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Country report

Gender equality



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Country report

Gender equality

How are EU rules transposed into
national law?

Czech Republic

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Reporting period 1 January 2014 – 1 July 2015

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1. Introduction

1.1 Basic structure of the national legal system

The Czech legal system belongs to the Germanic branch of continental legal culture. Written law is the basis of the legal order, and the most important sources of law are legal regulations (acts of Parliament, as well as government or ministerial orders), international treaties (once they have been ratified by Parliament and officially declared as binding in the Collection of International Treaties), and such findings of the Constitutional Court of the Czech Republic in which an act or a part thereof has been nullified as being unconstitutional or confirmed to be constitutional.

There are general courts – district and regional courts (usually appeal courts), with specialized senates, upper courts, a Supreme Court, and a Supreme Administrative Court. Regional courts are usually appeal courts. The Supreme Court and Supreme Administrative Court usually supervise the procedural aspects of procedures and decide on extraordinary remedies. The Constitutional Court supervises the constitutionality of legislation, as well as the case law of the general courts.

The legal competence concerning gender equality is distributed among the government institutions, which are made up of the Ministry of Labour and Social Affairs; the Ministry of Human Rights; the Ministry of Justice; and the Ministry of Education. These ministries are responsible for proposing laws and acts implementing the EU gender equality framework. It is difficult to say which of the above mentioned institutions takes the lead on gender equality, as each aspect is dealt with by the most competent ministry. General issues of equality principle etc. are dealt most by the Ministry of Human Rights. In addition, Parliament (composed of the Chamber of Deputies and the Senate) is responsible for adopting laws and acts; and both the Public Defender of Rights (a Czech equality body) and the courts are responsible for making decisions in individual cases. The government council for equal opportunities for women and men is a consultation body to the government.

1.2 List of main legislation transposing and implementing Directives

The main general national legislation on gender equality and the prohibition on sex discrimination are:

Act No. 198/2009 Coll., on equal treatment and on the legal means of protection against discrimination and on an amendment to some laws (hereinafter the Anti-Discrimination Act)

Act No. 262/2006 Coll., Labour Code (hereinafter the Labour Code)

Act No. 435/2004 Coll., on employment

Act No. 99/1963 Coll., Code of Civil Procedure (hereinafter the Code of Civil Procedure)

Act No. 349/1999 Coll., on the public defender of rights (hereinafter the Public Defender of Rights Act)

There are also specific acts which prohibit discrimination in specific areas:

Act No. 234/2014 Coll., on the civil service

Act No. 561/2004 Coll., Schools Act

Act No. 361/2003 Coll., on the civil service of members of the security corps

Act No. 221/1999 Coll., on professional members of the armed forces

2. General legal framework

2.1 Constitution

2.1.1 Does your national Constitution prohibit sex discrimination?

Yes. Article 3 (1) states: 'Everyone is guaranteed the enjoyment of her fundamental rights and basic freedoms without regard to gender, race, colour of skin, language, faith and religion, political or other conviction, national or social origin, membership of a national or ethnic minority, property, birth, or other status.'

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

No.

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

The principle of equality, as one of principles of fundamental rights and freedoms can be invoked in horizontal relations in the sense that a party to a case can use fundamental rights as a legal argument. Fundamental rights are in general addressed to public authorities. However, according to the case law of the Czech Constitutional Court, fundamental rights and their principles may influence and extend into horizontal relations.¹ However, a party to a case cannot explicitly rely on the Constitution in horizontal relations.

2.2 Equal treatment legislation

2.2.1 Does your country have specific equal treatment legislation?

Yes. Sec. 2 of the Anti-Discrimination Act prohibits sex discrimination.

Under Sec. 2 of the Anti-Discrimination Act other grounds are also covered: race, ethnic origin, nationality, sexual orientation, age, disability, religion, belief or opinions.

¹ The judgment of the Constitutional Court Pl. ÚS 38/06 states '[t]he fundamental right, respectively, freedom is the content of the relationship between the subject (bearer) (individual and derivatives, as well as a legal person) and the addressee, which is a public authority. The exceptions to this general construction are cases of the horizontal effect of fundamental rights, cases in which the addressee of fundamental rights (freedom) is not a public authority, but private parties.'

3. Implementation of central concepts

3.1 Sex/gender/transgender

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

No.

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

Yes, a prohibition on discrimination on the ground of gender identification.

