot immediately (without notice) terminate the employment relationship with a pregnant employee, a female employee on maternity leave, or male employee caring for a new-born child on parental leave (Article 68 Section 3 of the Labour Code).

Dismissal is permitted in exceptional cases as defined in Article 10(1) if the employer or its business unit is being closed down or relocated (Article 64 Section 3/a of the Labour Code).

Payment for maternity leave does not cease if the employee is made redundant during her maternity or his parental leave. The maternity allowance is a social endowment, paid by the Social Insurance Agency³⁶ (not by the employer), the amount of which depends on the contributions paid to the social security scheme.

5.1.4 In cases of dismissal from the beginning of pregnancy until the end of maternity leave, is the employer obliged to indicate substantiated grounds for the dismissal in writing (see Article 10(2) of Directive 92/85)?

Yes, according to Article 72 of the Labour Code the employer may terminate the employment within the probationary period of a pregnant woman, a mother who has given birth within the last nine months or a breastfeeding woman only in writing, in exceptional cases,³⁷ not relating to her pregnancy or maternal role, giving appropriate reasons³⁸ in writing, otherwise the termination shall be invalid. Since August 2011 the employer is no longer allowed to terminate the employment relationship with a pregnant employee in the probation period without stating reasons.

5.2 Maternity leave

5.2.1 How long (in days or weeks) is maternity leave? Please specify the relevant legislation and Article(s).

According to Article 166 Section 1 of the Labour Code the duration of maternity leave is 34 weeks, 37 weeks for single mothers, or 43 weeks for multiple births.

5.2.2 Is there an obligatory period of maternity leave before and/or after birth?

Yes, in Article 167 of the Labour Code.

The maternity leave of a woman connected with childbirth and the care of a new-born child must not be shorter than 14 weeks and if the woman goes on maternity leave before childbirth, the maternity leave must not end before the sixth week after childbirth. The beginning of maternity leave for a woman is determined by a physician and generally commences six weeks prior to the expected date of confinement, and at the earliest,

³⁶ SIA has been designated to be the competent and liaison institution for the following branches of social security: sickness benefits, maternity and equivalent paternity benefits, invalidity benefits, old-age benefits, survivors' benefits, benefits in respect of accidents at work and occupational diseases, and unemployment benefits.

³⁷ The Labour Code does not define what is meant by exceptional cases. According to expert opinion the probation period must not serve as a tool for the discriminatory dismissal of female workers on the ground of their pregnancy, i.e. for a reason that has no relation to their ability or inability to carry out certain work, or to the quality of this work.

³⁸ Appropriate reason must be in the application practice assessed in terms of preventing circumvention of the act and conduct contrary to good moral. Generally, the notice must be given in writing and delivered to the other party, or otherwise it shall be invalid. An employer may only give notice to an employee for reasons expressly stipulated in the Labour Code. The reason for giving notice must be defined in the notice in terms of fact such that it may not be confused with a different reason, or the notice shall otherwise be deemed invalid. The reason for giving notice may not be subsequently amended (Article 61 of Labour Code).

from the beginning of the eighth week prior to such day.³⁹ Male employees are entitled to paternity⁴⁰ leave in order to be able to care for the new-born child and the beginning of this leave is normally determined by the fact that a father starts to care for a new-born baby.⁴¹

If a woman has used less than six weeks of maternity leave prior to giving birth, for reason of the birth occurring earlier than was determined by a physician, she shall be entitled to maternity leave from the day of commencement up to the expiry of 34 weeks, 37 weeks for single mothers, or 43 weeks for multiple births. If a woman has used less than six weeks of her maternity leave before confinement for another reason, she shall be provided maternity leave from the day of confinement until the expiry of 28 weeks, 31 weeks for single mothers, or 37 weeks for multiple births. The reason for this in a sense 'repressive' legislation, consisting in fixing a maximum and minimum length of maternity leave, is to put pressure on the woman through economic encouragement, to ensure protection of pregnancy, childbirth, the health of the woman who has given birth, the healthy development of the foetus, and the child's health after birth.

5.2.3 Is there a legal provision insuring that the employment rights relating to the employment contract are ensured in the cases referred to in Articles 5, 6 and 7 of Directive 92/85?

Yes, in Articles 162-165 of the Labour Code.

Pregnant women, mothers until the end of the ninth month after confinement and breastfeeding women must not be employed in work activities that are physically inappropriate or harmful for them. Neither can a pregnant woman be employed in such work activities that according to medical opinion jeopardise her pregnancy due to her individual condition of health. The same holds for mothers until the end of the ninth month following childbirth and breastfeeding women. If a pregnant woman performs work that is prohibited for pregnant women, or which according to medical opinion threatens her pregnancy, the employer shall be obliged to implement a temporary change to her working conditions. If a change to the woman's working conditions is not possible, the employer shall temporarily transfer her to work that is suitable and in which she may earn the same salary as the salary that she earns for her normal work within the scope of the employment contract. If this is not possible, the employer shall transfer her, upon her agreement, to a different type of work. If transfer of a pregnant woman to day work or transfer to other suitable work is not possible, the employer shall be obliged to give the pregnant employee time off and wage compensation. If a woman, in work she was transferred to by no fault of her own, earns a salary that is lower than that earned in her normal work, for the purpose of balancing out the difference she shall be provided with an equalization benefit for pregnancy and motherhood according to the Social Insurance Act. The employer is also obliged to transfer a pregnant woman working nights to day work, if the pregnant woman applies for such transfer. If she cannot be transferred to day work, the employer is obliged to give a pregnant employee time off and wage compensation. If the employer has not transferred a pregnant woman to

³⁹ A woman is in principle entitled to choose the beginning of maternity leave only in the timeframe of 6 to 8 weeks prior to the expected day of confinement.

⁴⁰ However, there is no term meaning paternity leave in Slovakian legislation. In this report, leave that is exclusively available to the father who takes care of the new-born child is nevertheless called paternity leave, in order to distinguish this leave from parental leave. According the Slovak legislation male employees are entitled to parental leave in two separate cases: 1. from the birth of a child in connection with the care of a new-born child (the same scope as maternity leave for women) or 2. if he requests parental leave in order to enhance the care of a child until the age of three (the same scope as parental leave for women).

Slovakian translations: maternity leave: *materská dovolenka*, paternity leave: *otcovská dovolenka*, parental leave: *rodičovská dovolenka*.

⁴¹ Because the period of paternity leave for men does not include the period before confinement (time of pregnancy), in the light of the purpose of leave after the birth, in practical terms men are unjustifiably granted a longer period of paternity leave in the period following childbirth than women.

different work, although the employer was obliged to do so, the employee has the right to refuse further performance of work. Such employee is then entitled to wage compensation in the amount of average earnings. She is entitled to such compensation also when it can be presumed that employer had no other work for her.

5.2.4 Is there a legal provision that ensures the employment rights relating to the employment contract (including pay or an adequate allowance) during the pregnancy and maternity leave?

Yes, in Article 54 of the Labour Code.

The agreed contents of an employment contract may only be amended where the employer and employee agree on such amendment. The employer shall be obliged to lay down the amendment to an employment contract in writing.

5.2.5 Is pay or an allowance during the pregnancy and maternity leave at the same level as sick leave or is it higher?

During maternity leave, the woman shall be provided with the maternity allowance which is provided under the Social Insurance Act⁴² and paid by the Social Insurance Agency (SIA)⁴³ in an amount of 70 % of her daily counting base (which is based on her income/wage before maternity leave). The minimum amount is EUR 279.60 and the maximum amount is EUR 918.20 per month. The estimated average monthly maternity benefit is EUR 459.60 per month.

5.2.6 Are statutory maternity benefits supplemented by some employers up to the normal remuneration?

No.

5.2.7 Are there conditions for eligibility for benefits applicable in national legislation (see Article 11(4) of Directive 92/85)?

Yes, these are stipulated in Article 48 of the Act on Social Insurance.

The criteria for eligibility for maternity allowance are that a person who is pregnant or takes care of a child must have sickness insurance at the time that the reason for provision of maternity allowance arises, and that this insurance must have existed at least 270 days in the last two years before the birth of the child. A person who does not pay sickness insurance contributions, mandatorily or voluntarily, is not entitled to maternity benefits. In this case she/he can apply for parental benefits – state social benefits paid by the Office of Labour, Social Affairs and Family. The State pays the eligible person contributions that are to ensure the proper care of a child until the age of three (or six for a child with a long-term unfavourable state of health). Since January 2014 the amount of monthly benefits has been EUR 202.30; a parent of twins will receive EUR 254 per month and a parent of triplets EUR 304.80 per month.

5.2.8 In national law, is there a provision that guarantees the right of a woman to return after maternity leave to her job or to an equivalent job, on terms and conditions that are no less favourable to her, and to benefit from any improvement in working conditions to which she would have been entitled during her absence (see Article 15 of Directive 2006/54)?

⁴² Act No. 461/2003 Coll. Social Insurance Act, as amended.

⁴³ SIA has been designated to be the competent and liaison institution for the following branches of social security: sickness benefits, maternity and equivalent paternity benefits, invalidity benefits, old-age benefits, survivors' benefits, benefits in respect of accidents at work and occupational diseases, and unemployment benefits.

Yes, in Article 157 Section 1 of the Labour Code.

Where a female employee returns to work after maternity leave, the employer shall be obliged to assign her to her original work and workplace. Where assignment to the original work and workplace is not possible, the employer shall be obliged to assign her to different work corresponding to her contract of employment.