Sec. 2 par. 4 of the Anti-Discrimination Act.

The above-mentioned article defines discrimination on the ground of gender identification as discrimination based on sex. The whole system of protection against discrimination is therefore also relevant for gender identification. Czech law uses the term 'gender identification' which means the same as gender identity. There is, as yet, no case law, but the commentary on the Anti-Discrimination Act does discuss gender identification case law when explaining gender identification, and also Paragraph 3 of the preamble to Directive 2006/54.²

The Anti-Discrimination Act does not include a ban on discrimination based on gender reassignment, but more broadly defines discrimination based on gender identification as discrimination on the ground of sex, which is prohibited.

3.2 Direct sex discrimination

3.2.1 Is direct sex discrimination explicitly prohibited in national legislation?

Yes, under Sec. 3 par. 2 of the Anti-Discrimination Act.

The above-mentioned provision states: 'Direct discrimination shall mean an act, including an omission, where one person is treated less favourably than another is, has been or would be treated in a comparable situation.' In the view of the expert, this complies with the EU definition found in the Recast Directive 2006/54.

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

Yes, under Sec. 2 par. 4 of the Anti-Discrimination Act.

Discrimination based on pregnancy, maternity and paternity is defined as discrimination based on sex, which complies with Directive 2006/54 and it even exceeds the requirement of the Directive as regards paternity.

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.

² Bouckova, P., Havelkova, B., Koldinska, K., Kuhn, Z., Whelanova, M. (2010), Antidiscriminační zákon - komentář (Anti-Discrimination Act - Commentary), C.H. Beck. Prague.

3.3 Indirect sex discrimination

3.3.1 Is indirect sex discrimination explicitly prohibited in national legislation?

Yes, under Sec. 3 par. 1 of the Anti-Discrimination Act

The above-mentioned provision states: 'Indirect discrimination shall mean an act or an omission where a person is put at a disadvantage compared to other persons [...] on the basis of an apparently neutral provision, criterion or practice. Indirect discrimination shall not be considered to occur if such a provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.'

The definition was a simple translated from the EU law, so it complies.

3.3.2 Is statistical evidence used in your country in order to establish a presumption of indirect sex discrimination?

Yes. For example, in case 30 Cdo 4277/2010 from 13 December 2012 the Supreme Court stated that if the applicant argues that there has been discrimination in the field of education (access to education) and that s/he was in a disadvantaged position, the applicant must prove, using statistics or otherwise, that at first glance a neutral criterion (in this case placement tests) affects a protected group (defined by ethnicity, race, gender or otherwise) particularly adversely, and that the applicant is a member of such a protected group. So, the burden of proof can be shifted to the defendant.

Also in case I.ÚS 2482/13 from 26 May 2014 the Constitutional Court, in connection with the care for children after their parents have divorced, stated that if the applicant wanted to argue that there was indirect discrimination, then statistics proving this argument should have been presented, which was not the case. This means that the Constitutional Court would have been prepared to accept statistics as evidence of indirect discrimination if such statistics had been presented.

3.3.3 Is in your view the objective justification test applied correctly by national courts?

National courts have not yet used the objective justification test in discrimination cases. There is however a wide range of case law mentioning objective justification, but in other areas.³

3.3.4 Are there specific difficulties in your country in applying the concept of indirect sex discrimination?

I do not see any specific difficulties in applying the concept of indirect sex discrimination, although there is no case law as yet.

³ E.g. the objectively justifiable reasons for the opinion of the Constitutional Court, as argued in case IV ÚS 301/05 from 13 November 2007.

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. Nor are there currently proposals pending which aim at incorporating the concept of multiple and/or intersectional discrimination in national legislation.

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.

3.5 Positive action

3.5.1 Is positive action explicitly allowed in national legislation?

Yes, under Sec. 7 par. 2 and 3 of the Anti-Discrimination Act.

The above-mentioned provision states: '(2) Measures aimed at preventing or compensating for disadvantages resulting from a person's membership of a group of persons defined by any of the grounds specified in Section 2 (3) and ensuring equal treatment and equal opportunities for that person shall not be considered to be discrimination. (3) In matters of access to employment or an occupation, the measures under paragraph 2 above may not result in the favouring of a person whose qualities for the performance of employment or an occupation are not higher than those of other persons assessed at the same time.'

The Anti-Discrimination Act allows for positive action in a fairly broad sense and it complies with the Art. 157(4) TFEU.