The employer shall be obliged to assign the work conditions that will not be less favourable for her than those she enjoyed before going on maternity leave, and she/he shall have the right to benefit from any improvement to the working conditions to which she/he would have been entitled if she/he had not taken maternity leave or paternity leave.⁴⁴

5.3 Adoption leave

5.3.1 Does national legislation provide for adoption leave?

Not literally. In addition to biological parents, the claim for maternity leave and paternity leave is granted to persons who have taken a child in so-called substitution family care (i.e. adoption, foster care or care in case of death of the child's mother) (Article 169 Section 1 of the Labour Code).

Article 169 Section 2 of the Labour Code includes the following:

The scope of the claim for maternity and paternity leave - in connection with care for a new-born child in case of so-called substitute parents is (in comparison with the scope of claim regarding the said types of leave of so-called biological parents) modified and exists from the day of taking the child into care for 28 months (31 months for a single parent, 37 months for care for 2 or more children).

The woman, during maternity leave, and the man, during paternity leave, shall be provided with the maternity allowance on the same conditions as biological parents, which is provided under the Social Insurance Act⁴⁵ and paid by the Social Insurance Agency (SIA)⁴⁶ in an amount of 70 % of the daily counting base (which is based on the income/wage before maternity leave). The minimum amount is EUR 279.60 and the maximum amount is EUR 918.20 per month.⁴⁷

5.3.2 Does national legislation provide for protection against dismissal of workers who take adoption leave and/or specify their rights after the end of adoption leave (see Article 16 of Directive 2006/54)?

Yes, in Article 157 Section 1 of the Labour Code.

Where a female employee returns to work after maternity leave, and a male employee returns to work after paternity leave the employer shall be obliged to assign them to their original work and workplace. Where the assignment to the original work and workplace is not possible, the employer shall be obliged to assign them to different work corresponding to their contract of employment. The employer shall be obliged to assign the employees on conditions that will not be less favourable for them than those they

⁴⁴ However, there is no term meaning paternity leave in Slovakian legislation. In this report, leave that is exclusively available to the father who takes care of the new-born child is nevertheless called paternity leave, in order to distinguish this leave from parental leave. Slovakian translations: maternity leave: *materská dovolenka*, paternity leave: *otcovská dovolenka*, parental leave: *rodičovská dovolenka*.

⁴⁵ Act No. 461/2003 Coll. Social Insurance Act, as amended.

⁴⁶ SIA has been designated to be the competent and liaison institution for the following branches of social security: sickness benefits, maternity and equivalent paternity benefits, invalidity benefits, old-age benefits, survivors' benefits, benefits in respect of accidents at work and occupational diseases, and unemployment benefits.

⁴⁷ The estimated average monthly maternity benefit in 2016 is EUR 459.60 per month.

enjoyed before going on maternity leave or paternity leave and they shall have the right to benefit from any improvement to the working conditions to which they would have been entitled if they had not taken maternity leave or paternity leave.

5.4 Parental leave

5.4.1 Has Directive 2010/18 been explicitly implemented in your country?

Yes, the Directive was transposed particularly in 2010 and 2011, when Act No. 461/2003 Coll. Social Insurance Act, Act No. 311/2001 Coll. Labour Code, Act No. 73/1998 Coll. on civil service of members of the Police Force, the Slovak Intelligence Service, the Prison Wardens and Judiciary Guards Corps of the Slovak Republic and of the Railway Police, Act No. 200/1998 Coll. on the civil service of customs officers, Act No. 315/2001 Coll. on the Fire Fighting and Rescuing Corps, Act No. 365/2004 Coll. on equal treatment in some areas and on protection against discrimination and amending certain acts (Antidiscrimination Act), Act No. 346/2005 Coll. on civil service of professional soldiers of the Armed Forces of the Slovak Republic and Act No. 400/2009 Coll. on civil service and amending and supplementing certain acts, as amended by Act No. 151/2010 Coll., were all amended.

5.4.2 Is the national legislation applicable to both the public and the private sector (see Clause 1 of Directive 2010/18)?

The provisions on maternity and parental leave contained in the Labour Code apply to both the private and the public sector, to civil-service relationships and to the exercise of public services. They also cover part-time employment contracts, contracts for a definite period of time and employment relationships with a temporary employment agency.

5.4.3 Does the scope of the national transposing legislation include contracts of employment or employment relationships related to part-time workers, fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary agency?

The provisions on maternity and parental leave contained in the Labour Code apply to both the private and the public sector, to civil-service relationships and to the exercise of public services. They also cover part-time employment contracts, contracts for a definite period of time and employment relationships with a temporary employment agency.

5.4.4 What is the total duration of parental leave? If the provisions regarding duration differ between the public and the private sector, please address the two sectors separately.

Parental leave shall be allowed until the child turns three and if the child is in ill health until the child turns six. Parental leave is allowed for the time requested by the parent, usually for a period not shorter than one month (Article 166 Section 2 of the Labour Code).

5.4.5 Is the right of parental leave individual for each of the parents?

If both parents apply for the parental leave only one of them will be entitled to parental benefits. According to the Labour Code the second spouse/parent is entitled to the parental leave in the form of unpaid time off from work with a guarantee of employment upon return. If both parents use the parental leave, only one of them is entitled to parental allowance.

5.4.6 What form can parental leave take (full-time or part-time, piecemeal, or in the form of a time-credit system)? Do the various available options allow taking into

account the needs of both employers and workers and if so, how is that done (see Clause 3 of Directive 2010/18)?

Parental leave is full time. There is no possibility that granting parental leave may be postponed for justifiable reasons related to the operation of the organisation. There are no special arrangements for small firms.

5.4.7 Is there a notice period and if so, how long is it? Does the national legislation take sufficient account of the interests of workers and of employers in specifying the length of such notice periods and how is that done? (See Clause 3 of Directive 2010/18)?

Yes. Since 1 April 2011 the amendment to the Labour Code, in Article 166/3, has been effective, according to which both women and men shall give their employer at least one month's notice in advance of the expected date of going on parental leave, including the expected date of suspension, termination and any changes regarding starting, suspending, and terminating parental leave.

5.4.8 Did the Government take measures to address the specific needs of adoptive parents (see Clause 4 of Directive 2010/18)?

No.

5.4.9 Is there a work and/or length of service requirement in order to benefit from parental leave?

No.

5.4.10 Are there situations where the granting of parental leave may be postponed for justifiable reasons related to the operation of the organisation?

No.

5.4.11 Are there special arrangements for small firms?

No.

5.4.12 Are there any special rules/exceptional conditions for access and modalities of application of parental leave to the needs of parents of children with a disability or a long-term illness?

Yes, in Article 169 of the Labour Code.

With the aim to harmonise work and family duties of employees who take care of children and to facilitate their access to and performance of work, the Act includes the possibility to use the unused part of parental leave until the child reaches the age of five for a healthy child and until the age of eight for a child with a long-term unfavourable state of health requiring special care, providing the employer and the employee agree on this possibility, with effect from 1 September 2011. The total length of the parental leave remains unchanged, i.e. the part of the parental leave that was not used, but could have been used until the age of three for a healthy child and until the age of six for a child with a long-term unfavourable state of health requiring special care, may be postponed until the date when a healthy child reaches the age of five or a child with a long-term unfavourable state of health requiring special care reaches the age of eight. The age limit is the same for adopted children.

5.4.13 Are there provisions to protect workers against less favourable treatment or dismissal on the grounds of an application for, or the taking of, parental leave (see Clause 5 of Directive 2010/18)?

Yes, in Act No. 311/2001 Coll. Labour Code: Fundamental Principles, Article 6.

According to the Labour Code women and men have the right to equal treatment, as regards the access to employment, remuneration and careers, training and working conditions. For women and men, working conditions shall be secured that will enable them to perform their social role in the upbringing of children and childcare.

5.4.14 Do workers benefitting from parental leave have the right to return to the same job or, if this is not possible, to an equivalent or similar job consistent with their employment contract or relationship?

Yes.⁴⁸ If an employee returns to work after termination of maternity or parental leave the employer is obliged to assign them their initial working position and workplace. If such assignment to initial working position and workplace is not possible the employer is obliged to assign the employee other work corresponding to the employment contract.

5.4.15 Are rights acquired or in the process of being acquired by the worker on the date on which parental leave starts maintained as they stand until the end of the parental leave?

Yes. The employer is obliged to assign the employee a working position and workplace on conditions that for them are not less favourable than the conditions valid when he or she left for maternity or parental leave, and the employee is entitled to benefit from each improvement of working conditions to which he or she would be entitled if he or she had not taken maternity or parental leave. These rights will be exercised including any changes resulting from legal regulations, collective agreement or usual procedures applied at the employer (Article 157 Section 2 of the Labour Code).

5.4.16 What is the status of the employment contract or employment relationship for the period of the parental leave?

The employment relationship and contract remain valid during the period of parental leave.

5.4.17 Is there continuity of the entitlements to social security cover under the different schemes, in particular healthcare, during the period of parental leave?

Yes. Contribution to the health security system, old-age and disability insurance are paid by the state on behalf of persons on parental leave.

Sickness insurance is suspended during parental leave, but this period will be counted when assessing entitlement to maternity benefit as term of insurance. The state does not pay contributions to sickness insurance system on behalf of persons on parental leave.

5.4.18 Is parental leave remunerated by the employer? If so, how much and in which sectors?

No.

⁴⁸ Legal regulation of the conditions regarding return from parental leave was completed and harmonized with effect from 1 April 2011 in Article 157 Section 2 of Labour Code.

5.4.19 Does the social security system in your country provide for an allowance during parental leave? If so, how much and in which sectors?

During parental leave, the parent is entitled to parental allowance which is provided under the Act on Parental Allowance by the state to the beneficiary to ensure proper care of the child. The parental allowance is a state social benefit, the amount of which does not depend on any contributions paid to the social security scheme and amounts to EUR 204.20 for one child, to EUR 254 for twins, and to EUR 304.80 for triplets and more.

5.4.20 In your view, regarding which issues does the national legislation apply or introduce more favourable provisions (see Clause 8 of Directive 2010/18)?

Slovak legislation complies with the Directive. However, there is still a great deal of room for improvement from a legislative point of view, which could contribute to achieving gender equality in practice. One of the obstacles is the practical impossibility for both parents to take 'paid' paternity leave at the same time. If both parents apply for parental leave, only one of them will be entitled to parental allowance, the amount of which is insufficient to cover the living costs of both parents and the child.

5.5 Paternity leave

5.5.1 Does national legislation provide for paternity leave?

No.⁴⁹

5.5.2 Does national legislation provide for protection against dismissal of workers who take paternity leave and/or specify their rights after the end of paternity leave (see Article 16 of Directive 2006/54)?

No.

5.6 Time off/care leave

5.6.1 Does national legislation entitle workers to time off from work on grounds of force majeure for urgent family reasons in case of sickness or accident (see Clause 7 of Directive 2010/18)?

Yes, in Article 141 of the Labour Code.

The employer is obliged to accept the absence of an employee from work during maternity, paternity and parental leave, which is included in Article 141 of the Labour Code as one of the substantive personal obstacles to work.

This also applies during the care of a child under ten, who for significant reasons cannot be placed in an educational centre or school that otherwise cares for the child; or if the person taking care of the child falls ill or is placed in quarantine, or undergoes treatment in a healthcare facility that cannot take place outside his or her working hours.

All circumstances including maternity and parental leave are regarded as 'important personal obstacles to work'. For this time off, the employee is not entitled to be paid by the employer, because he/she is entitled to an allowance under the Social Insurance Act. There is no limit to the amount of times per year an employee can take this time off.

⁴⁹ There is no term meaning paternity leave in Slovakian legislation. In this report, leave that is exclusively available to the father who takes care of the new-born child is nevertheless called paternity leave, in order to distinguish this leave from parental leave. Slovakian translations: maternity leave: *materská dovolenka*, paternity leave: *otcovská dovolenka*, parental leave: *rodičovská dovolenka*.

The employer is obliged to provide the employee paid time off work to cover preventive medical checks related to pregnancy, if the examination or treatment cannot take place outside working hours. Time off from work will also be provided for the transport of the mother of the employee's new-born child to and from the maternity hospital. The employer is obliged to provide its employee with time off from work, when the employee is accompanying:

- (i) a family member to a medical facility for examinations or treatment upon sudden disease or accident, and also for planned examinations and treatment. Wage compensation is for a maximum of seven days per calendar year.
- (ii) A handicapped child to a social care facility or special school. In this situation, wage compensation is provided for a maximum of ten days per calendar year.

5.7 Leave in relation to surrogacy

5.7.1 Is parental leave available in case of surrogacy?

Yes, in Article 169 Section 2 of the Labour Code.

In addition to biological parents, the claim for parental leave is granted to persons (of both sexes) who have taken a child in so-called substitution family care (i.e. adoption, foster care or care in case of the death of the child's mother).

The scope of the claim for parental leave in case of so-called substitute parents is the same as the scope of the claim for the said types of leave of so-called biological parents.

Parental leave shall be provided for the duration of three years from the day of completion of maternity leave or paternity leave, or from the day the child is taken in that has not yet reached the age of three, but not longer than until the day the child turns six. If a child with a long-term unfavourable state of health is involved, requiring special care, parental leave shall be provided for the duration of six years from the day of completion of maternity or parental leave subject to the first sentence, or from the day of taking in of the child that has not yet reached the age of three, not longer than until the day the child turns six.

5.8 Leave sharing arrangements

5.8.1 Does national law provide a legal right to share (part of) maternity leave?

No.

5.8.2 Is there a possibility for one parent to transfer part of the parental leave to the other parent?

No.

5.9 Flexible working time arrangements

5.9.1 Does national law provide workers with a legal right (temporarily or otherwise) to reduce working time on request?

Yes. The Labour Code contains several provisions that may contribute to the development of part-time work on a voluntary basis and to the flexible organisation of working time. Many of these provisions are related to time management and/or division of working time.

According to Article 49 of the Labour Code an employer may agree with an employee on a reduced weekly working time schedule rather than the previously determined weekly working time schedule. Part-time work differs from both standard full-time and fixed-term work in the volume of weekly working hours. However, legislation does not contain a general right to part-time work. The arrangement of reduced working time is based on the contractual principle, i.e. the employee is not automatically entitled to reduced working time. The relevant agreement on part-time work is, in principle, laid down in writing.

Only certain groups of employees are entitled to work part time. If a pregnant woman and woman or man permanently taking care of a child younger than 15 years applies for part-time work or other suitable adjustment of working time, the employer is obliged to grant such application, unless serious operating reasons prevent it (Article 164 Section 2 of the Labour Code). In case of refusal of such application by the employer, it can be enforced in court. The Labour Code does not specify what is meant by serious operational reasons. According to the commentary to the Labour Code for the purposes of interpretation, this term must be understood as facts relating to the technical, organizational and economic activities of the employer, which could be directly threatened if the employee's requests should be accepted.

The conclusion of an agreement on reduced working time is not subject to the fulfilment of any other criteria, such as certain eligibility criteria, a time limit for requesting such right, a specific trigger, and the size of the employer. Maternity leave or parental leave cannot be taken in the form of part-time working. No allowance or payment is provided to workers working reduced hours. There are no measures in place to specifically encourage men to make use of such legal right.

Job sharing according to Article 49a of the Labour Code means a job in which employees in an employment relationship with reduced working time distribute amongst themselves the working time and the job description pertaining to the job. In addition to the employment contract the employer concludes a written agreement on the assignments of the employee sharing a job and before concluding this agreement the employer informs the employee in writing about the working conditions relating to the job sharing. These acts impose a heavy administrative burden and may discourage employers from concluding contracts of this type. Employees sharing a job have the legal obligation to substitute each other if there are obstacles at work on the part of one of them, for example when a child of one of the parents falls ill, which may cause problems in practice. The issue of employee liability for damage caused and the issue of remuneration of employees with different qualifications sharing a job are regarded as problematic, too. Employees sharing a job should have access to all employee opportunities and options in the same way as full-time employees, as well as to employee benefits and means of social protection.

5.9.2 Does national law provide workers with a legal right to adjust working time patterns (temporarily or otherwise) on request?

Yes. Article 85 of the Labour Code defines working time as the time segment when an employee is at the disposal of an employer, performs work and discharges obligations pursuant to an employment contract. The same Article stipulates even distribution of working time (Article 86) and uneven distribution of working time (Article 87), working time account (Article 87a) and flexible working time (Article 89).

The decision on even distribution of working time lies within the competence of an employer, but is not the obligation of the employer. If the employer takes a decision in this area, all they have to do is discuss it with employees' representatives, providing they work in the organisation of the employer, and the employee must respect such decision.

The employer may, after agreement with employees' representatives or, if there are no employees' representatives in the workplace, after agreement with the employee, decide on uneven distribution of working time over a period not exceeding four months. If this period exceeds four months, but does not exceed more than twelve months, from 1 January 2013⁵⁰ the employer may not decide on uneven distribution of working time independently, but it may do so on the basis of a collective agreement or agreement with employees' representatives.

The uneven distribution of working time may be arranged with specially protected employees only on the basis of an agreement, which can be substituted neither by a decision of the employer, nor by an agreement with employees' representatives. This provision applies to pregnant women, women or men who continuously take care of a child younger than three, and single employees who continuously take care of a child younger than fifteen.

The working time account is a method of uneven distribution of working time. When a working time account is introduced, an employer may schedule working time so that when there is a greater need for work an employee works more hours than his/her stipulated weekly working time and where there is less need for work the employee works fewer hours than his/her stipulated weekly working time or may not work at all. The average weekly working time may not exceed the stipulated weekly working time over a period not exceeding 12 consecutive months. The working time account may be agreed in the collective agreement or after agreement with employees' representatives in the workplace. Moreover, the agreement may not be replaced by a decision of the employer or by an agreement with the employee. This account may therefore be introduced only at an employer when employees' representatives consent to its introduction in an agreement or in a collective agreement. The agreement must be in writing.

The introduction of a working time account for a specially protected employee requires an agreement, which cannot be replaced by a decision of the employer or an agreement with employees' representatives. It concerns pregnant women, women or men who continuously take care of a child younger than three, and single employees who continuously take care of a child younger than fifteen.

The employer is to keep a working time account and a wage account for each employee and to report on a weekly basis the difference between the determined weekly working time and the number of hours actually worked by the employee.

The employer may autonomously introduce flexible working time if there are no employees' representatives in the workplace (Article 88). Otherwise the introduction of flexible working time requires an agreement with employees' representatives or their consent expressed in the collective agreement. Flexible working time is a method of distribution of working time where the employee alone chooses the beginning and if appropriate the end of working time on individual days within the time segments determined by the employer (optional working time).

Between the two segments of optional working time is inserted a time segment in which the employee is obliged to be present in the workplace (basic working time).⁵¹

⁵⁰ It was introduced by amendment of the Labour Code, valid since 1 January 2013.