3.5.2 Are there specific difficulties in your country in relation to positive action?

Positive action hardly takes place at all in practice. This provision is clearly drafted in the Anti-Discrimination Act, but employers or other entities are rather hesitant to use it.

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

No. There are no concrete proposals which are pending, nor are there any policy measures aimed at addressing the issue.

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?

Not yet. In June 2015, the Minister for Human Rights proposed to amend the electoral act in order to introduce a 40 % quota for women on political candidate lists. This proposal was however rejected by the government in July 2015.⁴

⁴ See e.g. <http://www.vlada.cz/cz/clenove-vlady/pri-uradu-vlady/jiri-dienstbier/z-medii/aktualne-navrh-cssd-na-kvoty-pro-zeny-padl--ano-i-lidovci-byli-proti-132503/>, accessed 12 September 2015.

3.6 Harassment and sexual harassment

3.6.1 Is harassment explicitly prohibited in national legislation?

Yes, under Sec. 2 par. 2 of the Anti-Discrimination Act.

Sec. 4 par. 1 of the Anti-Discrimination Act states: 'Harassment shall mean any unwanted conduct associated with the grounds specified in Section 2 (3), a) taking place with the purpose or effect of diminishing the dignity of a person and creating an intimidating, hostile, degrading, humiliating or offensive environment, or b) which could legitimately be perceived as a precondition for a decision affecting the exercise of rights and obligations following from legal relationships.'

The definition has been copied from EU law.

3.6.2 Does the definition of harassment cover a broader scope than employment in your country?

The scope of the definition is actually mentioned in the quoted Sec. 4 par. 1 above, which states that the harassing behaviour could affect the exercise of rights and obligations following from legal relationships. The scope of the protection granted is therefore broader than merely employment.

3.6.3 Is sexual harassment explicitly prohibited in national legislation?

Yes. Sec. 2 par. 2 defines sexual harassment as direct discrimination, which is prohibited by the Anti-Discrimination Act.

Sec. 4 par. 2 states: 'Sexual harassment shall mean any conduct of a sexual nature under paragraph 1 above.' In the view of the expert, this complies with the EU definition which is to be found in the Recast Directive.

3.6.4 Does the definition of sexual harassment cover a broader scope than employment in your country?

The scope of the definition is mentioned in the quoted Sec. 4 par. 1 above, which states that the harassing behaviour could affect the exercise of rights and obligations following from legal relationships, meaning any legal relationship, not only employment.

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, see above.

3.7 Instruction to discriminate

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

Yes, under Sec. 4 par. 4 of the Anti-Discrimination Act.

The above-mentioned provision defines an instruction to discriminate as 'the conduct of a person who misuses the subordinate position of another to discriminate against a third party.' Sec. 2 par. 2 considers an instruction to discriminate to be a prohibited form of discrimination.

3.7.2 Are there specific difficulties in your country in relation to the concept of instruction to discriminate?

No difficulties are known.

3.7.3 Is incitement to discrimination explicitly prohibited in your country?

Yes, under Sec. 4 par. 5 of the Anti-Discrimination Act.

The above-mentioned provision defines incitement to discrimination as 'the conduct of a person who persuades, confirms or encourages another to discriminate against a third party.' Sec. 2 par. 2 considers incitement to discrimination to be a prohibited form of discrimination.

3.8 Other forms of discrimination

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

Yes, under Sec. 2 par. 5 of the Anti-Discrimination Act.

The above-mentioned provision states: 'An act where a person is treated less favourably on alleged grounds shall also constitute discrimination.' The act covers all grounds mentioned above: race, ethnic origin, nationality, sexual orientation, age, disability, religion, belief or opinions. The cited provision covers assumed discrimination.

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, under Sec. 110 of the Labour Code.

The above-mentioned provision states that all employees shall be remunerated equally if they perform equal work or work of equal value.

4.1.2 Is the concept of pay defined in national legislation?

Yes, under Sec. 5 par. 1 of the Anti-Discrimination Act.

The above-mentioned provision defines pay using the term remuneration, which 'shall mean any performance, whether monetary or non-monetary, recurring or one-off, which is directly or indirectly provided to a person in paid employment.' In the Labour Code pay is defined as a wage, salary or remuneration, which is a monetary consideration and an in-kind consideration provided to an employee for work done.

The national definition complies with 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)?