⁵¹ The Labour Code allows the introduction of flexible working time with even or uneven distribution of working time as:

- a) *Flexible working day*, where the employee alone chooses the beginning of his work shift and on the respective working day is obliged to work the overall work shift falling on this day according to the schedule of working time determined by the employer;
- b) *Flexible working week* with evenly distributed working time, where the employee alone chooses the beginning and the end of his work shifts and in the respective week is obliged to work the overall determined weekly working time, but the length of a work shift must not exceed 12 hours;

The fulfilment of any other criteria, such as certain eligibility criteria, a time limit for requesting such right, a specific trigger, and the size of the employer is not required. Maternity leave or parental leave cannot be taken in the form of part-time work. No allowance or payment is provided to workers working reduced hours.

5.9.3 Does national law provide workers with a legal right to work from home or remotely (temporarily or otherwise) on request?

Yes. The provision of Article 52 of the Labour Code stipulates special types of employment relationships, such as working from home (or other agreed location) and working remotely (teleworking - at home or at another agreed location with use of information technologies). In these cases the employee is not subject to the provisions on distribution of the determined weekly working time, continuous daily rest, and continuous rest in the week and idle time. If there are important personal obstacles at work the employee may only require from the employer wage compensation in case of the death of a family member; the employee is not entitled to wage for overtime work, wage supplement for work on a public holiday, wage supplement for night work and wage compensation for work performed in difficult conditions, unless the employee and the employer agree otherwise.

The arrangement of working from home and teleworking is based on the contractual principle.

The conclusion of such agreement is not subject to the fulfilment of any criteria.

5.9.4 Are there any other legal rights to flexible working arrangements, such as arrangements by which workers can 'bank' hours to take time off in the future?

No.

c) *Flexible four-week working period*, where the employee alone chooses the beginning and the end of work shifts and in the period of four successive weeks determined by the employer the employee is obliged to work the working time determined by the employer for this four-week period.
Full flexible working time is working time without any limitations, i.e. there is no firmly determined basic working time (however the length of a work shift must not exceed 12 hours).

6. Occupational social security schemes (Chapter 2 of Directive 2006/54)

6.1 Is direct and indirect discrimination on grounds of sex in occupational social security schemes prohibited in national law?

Yes. According to Article 5 of Antidiscrimination Act the principle of equal treatment on all grounds set out in the Antidiscrimination Act shall apply only with regard to the rights of persons laid down under separate laws regulating the access to and provision of social assistance, social insurance, old-age pensions, complementary old-age pensions, state social security allowance and social benefits.

The occupational pension schemes are not regulated by special legislation. Some provisions of the Act on Additional Pension Savings, however, could be considered as laying down conditions for such schemes.⁵² The aim of this Act is to enable an insured person, e.g. an employee according to the Labour Code and professional dancers, to receive an additional pension income in old age or during invalidity and to grant his or her survivors an additional pension income in the event of the insured person's death. In Article 7, the Act prohibits discrimination in the accrual of additional pension savings, referring to the Antidiscrimination Act (including the provisions on legal protection and proceedings in matters concerning the violation of the principle of equal treatment). It also states that any provisions of the collective agreement connected with additional pension savings, or of the employer's agreement, participant's agreement, plan of endowments/payments, or bylaws of the additional pension fund that are not in full compliance with the principle of equal treatment are invalid. Pursuant to Article 34 of this Act, the additional pension savings company is obliged to, inter alia, apply the principle of equal treatment in relation to all savers.

6.2 Is the personal scope of national law relating to occupational social security schemes the same, more restricted, or broader than specified in Article 6 of Directive 2006/54? Please explain and refer to relevant case law, if any.

The personal scope is identical.

6.3 Is the material scope of national law relating to occupational social security schemes the same, more restricted, or broader than specified in Article 7 of Directive 2006/54? Please explain and refer to relevant case law, if any.

The material scope is identical.

6.4 Has national law applied the exclusions from the material scope as specified in Article 8 of Directive 2006/54?

No.

6.5 Are there laws or case law which would fall under the examples of sex discrimination as mentioned in Article 9 of Directive 2006/54?

No.

6.6 Is sex used as an actuarial factor in occupational social security schemes?

No.

⁵² Act No. 650/2004 Coll. on Additional Pension Savings, as amended.

6.7 Are there specific difficulties in your country in relation to occupational social security schemes, for example due to the fact that security schemes in your country are not comparable to either statutory social security schemes or occupational social security schemes? If so, please explain with reference to relevant case law, if any.

In Slovakia, there is no specific regulation of occupational social security schemes. The social security system is based on three schemes: social insurance, which covers old age, invalidity, survivor, pregnancy, and disease; state social benefits, which are direct financial contributions by the state to aid in overcoming an undesirable fall in the population's standards of living due to the occurrence or continuation of certain events in the lives of families (dependent children) and citizens; and social assistance, which is the approach of the state to the citizen in need, where the role of the state is only to assist the citizen in overcoming his/her crisis situation. Social insurance consists of a mandatory public insurance component (based on mandatory contributions and defined benefit) governed by the Act on Social Insurance,⁵³ a mandatory/voluntary saving component governed by the Act on Old-Age Pension⁵⁴ Savings and a voluntary private saving component, which is a supplementary component governed by the Act on Additional Pension Saving.⁵⁵

⁵³ Act No. 461/2003 Coll. Act on Social Insurance, as amended.

⁵⁴ Act No. 461/2003 Coll. Act on Social Insurance, as amended.

⁵⁵ Act No. 650/2004 Coll. on Additional Pension Savings, as amended.

7. Statutory schemes of social security (Directive 79/7)

7.1 Is the principle of equal treatment for men and women in matters of social security implemented in national legislation?

Yes. According to Article 5 of the Antidiscrimination Act the principle of equal treatment on all grounds set out in the Antidiscrimination Act shall apply only with regard to the rights of persons laid down under separate laws regulating the access to and provision of social assistance, social insurance, old-age pensions, complementary old-age pensions, state social security allowance and social benefits,

7.2 Is the personal scope of national law relating to statutory social security schemes the same, more restricted, or broader than specified in Article 2 of Directive 79/7? Please explain and refer to relevant case law, if any.

The personal scope is identical, the statutory social security schemes apply to the whole working population. The Act on Social Insurance⁵⁶ covers employees: public servants, civil servants, constitutional representatives, the public guardian of rights (ombudsman), employees in an employment relationship according to the Labour Code, members of co-operatives, etc.

This Act does not relate to the so-called 'power branches', i.e. specific groups of civil servants, such as police officers, professional soldiers, members of the Police Corps, the Slovak Intelligence Service, the Bureau of National Security, the Prison Corps and the Judicial Guard. Separate laws regulate the schemes of these groups of professionals. Their employer (the Ministry of Defence and the Ministry of Interior) pays contributions to special funds associated with ministerial budget chapters.

7.3 Is the material scope of national law relating to statutory social security schemes the same, more restricted, or broader than specified in Article 3 par. 1 and 2 of Directive 79/7? Please explain and refer to relevant case law, if any.

The material scope is identical. The scope of social insurance according to the Act on Social Insurance consists of five independent sub-schemes: sickness insurance, pension insurance (old-age insurance and invalidity insurance), accident insurance, guarantee insurance and unemployment insurance.

7.4 Has national law applied the exclusions from the material scope as specified in Article 7 of Directive 79/7? Please explain (specifying to what extent the exclusions apply) and refer to relevant case law, if any.

The pensionable age introduced by the Act on Social Insurance has been gradually extended and has now been equalized for women and men at 62 years of age, although the Act still contains some exceptions to the general provision and provides for a gradual equalization of the currently diversified pensionable ages for women depending on the number of children raised

7.5 Is sex used as an actuarial factor in statutory social security schemes?

No.

⁵⁶ Act No. 461/2003 Coll. Act on Social Insurance, as amended.

7.6 Are there specific difficulties in your country in relation to implementing Directive 79/7? For example due to the fact that security schemes in your country are not comparable to either statutory social security schemes or occupational social security schemes? If so, please explain with reference to relevant case law, if any.

No.

8. Self-employed workers (Directive 2010/41/EU and some relevant provisions of the Recast Directive)

8.1 Has Directive 2010/41/EU been explicitly implemented in national law?

Yes. This is true for social insurance, which consists of a mandatory public insurance component (based on mandatory contributions and defined benefits) governed by the Act on Social Insurance, a mandatory or voluntary savings component governed by the Act on Old-Age Pension Savings, and a voluntary private savings component, which is a supplementary component governed by the Act on Additional Pension Savings. Health insurance is not included in the scope of social insurance. Having health insurance is mandatory for all self-employed persons.

8.2 What is the personal scope related to self-employment in national legislation? Has your national law defined self-employed or self-employment? Please discuss relevant legislation and national case law (see Article 2 Directive 2010/41/EU)

No special Act only regulating issues regarding self-employed persons exists in Slovakia. The term 'self-employed person' has been regulated by several Acts, which however previously stipulated different definitions of the term. The definition of this term was unified in 2011.⁵⁷

The basic definition of self-employed person (so-called *SZČO*) is contained in the Act on Social Insurance. With effect from 1 July 2014, an *SZČO* is defined as a natural person who has reached the age of 18, and who derives income from a business or other self-employed occupation in the calendar year that is decisive for the payment or duration of mandatory sickness insurance and mandatory old-age insurance of an *SZČO*. For the status of an *SZČO* it is therefore relevant whether a person earns a taxable income, rather than whether such person is registered with the tax office (as was the case before).

According to the Act on Employment Services, self-employed activity also means:

- (i) trade operated independently, systematically, in his/her own name, on his/her own responsibility, for profit-making purposes and under conditions laid down by the Small Businesses Act;
- (ii) activity performed under special regulations – so-called freelance occupations, e.g. activities of lawyers or notaries public; and
- (iii) activity of a natural person, who carries out fee-charged mediation of employment, who executes the activities of an agency for temporary employment and who executes the activities of an agency for supported employment according to the Act on Employment Services.

8.3 Related to the personal scope, please specify whether all self-employed workers are considered part of the same category and whether national legislation recognises life partners.

All self-employed workers are considered part of the same category.

Also, a natural person who produces agricultural products and is registered can be defined as a self-employed person. The agricultural sector is not treated differently and all self-employed persons are considered to be part of the same category.

⁵⁷ By amendments to Act No. 461/2003 Coll. on Social Insurance, Act No. 5/2004 Coll. on Employment Services, Act No. 43/2004 Coll. Act on Old-Age Pension Savings and to Act No. 571/2009 Coll. on Parental Contribution.

The national law does not contain specific regulations concerning a spouse or life partner of a self-employed person. The definition of 'co-operating person' (contributing partner)⁵⁸ as a spouse who participates in the activities of a self-employed person was included in the previous Act on Social Insurance, which was abolished by the current Act on Social Insurance in 2003. This new Act lacks any regulation concerning contributing partners. Only what could be considered as an assisting spouse can be found in Article 11(1) of the Small Businesses Act, which states that the deputy responsible for performing the trading activities of the trader must be in an employment relationship, unless this responsible person is the trader's spouse. However, this type of engagement in trader's activities is not explicitly called a cooperative partnership, and the statutory social insurance does not recognise such concept either.

According to current legislation there is practically no legal definition of a helping spouse and no legal/social protection for such persons. Issues relating to their social protection are not resolved in a satisfactory manner, so the Slovak legislation transposing the Directive does not meet the prescribed criteria.

8.4 How has national law implemented Article 4 Directive 2010/41/EU? Is the material scope of national law relating to equal treatment in self-employment the same, more restricted, or broader than specified in Article 4 Directive 2010/41/EU?

The material scope is identical. In all of the abovementioned Acts that contain a definition of a self-employed person, the principle of equal treatment is established, in accordance with the concept of equal treatment as expressed in the Antidiscrimination Act.

8.5 Has your State taken advantage of the power to take positive action (see Article 5 Directive 2010/41/EU)? If so, what positive action has your country taken? In your view, how effective has this been?

No.

8.6 Does your country have a system for social protection of self-employed workers (see Article 7 (Directive 2010/41/EU)?

Yes. The system of social protection comprises social insurance and a pension savings system, state social support for families, social assistance and health insurance.

Social insurance consists of a mandatory public insurance component (based on mandatory contributions and defined benefits) governed by the Act on Social Insurance,⁵⁹ a mandatory or voluntary savings component governed by the Act on Old-Age Pension Savings,⁶⁰ and a voluntary private savings component, which is a supplementary component governed by the Act on Additional Pension Savings. Health insurance is not included in the scope of social insurance. Having health insurance is mandatory for all self-employed persons.

⁵⁸ This had a significant impact in terms of voluntary social insurance which a co-operating member could opt for if his or her self-employed partner is insured.

⁵⁹ According to the Act on Social Insurance, the scope of social insurance covers five independent sub-schemes: sickness insurance (which is designed to protect people from remaining without any income or with a considerably lower income during times of sickness, pregnancy or maternity); pension insurance (old-age insurance – designated to secure income for old-age pensioners and in case of death, and disability insurance – designated to secure income for people who cannot find employment because of their disability), injury insurance (which covers risk of health damage or death caused by a work-related accident or a work-related disease), guarantee insurance (which covers the risk of insolvency (bankruptcy) of the employer in order to pay the wages to the employees and the compulsory contributions of the employer for the contributory pensions fund) and unemployment insurance (designed to secure an income for eligible workers who become unemployed).

⁶⁰ Act No. 43/2004 Coll. Act on Old-age Pension Savings, as amended.

Mandatory insurance for sickness and pension insurance applies to a self-employed person whose income from business and other gainful occupation in the previous year was more than 12 times the tax base (more than 12 times 50 % of the average yearly wage for a full-time job).

There is only one system of social protection.

The spouses or life partners of self-employed persons, not being their employees or partners in the business, are not protected under the social security scheme for self-employed persons. They are, however, allowed to join the social security scheme voluntarily. The precondition is that the person is voluntarily insured for sickness and pensions at the same time.

8.7 Has Article 8 Directive 2010/41/EU regarding maternity benefits for self-employed been implemented in national law?

Yes. According to Article 48 of the Act on Social Insurance⁶¹ self-employed persons are entitled to maternity allowance, which are benefits of the sickness insurance provided regarding pregnancy or childcare. The entitlement to maternity allowance applies to each insured person who:

- (i) satisfies the criteria for eligibility for maternity allowance;
- (ii) satisfies the criteria for payment of maternity allowance; and
- (iii) exercises their right to maternity allowance by submitting the request to the respective branch of the Social Insurance Agency.

The maternity allowance meets the requirement of sufficiency in Article 8(3). Maternity allowance is paid for seven days a week and is generally 70 % of the daily counting base⁶² (with a monthly ceiling corresponding to 1.5 times the national average wage).

A mother who does not pay sickness insurance contributions, mandatorily or voluntarily, or whose debt in respect of social insurance contributions for the last 5 years exceeds the amount of EUR 5 is not entitled to maternity benefits. In this case she can apply for parental benefits – state social benefits paid by the Office of Labour, Social Affairs and Family. The state pays the eligible person contributions that are to ensure the proper care of a child until the age of three (or six for a child with a long-term unfavourable state of health). Since January 2014 the amount of monthly benefits has been EUR 202.30; a parent of twins will receive EUR 254 per month and a parent of triplets EUR 304.80 per month.

The criteria for eligibility for maternity allowance are that: 1. the self-employed person has the mandatory sickness insurance; and 2. has no debts in respect of insurance contributions. A person who is pregnant or takes care of a child must have sickness insurance at the time that the reason for provision of maternity allowance arises, and this insurance must have existed at least 270 days in the last two years before the birth of the child.

For self-employed persons, another criterion applied to the assessment of their eligibility for maternity allowance is the absence of debts in respect of social insurance contributions for the period of the last 5 years. Arrears not exceeding the amount of EUR 5 are tolerated.

In relation to Article 8(4) no services supplying temporary replacements or national social services exist.

⁶¹ Act No. 461/2003 Coll. on Social Insurance.

⁶² The minimum amount is EUR 279.60 and the maximum amount is EUR 918.20 per month.

8.8 Has national law implemented the provisions regarding occupational social security for self-employed persons (see Article 10 of Recast Directive 2006/54)?

Yes, in Article 5 of the Antidiscrimination Act, according to which the principle of equal treatment in occupational security schemes applies also to self-employed persons,

8.9 Has national law made use of the exceptions for self-employed persons regarding matters of occupational social security as mentioned in Article 11 of Recast Directive 2006/54? Please describe relevant law and case law.

No.

8.10 Is Article 14(1)(a) of Recast Directive 2006/54 implemented in national law as regards self-employment?

Yes, in Article 5 of the Antidiscrimination Act.

The principle of equal treatment on all grounds set out in the Antidiscrimination Act shall apply only with regard to the rights of persons laid down under separate laws regulating the access to and provision of a) social assistance, social insurance, old-age pensions, complementary old-age pensions, state social security allowance and social benefits, b) healthcare, c) education, d) goods and services, including housing, provided to the public by legal entities and entrepreneurs.

9. Goods and services (Directive 2004/113)

9.1 Does national law prohibit direct and indirect discrimination on grounds of sex in access to goods and services?

Yes. According to Article 5 of the Antidiscrimination Act the principle of equal treatment on all grounds set out in Antidiscrimination Act shall apply only with regard to the rights of persons laid down under separate laws regulating the access to and provision of a) social assistance, social insurance, old-age pensions, complementary old-age pensions, state social security allowance and social benefits, b) healthcare, c) education, d) goods and services, including housing, provided to the public by legal entities and entrepreneurs.

Under the Consumer Protection Act (Article 4 Section) when providing goods and services to consumers, the seller has the obligation to comply with the principle of equal treatment stipulated in the Antidiscrimination Act.

9.2 Is the material scope of national law relating to access to goods and services more restricted or broader than specified in Article 3 of Directive 2004/113? Please explain and refer to relevant case law, if any.

The material scope is more restricted. The provisions of the Antidiscrimination Act do not apply to goods and services offered or provided on a private basis. Prohibition of discrimination in the access to and supply of goods and services is limited to the sale of goods and the supply of services in public and targeted to the public.

9.3 Has national law applied the exceptions from the material scope as specified in Article 3(3) of Directive 2004/113, regarding the content of media, advertising and education?

No.

9.4 Have differences in treatment in the provision of the goods and services been justified in national law (see Article 4(5) of Directive 2004/113)? Please provide references to relevant law and case law.

Yes. According to Article 8 Section 7/c objectively justified differences of treatment on grounds of sex shall not be deemed to constitute discrimination if they consist in the provision of goods and services exclusively or preferentially to member of one sex, if they have a legitimate aim and if the means to achieve this aim are appropriate and necessary.

9.5 Does national law ensure that the use of sex as a factor in the calculation of premiums and benefits for the purposes of insurance and related financial services shall not result in differences in individuals' premiums and benefits (see Article 5(1) of Directive 2004/113)?