Partly, equal pay for men and women is not explicitly mentioned, but the principle of equal pay for all employees apparently also includes equal pay for men and women.

Sec. 110 of the Labour Code provides that all employees are entitled to receive equal pay for the same work or for work of equal value.

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?

Yes, under Sec. 110 of the Labour Code.

The same work or work of equal value is taken to mean work of the same or comparable complexity, responsibility and strenuousness, which is performed under the same or comparable working conditions and which is of equal or comparable work efficiency and produces equal or comparable work results. The Labour Code covers almost all basic principles and elements of remuneration, including the principle of equal pay.

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

No. In fact, wage transparency is one of the weaknesses of Czech national legislation.

- 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?

Czech national law does not provide for any justifications for a pay difference, unless the work performed is of unequal value, or if it is in fact different work.

- 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)?

No, equal access to employment, vocational training, working conditions etc. are guaranteed to all employees in the public and private sphere. Sec. 4 of Act No. 435/2004 Coll. on employment stipulates that parties to a legal relationship according to this law are obliged to guarantee the equal treatment of all physical persons who make use of their right to employment. Also general provisions of the Anti-Discrimination Act (especially Sec. 1, par. 1) provide for equal treatment in access to employment, vocation, entrepreneurship, self-employment etc.

- 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, under Sec. 1 and Sec. 5 of the Anti-Discrimination Act.

Sec. 1 provides for the material scope of the right to equal treatment and the prohibition of discrimination as guaranteed by the Anti-Discrimination Act. Material scope includes: the right to employment and access to employment, access to an occupation, business or other self-employment, an employment contract, service and other paid employment, including remuneration, membership of and involvement in trade unions, works' councils or employers' associations, including the benefits that such associations provide for their members, membership of and involvement in professional associations, including the benefits that such legal persons governed by public law provide for their members.

Sec. 5 further states that: '[i]n matters of the right and access to employment and access to an occupation, business or other self-employment, working activities and other paid employment, including remuneration, employers shall be obliged to provide for equal treatment. [...] an occupation shall mean the activities of a natural person performed for consideration in paid employment or self-employment, whose proper performance is made subject by special provisions to the fulfilment of qualification criteria, particularly the completion of the required education and, if applicable, a period of experience.'

The material scope, as defined in the Anti-Discrimination Act, is more limited as it does not include, for example, vocational training and access thereto, promotion, and recruitment conditions. With the interpretation of the legislation currently in force, vocational training could be included under access to employment.

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

Yes. Sec. 6 par. 3 of the Anti-Discrimination Act states: 'A difference in treatment in matters of the right to employment, access to employment or an occupation, in matters of employment, service or other paid employment shall not constitute discrimination, provided that it is based on substantive grounds which are inherent in the nature of the performed work or activities and the requirements made are appropriate for that nature. A difference in treatment in matters of access to vocational training for employment or an occupation shall not constitute discrimination on the ground of sex, provided that it is based on substantive grounds which are inherent in the nature of the performed work or activities and the requirements made are appropriate to that nature.'

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 the sense that pregnant women enjoy special protection, as envisaged by Directive 92/85.

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.?

Not to my knowledge.

5. Pregnancy and maternity protection; maternity, paternity, parental leave and adoption leave (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?

Not explicitly. The national legislation however uses the term pregnant worker, without defining it. If the Labour Code is interpreted teleologically, it can be assumed that the way it works with the term pregnant worker 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 Sec. 41 of the Labour Code.

The Labour Code guarantees that in the case of a pregnant woman whose job involves tasks which, according to medical opinion, might endanger her pregnancy, her employer must then temporarily transfer her to more suitable work for an equal wage. Similar rules apply to mothers for nine months after the birth of their child and to breastfeeding women. Pregnant women who carry out night work may request to be transferred to day work and the employer must not refuse such a request. An employer must also grant a female employee who is breastfeeding her child special breaks for breastfeeding. Breaks for breastfeeding are considered as working hours and a compensatory wage or salary equivalent to the amount of average earnings is paid for such breaks.

The relevant provisions of the Directive have been correctly implemented. Pregnant and breastfeeding women enjoy good protection of their labour relationship and their working conditions.

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, under Sec. 53 of the Labour Code.

Pregnant women and parents looking after children under three years of age who are on parental leave are protected against dismissal.