Yes. Amendments⁶³ to the Antidiscrimination Act and the Insurance Act (in effect since 1 April 2013) significantly intervened in the insurance sector. The Antidiscrimination Act in Article 8 Section 8 previously allowed the use of differences based on sex for the determination of the amount of insurance premiums and the calculation of insurance benefits by insurance companies without regarding such approach as discriminatory. Since 1 April 2013 such different approach, with the exception of insurance contracts concluded before 1 April 2013, is regarded as discrimination.

⁶³ Act No. 32/2013 Coll.

9.6 How has the exception of Article 5(2) of Directive 2004/113 been interpreted in your country? Please report on the implementation of the C-236/09 *Test-Achats* ruling in national legislation.

In order to take into account the effects of the judgment of the CJ EU in case C-236/09 *Test-Achats*, the Slovak legislator has adopted Act 32/2013 Coll. This Act has deleted a provision of Article 8 Section 8 of the Antidiscrimination Act which permitted to use the differences based on sex in the calculation of individuals' premiums and benefits provided that such difference was the determining factor for the assessment of the insurance risk arising from the insurance contract and this assessment was based on relevant and accurate actuarial and statistical data.

This Act has introduced a new transitional provision into the Antidiscrimination Act (Article 13a). Pursuant to this provision, the use of differences in the calculation of individuals' premiums and benefits based on sex is not discriminatory when it is contained in insurance contracts concluded before 1 April 2013, provided that these differences are the determining factor for the assessment of the insurance risk and this assessment is based on actuarial and statistical data.

This Act has also deleted the provisions of Article 35 Sections 3 to 5 of the Insurance Act.⁶⁴ These provisions regulated the obligations stemming from the use of the exception prescribed by Article 5 Paragraph 2 of the Directive. These provisions stipulated that insurance companies were obliged to collect and update the actuarial and statistical data related to the use of the criterion of the sex of a person as the determining factor for the calculation of the individuals' premiums and benefits provided that the calculation of the premiums and benefits was based on these data. The deleted provisions of the Act on Insurance also imposed on insurance companies an obligation to submit the abovementioned data to the National Bank of the Slovakia. On the basis of the submitted data, the National Bank of the Slovakia regularly published and updated actuarial and statistical data related to the use of sex as the determining actuarial factor.

9.7 Has your country adopted positive action measures in relation to access to and the supply of goods and services (see Article 6 of Directive 2004/113)?

No.

9.8 Are there specific problems of discrimination on the grounds of pregnancy, maternity or parenthood in your country in relation to access to and the supply of goods and services? Please briefly describe relevant case law.

No.

⁶⁴ Act No. 8/2008 Coll. Insurance Act. This act was replaced by the new Act No. 39/2015 Coll. Insurance Act, valid since 1 January 2016.

10. Violence against women and domestic violence in relation to the Istanbul Convention

10.1 Has your country ratified the Istanbul Convention?

No.

The Slovak Republic signed the Istanbul Convention in 2011 in accordance with the resolution of the Slovak Government No. 297 of 4 May 2011.⁶⁵ Although the Government declared the intention to ratify it in 2012 and the task to ratify the Istanbul Convention was incorporated into the National Action Plan⁶⁶ to prevent and eliminate violence against women for 2014 – 2019 (NAP), the ratification was postponed several times.

The Minister of Justice argued that prior to the ratification a special law on domestic violence has to be enacted. At the same time he called for a dialogue with the conservative organisations which raised objections against the ratification of the Istanbul Convention because of introducing 'gender ideology'.⁶⁷ The Minister of Labour⁶⁸ stressed that the Ministry of Labour as the body monitoring the issue of VAW insists on the ratification of the Istanbul Convention, because it was clearly supported by the Council of the Government for Human Rights and the Committee for Gender Equality and because this requirement also results from the NAP. During the summer of 2015 the Department on Gender Equality of the Ministry of Labour prepared a draft of the new Act on Prevention and Elimination of Gender Based Violence and Domestic Violence (Draft of Act on GBV and DV),⁶⁹ based on the Istanbul Convention requirements.

The Government was not planning to provide any financial support for the specialised services for victims of violence against women as required by the Istanbul Convention. The Coordinating Methodical Centre for gender-based and domestic violence responsible for the coordination of policies to prevent and eliminate gender-based violence and domestic violence as required by Article 10 of the Istanbul Convention was established in April 2015 in the framework of the project supported by Norway Grants. The project has to finish in April 2016 and the state administration will face the question of how to maintain the Centre without foreign funding.

The Government decided to postpone the presentation of the prepared draft to Parliament. The reason was that parliamentary elections were held in March 2016, so there were only two sessions of Parliament in which new 'acts' were adopted. The other reason was that in the pre-election time the previous Government was afraid to bring up 'controversial' issues such as gender-based violence and the ratification of Istanbul Convention.

The new four-party Government in its Government Manifesto⁷⁰ declared its intent to 'pay

⁶⁵ <http://www.rokovania.sk/File.aspx/ViewDocumentHtml/Uznesenie-11688?prefixFile=u>, accessed 10 March 2017.

⁶⁶ <http://www.rokovania.sk/Rokovanie.aspx/BodRokovaniaDetail?idMaterial=23121> in Slovak, http://www.gender.gov.sk/wp-content/uploads/2012/06/NAP_VaW_2014-2019_EN.pdf in English accessed 10 March 2017.

⁶⁷ Report on the observance of human rights including the observance of the principle of equal treatment and the rights of the child in the Slovak Republic for the year 2014, http://www.snsip.sk/CCMS/files/komplet_prekald_spravy_AJ_final.pdf, pp. 44-48, accessed 10 March 2017.

⁶⁸ http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CCUQFjAB&url=http%3A%2F%2Fvo.sk%2Fwp%2Fwp-content%2Fuploads%2F2014%2F03%2F0dpovedIstanbulRichter.pdf&ei=pav1VJjVE8n_UKjvqfAM&usq=AFQjCNG3oeMKdPX13aaxKIH7xeIjOAw7GQ&sig2=zzq6WT_WzdM65HuK58DaQg&bvm=bv.87269000,d.d24&cad=rja, accessed 10 March 2017.

⁶⁹ However at this time only a 'draft' of the act prepared by Labour Ministry is available, not the final version of the 'proposal' of the act, which Government has to submit to Parliament.

⁷⁰ http://www.vlada.gov.sk/data/files/6483_programove-vyhlasenie-vlady-slovenskej-republiky.pdf, http://www.vlada.gov.sk/data/files/6483_programove-vyhlasenie-vlady-slovenskej-republiky.pdf accessed 10 March 2017.

particular attention to reducing inequalities between men and women in all spheres of public and private life in accordance with the adopted strategic documents and international commitments of the Slovak Republic. In this context, there is particular focus on combating violence against women, such as the development of services and measures to prevent and punish violence against women and domestic violence, but also with a countrywide discussion on international instruments that concern marriage, family and violence against women and children.¹ The Manifesto does not contain a commitment to adopt a new Act on the Prevention and Elimination of Gender-Based Violence and Domestic Violence based on the Istanbul Convention requirements. On 8 June 2016, the Ministry of Justice requested the Prime Minister to postpone the ratification of the Istanbul convention until 30 June 2017. Subsequently, the draft Act on Prevention and Elimination of Gender-Based Violence and Domestic Violence was not included in the Plan of Legislative Task of the Government for June to December 2016, adopted by the Government on 16 June 2016.

11. Enforcement and compliance aspects (horizontal provisions of all directives)

11.1 Victimisation

11.1.1 Are the provisions on victimisation implemented in national legislation and interpreted in case law?

Yes. Victimisation, according to Article 2a Section 8 of the Antidiscrimination Act, is considered to be discrimination. Victimisation is also regulated in the Labour Code and some other laws. There is no available information on judgments concerning victimisation.

According to Article 2a Section 8 of the Antidiscrimination Act, victimisation is an action or omission which has adverse consequences for the person in question and directly relates to legal protection against discrimination when the person in question or a third person submits a complaint regarding or testifies to a violation of the principle of equal treatment. The Antidiscrimination Act also contains procedural guarantees against victimisation.

According to Article 13 Section 3 of the Labour Code in the workplace, nobody may be persecuted or otherwise sanctioned in the performance of labour-law relations for submitting a complaint, charge or proposal to start criminal prosecution against another employee or the employer. Other laws also contain similar provisions such as the Act on State Service, the Act on State Service Covering Members of the Police Force, Slovak Intelligence Service, Corps of Prison and Court Guard of the Slovak Republic and Railroad Police, and the Act Employment Services.

The protection against victimisation complies with the directives.

The definition of victimisation in the Antidiscrimination Act cover a broader scope than employment.

11.2 Burden of proof

11.2.1 Does national legislation and/or case law provide for a shift of the burden of proof in sex discrimination cases?

Yes. The Antidiscrimination Act also regulates anti-discrimination proceedings. It is the only Act that also includes provisions regarding the shift of the burden of proof in Article 11 Section 2, which states: 'The defendant has the obligation to prove, that there was no violation of the principle of equal treatment if the facts submitted to a court by the claimant give rise to a reasonable assumption that such violation has indeed occurred.'

The draft of the Antidiscrimination Act initially also envisaged an amendment of the Code of Civil Procedure⁷¹, but this idea was abandoned in the end. The courts therefore tended to 'only' adhere to the procedural rule and avoid the application of the provisions included in the Antidiscrimination Act. They often justified the non-application of the principle of the shift of the burden of proof by the fact that this procedural principle was not provided for in the Code of Civil Procedure⁷². Consequently, victims of discrimination were often unsuccessful in court proceedings due to lack of evidence. As some judgments

⁷¹ Act No. 99/1963 Coll. on Civil Procedure Code. On 1 July 2016 this was replaced by the new Act No.160/2015 on Civil Dispute.

⁷² Article 315/2 of the new Civil Dispute Act stipulates that the procedural provisions contained in a Antidiscrimination Act (e.g. on the burden of proof) take precedence over the Civil Dispute Act.

concerning racial discrimination⁷³ show, the situation is gradually improving.⁷⁴ On the other hand, the judgments concerning gender discrimination did not show any improvement (see Section 11.4.4. Case law)

From the quoted judgments it is obvious that when courts apply the concept of the shift of the burden of proof, they apply it in accordance with the directives and with the case law of the European Court of Justice. The amendment of the provisions of Article 11(2) of the Antidiscrimination Act has also contributed to the improvement of the situation. Due to the inaccurate transposition, the initial wording of Article 11(2) of the Antidiscrimination Act contained the formulation ‘...if the claimant submits evidence (no facts) to the court...’, which weakened the claimant’s position in the proceedings regarding the violation of the principle of equal treatment. This deficiency has been eliminated by amendment of the quoted provision, which was replaced by ‘...if the claimant informs the court about facts...’.

In comparison with the directives, according to the Antidiscrimination Act the shift of the burden of proof is applied in relation to all forms of discrimination, i.e. not only in relation to direct or indirect discrimination. The scope of applicability of the shift of the burden of proof is therefore wider. On the other hand, the shift in the burden of proof does not explicitly apply to judicial proceedings in which administrative bodies’ decisions relating to discrimination are reviewed, nor in proceedings of inspectorates such as the labour inspection, school inspection, inspection in the field of provision of goods and services, which makes identification of cases of discrimination in these fields very inefficient.

In 2012 *Poradňa*⁷⁵ also collected court judgments concerning discrimination that were decided in previous years and comprehensively analysed Slovak courts’ decision-making work in cases of discrimination since the adoption of the Antidiscrimination Act in 2004. Based on their analysis as well as their own legal experience in courts, *Poradňa* state that courts remain insufficiently informed about antidiscrimination legislation and its proper application in practice. Specifically, the application of the reversed burden of proof continues to fall short of legal consistency.⁷⁶

3 Cdo 171/2008 Supreme Court

The Supreme Court provided an interpretation of the shift in the burden of proof in its decision 3 Cdo 171/2008.⁷⁷

In the case of national legislation (Article 13 Paragraph 7 of the Labour Code and Article 11 Paragraph 2 of the Anti-Discrimination Act), the burden of proof not only affects the defendant but also the applicant. The claimant must prove priority of the facts from which it may be presumed that there has been direct or indirect discrimination. The claimant must claim and at the same time produce evidence (burden of proof), which can reasonably give reason to conclude that the principle of equal treatment has been violated. Then, the burden shifts to the defendant who is entitled to prove their claims that they did not violate the principle of equal treatment. The claimant is therefore

⁷³ The Constitutional Court provided an interpretation of the shift in the burden of proof in ‘racial’ antidiscrimination cases in findings: No. IV. ÚS 16/09,30 April 2009 and No. III. ÚS 90/2015, 1 December 2015 available in Slovak at <https://www.ustavnysud.sk/vyhľadavanie-rozhodnuti#!DmsSearchHtmlView>, accessed 10 March 2017.

⁷⁴ <https://genderdatabaza.wordpress.com/2012/12/15/pravne-aspekty-rovnakeho-zaobchadzania-v-slovenskej-realite/>, accessed 10 March 2017, available only in Slovak.

⁷⁵ *Poradňa pre občianske a ľudské práva* (The Center for Civil and Human Rights).

⁷⁶ Written comments concerning Slovakia to the Committee on the Elimination of Discrimination against Women (CEDAW) for the consideration at its 62th session in November 2015., available in English, <http://www.poradna-prava.sk/en/documents/written-comments-for-the-un-committee-on-the-elimination-of-discrimination-against-women/>, accessed 6 June 2016, and <http://www.poradna-prava.sk/sk/dokumenty/diskriminacia-na-slovensku-hladanie-barier-v-pristupe-k-ucinnej-pravnej-ochrane-pred-diskriminaciou/>, available in Slovak with a summary in English, accessed 10 March 2017.

⁷⁷ http://www.supcourt.gov.sk/data/att/10928_subor.pdf available in Slovak, accessed 10 March 2017.

required to establish the first 'hit at first sight' (prima facie), where the claimant's argument, personal inner conviction or feeling of such intervention in itself is not sufficient. It then follows that the presented evidence should have predictive value, demonstrating the objective circumstances of the case, where possible, 'at first sight' (prima facie) to find a violation of the principle of equal treatment. If the claimant does not indicate that he/she was treated in an unusual way, causing a disadvantage (discrimination), the claim cannot be successful. In the view of the author such decisions are more favourable for defendants, which is not fully in line with CJEU case law.

11.3 Remedies and Sanctions

11.3.1 What types of remedies and sanctions (e.g. compensation, reinstatement, criminal sanctions, administrative fines etc.) exist in your country for breaches of EU gender equality law? Please specify the applicable legislation.

Disputes concerning the violation of the principle of equal treatment, including gender discrimination, are specifically covered by the Antidiscrimination Act,⁷⁸ (as a special regulation) and subsidiarily by the Civil Dispute Act⁷⁹ (as a general regulation on civil proceedings).

The Civil Dispute Act introduced new provisions on disputes with protection of the weaker party, which are classified in three categories: consumer disputes (Articles 301-306), antidiscrimination disputes (Articles 307-315) and individual labour-law disputes (Articles 316-323).

An antidiscrimination dispute is a dispute that concerns violation of the principle of equal treatment according to the Antidiscrimination Act. In proceedings on antidiscrimination disputes the principle of the reversed burden of proof, as it results from the Antidiscrimination Act, is applied, so the procedural provisions contained in Antidiscrimination Act take precedence over the Civil Dispute Act (Article 315/2).

An individual labour-law dispute is a dispute between the employee and the employer resulting from labour-law and other similar employment relationships. In order to solve cases of competition of claims according to labour-law and antidiscrimination regulations, a special interpretation rule is included: if discrimination occurs in relation to employment such dispute shall be regarded as a labour-law dispute (Article 316/2).

The parties in both types of disputes are the claimant and the defendant. The special instruction obligation of the court is more strictly regulated for antidiscrimination and individual labour-law disputes, but only in relation to the claimant, i.e. the discriminated party or employee as the weaker party. When fulfilling its special instruction obligation, the court must instruct the claimant on the possibility of representation, i.e. not only on his right to representation through a lawyer, physical person, or to request the Centre of Legal Aid for appointment of his legal representative, but also on the right to representation through a legal person in accordance with the Antidiscrimination Act (for an antidiscrimination dispute) or through a trade union organisation (for an individual labour-law dispute), as well as on evidence that must be submitted to prove the alleged claim and on other possibilities required for the effective exercise or defence of the claimant's rights.

In both types of proceedings a fundamental departure from general regulation of procedural evidence occurs through the application of the interrogation principle that is typical of non-judicial proceedings. However, the interrogation principle only applies in

⁷⁸ Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination and on amendment of certain acts (Antidiscrimination Act).

⁷⁹ Act No.160/2015 on Civil Dispute which replaced previous Act No.99/1963 Coll. on Civil Procedure Code.on 1 July 2016.

relation to the claimant as the weaker party. It consists in the possibility for the court to take the evidence initiative. The court need not limit itself to activities of the claimant in proposing evidence, but it can help him/her in the collection of evidence by procuring and producing means of proof that the claimant did not propose.

Another advantage of the claimant as the weaker party in both types of disputes concerns the date until which he/she may submit operative facts justifying his/her alleged claim and propose new means of proof. The law allows him/her to do so until the decision on the merits of the case is issued.

According to the Explanatory report to the Civil Dispute Act, the new legal regulation of antidiscrimination dispute is comparable with case law of the European Court of Human Rights, because it is aimed at protecting a discriminated person who, as the weaker party in the dispute, is often unable to efficiently and effectively defend himself/herself.

The Antidiscrimination Act refers to three specific types of actions:

- First - writ of 'quere impedit' – the purpose is to achieve that the person who has conducted in a discriminatory fashion will refrain from the unlawful infringement;
- Second - action for restitution – the purpose is to rectify the unlawful situation, and to eliminate the wrongful consequence of the unlawful conduct; and
- Third - action for satisfaction – the purpose is to provide adequate satisfaction. It is compensation of so-called immaterial damage i.e. prejudice to dignity and integrity of the person of the individual as a human being. Satisfaction should not serve for reparation of material damage suffered by the damaged party, but for compensation of immaterial damage, i.e. compensation that is justified with regard to the character of the discriminatory interference. The amount of non-pecuniary damages in cash shall be determined by the court, taking account of the extent of non-pecuniary damage and all underlying circumstances.

Section 13 of the Labour Code, which was amended by the Antidiscrimination Act, also stipulates the right of an employee to submit a complaint to his/her employer against the infringement of the principle of equal treatment. The employer is obliged to respond to such a complaint without undue delay, examine it, abstain from such conduct in the future and eliminate the consequences thereof. However, the effect of such a remedy is questionable and it is not used in practice. Any employee who considers that his/her legally protected rights or interests are affected by the non-appliance of principles of equal treatment may go before a civil court (there are no special labour courts for discrimination cases in the area of employment) and seek legal protection as provided under the separate Antidiscrimination Act.

11.3.2 In your opinion, do the remedies and sanctions meet the standards of being effective, proportionate and dissuasive? Please explain, if possible referring to relevant legislation or case law.