Yes, a woman on maternity leave (and an employee on parental leave for the time that maternity leave can last) can only be dismissed if the employer's undertaking or a relevant part thereof is closed down (Sec. 54 of the Labour Code). A pregnant woman (from the beginning of her pregnancy until she takes maternity leave – she is entitled to do so a maximum of 8 weeks before the planned date of confinement) can be dismissed if the necessary conditions for immediately ceasing the labour relationship are met.

Czech legislation does not allow for this alternative. However, if for example the employee's labour relationship ceases, e.g. because it was a relationship for a definite period, the maternity benefit continues to be paid from the sickness insurance system.

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)?

There is almost no possibility for the employer to dismiss a pregnant employee or an employee on maternity leave – see above. In general, however, any dismissal must be

presented in writing and with the indicated substantiated grounds for the dismissal, otherwise it is void (see Sec. 50 of the Labour Code).

5.2 Maternity leave

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

Sec. 195 of the Labour Code provides for 28 weeks of maternity leave; in the case of multiple births this is 37 weeks.

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

Yes, under Sec. 195 par. 5 of the Labour Code.

The above-mentioned provision states that 'maternity leave related to confinement may never be shorter than 14 weeks and cannot terminate or be suspended before the expiry of six weeks since the date of childbirth.' It means there is a 14 week obligatory period of maternity leave before and after birth it should not be shorter than 6 weeks.

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, under Art. 41 of the Labour Code, order No. 180/2015 Coll., on prohibited work and workplaces.⁵

The Labour Code guarantees that in the case of a pregnant woman whose job involves tasks which, according to medical opinion, might endanger her pregnancy, her employer must then temporarily transfer her to more suitable work for an equal wage. Similar rules apply to mothers for nine months after the birth of their child and to breastfeeding women. Pregnant women who carry out night work may request to be transferred to day work and the employer must not refuse such a request. An employer must also grant a female employee who is breastfeeding her child special breaks for breastfeeding. Breaks for breastfeeding are considered as working hours and a compensatory wage or salary equivalent to the amount of average earnings is paid for such breaks.

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

Yes. Sec. 195 of the Labour Code.

The labour relationship is only suspended and it is also maintained during the maternity or parental leave, any dismissal is prohibited. After a return from maternity leave exactly same job shall be guaranteed, and after a return from parental leave (that can last for up to three years) the same job as agreed in the labour agreement shall be guaranteed by the employer.

⁵ Decree No. 180/2015 Coll., on work and workplaces that are prohibited for pregnant workers, workers who are breastfeeding, and working mothers until the ninth month after childbirth, and on work and workplaces that are prohibited for minors, and the conditions under which juvenile employees exceptionally perform such work because of vocational training (Decree on prohibited work and workplaces).

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?

Maternity benefit (financial assistance during maternity) is paid from the sickness insurance system (Sec. 32 – 38 of the Sickness Insurance Act), like the sickness benefit; the amount of maternity benefit is 70 % of the daily salary, whereas the amount of sickness benefit is 60% of the daily salary. The maternity benefit is higher.

The ceiling for the payment is CZK 32 540, which is approximately EUR 1 250 per month.

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

Yes. Some large foreign firms provide for maternity benefits, but unfortunately I cannot provide a specific example, although I know that it does occur. It is fairly rare, however.

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

Yes, under Sec. 32-38 of the Sickness Insurance Act.

The basic condition is that on the day on which the benefit should be recognised the individual must still be participating in sickness insurance or be in the protected period⁶ and, in the last two years before this date, the insured person must have participated in sickness insurance for at least 270 days. The Sickness Insurance Act permits the mother of the child to alternate the care for the child with her husband or the father of the child, while each of them is entitled, in relation to this care for the child, to the payment of maternity benefits for the period and under the conditions stipulated by the Sickness Insurance Act. This alternation is permitted from the start of the seventh week from the date of birth and the frequency of such alternation is not restricted. In the event of an alternation in the care for the child the payment of maternity benefits to the mother is halted and it is then paid to the man from his sickness insurance, if he fulfils the conditions for entitlement to its payment, and vice versa.

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)?

Yes. Sec. 47 of the Labour Code.

After maternity leave, the mother (or also a man who returns from parental leave after the same period as the maternity leave lasts – a maximum of 22 weeks after the child was born) is entitled to return to the same job and the same workplace, unless it no longer exists. In such a case, there is an entitlement to return to a job which corresponds to the labour agreement (to the same type of the work), according to the Sec. 47 of the Labour Code. This provision is also applicable to civil servants. If the woman returns after a longer period (parental leave can take a maximum of three years), she is entitled to the job defined in her labour contract. The Labour Code does not mention anything about an improvement in working conditions.