The application of these provisions in practice so far has shown that court protection in proceedings in such cases is very limited. This particularly applies to cases where the aggrieved party can only claim adequate financial compensation or non-pecuniary compensation. In many cases in which women are discriminated against, only a claim for adequate compensation is possible. If the sanction in the form of redress is to be effective, proportionate and dissuasive, the amount of money claimed needs to reflect this. The claimant is supposed to pay 3 % of any sum claimed as non-pecuniary compensation (at all stages of the proceedings). Many women who have been discriminated against are therefore discouraged from submitting a complaint to court, as the high court fees often constitute a real barrier to enforcing their right to equal treatment and enjoying protection from discrimination.

11.4 Access to courts

- 11.4.1 In your opinion, is the access to courts safeguarded for alleged victims of sex discrimination? Please explain and discuss particular difficulties and barriers victims of sex discrimination have encountered. Refer to relevant legislation and case law.
- 11.4.2 In your opinion, is the access to courts safeguarded for anti-discrimination/gender equality interest groups or other legal entities? Please explain and refer to relevant legislation and case law.
- 11.4.3 What kind of legal aid is available for alleged victims of gender discrimination?

Victims of discrimination may be supported and also represented in court by the Slovak National Centre for Human Rights (the Centre), which is the equality body, or by an organisation which has protection against discrimination as its aim,⁸⁰ not only before regular courts (in first and second instance), but also before the Supreme Court or the Constitutional Court. Under the previous Civil Procedure Act the Centre and NGOs could represent victims of discrimination only before the courts of first and second instance.

In cases of discrimination which affect a larger or non-specified number of people or otherwise threaten the public interest, such an organisation, or the Centre, can initiate a case in its own name. The Centre can also be involved in the process of mediation and has the power to adopt non-binding opinions.

In 2012 *Poradňa*⁸¹ also collected court judgments concerning discrimination that were decided in previous years and comprehensively analysed Slovak courts' decision-making work in cases of discrimination since the adoption of the Antidiscrimination Act in 2004. Based on their analysis as well as their own legal experience in courts *Poradňa* state that the implementation of the provisions of the Antidiscrimination Act by courts in cases of gender and multiple discrimination remains inconsistent and often flawed. Courts remain insufficiently informed about antidiscrimination legislation and its proper application in practice. Court proceedings concerning discrimination last excessively long (rarely less than several years); the courts remain extremely reluctant to award any financial compensation for victims of discrimination. They tend to downplay the severity of discrimination, overlooking or not understanding its *prima facie* impact on a person's dignity. In some instances there have been hints of a certain bias or preoccupation of courts particularly when dealing with cases of discrimination of Roma women.⁸²

In 2015 *Poradňa* stated: In order to reverse the current situation the Slovak courts have to improve their decisions in favour of discriminated persons, including women, with adequate compensation and with a sufficient deterrent effect on the offenders. Positive court rulings will gradually motivate other persons to actively pursue their rights and resist discrimination by legal remedies and will strengthen their faith in legal institutions.⁸³

⁸⁰ There are only few NGOs in Slovakia which provide legal assistance to victims of discrimination. One of them is the Centre for Civil and Human Rights (*Poradňa*) which mainly deals with cases of discrimination against Roma. Another is Citizen, Democracy and Accountability (*OaDZ*), which focuses on gender-related discrimination.

⁸¹ *Poradňa pre občianske a ľudské práva* (The Center for Civil and Human Rights).

⁸² <http://www.poradna-prava.sk/sk/dokumenty/diskriminacia-na-slovensku-hladanie-barrier-v-pristupe-k-ucinnei-pravnej-ochrane-pred-diskriminaciou/>, available in Slovak with a summary in English, accessed 10 March 2017.

⁸³ Written comments concerning Slovakia to the Committee on the Elimination of Discrimination against Women (CEDAW) for consideration at its 62th session in November 2015, available in English, <http://www.poradna-prava.sk/en/documents/written-comments-for-the-un-committee-on-the-elimination-of-discrimination-against-women/>, accessed 10 March 2017, and <http://www.poradna-prava.sk/sk/dokumenty/diskriminacia-na-slovensku-hladanie-barrier-v-pristupe-k-ucinnei-pravnej-ochrane-pred-diskriminaciou/>, available in Slovak with a summary in English, accessed 10 March 2017.

11.5 Equality body

11.5.1 Does your country have an equality body that seeks to implement the requirements of EU gender equality law?

Yes. The Slovak National Centre for Human Rights (Centre) www.snslp.sk as an independent legal entity is a specialised national institution that promotes the observance of the principle of equal treatment and develops activities in combating discrimination. It was established in 1994 and its tasks were extended in accordance with the Antidiscrimination Act in 2004, when it started to fulfil the functions of an equality body. In the last three years, the functioning of the Centre has been criticised not only by human rights NGOs but also by the Government Council for Human Rights, National Minorities and Gender Equality.⁸⁴

The Centre covers all discrimination grounds and is currently unable to fully ensure the real and effective fulfilment of functions in the areas of support and assurance of equal treatment and protection of human rights. It does not have a special division for gender equality with sufficient funding and gender equality experts.

The Centre provides legal advice and legal aid to victims of discrimination. A key competence of the Centre is the authority to represent victims in proceedings relating to the violation of the principle of equal treatment. The Centre is not competent to decide cases of discrimination or impose fines or any sanctions. A statutory obligation of the Centre is also to prepare expert opinions and recommendations on compliance with the principle of equal treatment. These opinions and recommendations are not binding for parties or private and public bodies.

11.6 Social partners

11.6.1 What kind of role do the social partners in your country play in ensuring compliance with and enforcement of gender equality law? Are there any legislative provisions in this respect?

The social partners still pay little attention to equal opportunity and do not play any real role in promoting gender equality. Trade unions primarily try to negotiate the highest possible increase in wages and the greatest degree of job security for employees. Equal opportunity issues included in collective agreements have mostly concerned the working conditions of pregnant women and employees taking care of young children.

11.7 Collective agreements

11.7.1 To what extent does your country have collective agreements that are used as means to implement EU gender equality law? Please indicate the legal status of collective agreements in your country (binding/non-binding, usually declared to be generally applicable or not).

The right to collective bargaining is guaranteed by Section 36(g) of the Slovak Constitution⁸⁵ and by Article 229 Section 6 of the Labour Code.⁸⁶ The procedure for

⁸⁴ In June 2011 the Analytical Report on the Activities of the Centre noted, among other deficiencies, that the Centre did not have sufficient capacity in the area of equal treatment and only very few cases of discrimination had been brought to the courts by the Centre, none of which had been successfully resolved. The suggestion was to transform the Centre into an Equality Body and transfer its competences in the area of human rights to the Public Defender of Rights (the Ombudsman). Due to the fall of the former Government, the transformation of the Centre was postponed. See: http://www.rokovania.sk/File.aspx/ViewDocumentHtml/Mater-Dokum-133077?prefixFile=m_, accessed 10 March 2017.

⁸⁵ Act No. 460/1992 Coll. Constitution of the Slovak Republic, as amended, effective since 1 October 1992.

concluding collective agreements including rules for strike and lockout is regulated by the Act on Collective Bargaining.⁸⁷ Slovakia has a multi-level collective bargaining system. Collective agreements are concluded at sector level by the employers' association and trade union associations and at local (company) level by the company management and company trade union associations. National, inter-sector and regional collective agreements are not bargained in Slovakia.

According to the available information in general, collective agreements at sector level or at company level do not contain specific provisions regarding gender equality. Collective agreements usually contain provisions concerning cooperation and communication between the trade union and the management, employment and working conditions, wages and remuneration including pay increases, remuneration based on work performance, paid leave, redundancy payments, payment of special bonuses, supplementary pension contributions and payment of 13th and 14th month's wages.

Equal opportunity issues which have been included in collective agreements mostly concerned the working conditions of pregnant women and employees taking care of young children. No analysis is available of collective agreements. There is no body or organisation that systematically monitors these agreements so there is a lack of information concerning their concrete provisions and concerning cases in the field of equal pay and family-related benefits.

⁸⁶ Act No. 311/2001 Coll. Labour Code effective since 1 April 2002, as amended by Acts Nos 165/2002 Coll., 408/2002 Coll., 413/2002 Coll., 210/2003 Coll., 461/2003 Coll., 5/2004 Coll., 365/2004 Coll. and 82/2005 Coll.

⁸⁷ Act No. 2/1991 Coll. on Collective Bargaining, effective since 1 February 1991.

12. Overall assessment

The Antidiscrimination Act can be regarded as a progressive and comprehensive piece of legislation, which in many provisions goes beyond the requirements of the directives and has a wider scope *ratione personae* and *ratione materiae*. It regulates the duty to observe the principle of equal treatment on a relatively complex list of grounds including sex and gender in the fields of employment and occupation, social security including social advantages, healthcare, provision of goods and services including housing, and education. It not only provides for the prohibition of discrimination, but also for the proactive obligation to take measures for the protection against discrimination and the instruction to discriminate as one of the forms of discrimination. The action in the public interest is an important instrument which creates conditions for the procedural enforcement of the principle of equal treatment. Deficiencies in the Antidiscrimination act concern the inaccurate transposition of provisions concerning sexual harassment. A deficiency in the Labour Code is the definition of equal pay which is not in compliance with the definition of Article 157(2) TFEU.

Slovak legislation lacks any regulation of paternity leave and one of the obstacles is the practical impossibility for both parents to take 'paid' paternal leave at the same time.

Slovak legislation complies with the directives. However, there is still a great deal of room for improvement regarding the effectiveness of judicial remedies, and regarding the organisation and functioning of state institutions, which could contribute to achieving gender equality in practice.

Annexes

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