⁶ For women whose insured employment has ended during pregnancy, the protected period for entitlement to maternity benefits is the same number of calendar days as the duration of her last employment, up to a maximum of 180 calendar days.

Section 70 of Act No. 234/2004 Coll. on civil service guarantees a civil servant returning from maternity leave or parental leave the right to return to his/her original service place. This provision is even more convenient for the civil servant than the above mentioned provision of the Labour Code, which guarantees returning to the same place only after the maternity leave (or equivalent period of the parental leave). Here, returning to the same service place is guaranteed also to parents returning from parental leave, which can last until the child reaches 3 years of age. Improvement in working conditions is not mentioned here.

5.3 Adoption leave

5.3.1 Does national legislation provide for adoption leave?

Yes, under Sec. 197 of the Labour Code.

The leave can last until the child reaches three years of age; if a child older than three years of age, but younger than seven, is adopted the leave can be taken for 22 weeks. In the case of adoption the adoptive parents are entitled to maternity benefit and also to a parental allowance paid from the state's social support system, under the same conditions as biological parents.

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

No.

5.3.3 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, under Sec. 53 and Sec. 197 of the Labour Code.

As adoption leave is considered to be maternity leave (or parental leave), the adoptive parents are protected in the same way as biological parents. Employees on maternity leave can hardly ever be dismissed, unless the employer has closed down. The Labour Code provides the same rights connected to maternity/parental leave to adoptive parents. Returning to the same job after maternity leave, or an equivalent post after parental leave, is guaranteed in the same way as it is to biological parents. The Labour Code is silent as regards improvements in working conditions.

The Act on civil service also guarantees the same rights, as conditions for maternity and parental leave of civil servants is also settled in the Labour Code (Sec. 121 of the Act on civil service which states that maternity/parental leave of civil servants is regulated by Sec. 195-198 of the Labour Code).

5.4 Parental leave

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

Not explicitly.

The Labour Code and Act No. 117/1995 Coll. on state social support (hereinafter the State Social Support Act) apply.

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

Yes. The Labour Code does not make a distinction between the public and private sector.

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 national legislation on parental leave is applicable to both the public and the private sector. It is also applicable to part-time workers and to fixed-term contracts. If the fixed-term period agreed in the employment contract ends during parental leave, there is no obligation for the employer to prolong the employment relationship, but the parental allowance from the state social support system continues to be paid without any change. Temporary agency workers work on the basis of a normal employment contract, so they are also provided with parental leave. However, most agency workers work on a fixed-term basis, so the above also applies to them.

5.4.4 What is the total duration of parental leave?

According to Section 196 of the Labour Code, the employer must grant a male or female employee parental leave if requested. Parental leave is granted to the mother of the child at the end of her maternity leave (the general duration of maternity leave is 28 weeks; the period can be extended up to 37 weeks if the woman gives birth to two or more children at the same time) and to the father of the child from the day that the child is born, for the amount of time applied for, until the child reaches the age of three. The parents of the child are entitled to take maternity and parental leave concurrently. The duration of the parental leave (until the youngest child in the family has reached the age of four) has not been changed since it was introduced. There is no difference in the duration of parental leave in the public sector and the private sector. The child's maximum age for the parent to be entitled to parental leave is three. Parental leave may also be taken later and not immediately after the birth of the child (e.g. by the father). It is becoming more common (even if very slowly) for the mother to take care of the child during the first year, and for the father to take parental leave for another year or more when the mother returns to work.

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

The right to parental leave is individual for each of the parents and it can also be taken simultaneously, so there is no necessity to transfer part of the parental leave to the other parent and the law does not provide for such a possibility.

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 in general meant as full-time leave. The parent may carry out an occupational activity without losing his/her entitlement to parental allowance, subject to the condition that during the period of this occupational activity the parent ensures that the child is in the care of another adult. After the child reaches the age of two, it can also be placed in a kindergarten while the entitlement to parental allowance remains intact until the child reaches the age of four (while the right to time off work is only until the child reaches three years of age).

- 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)?

There is no notice period, the employee is even entitled to prolong the parental leave as often as s/he wants, until the child reaches three years of age. The employer is obliged to accept any prolongation of parental leave.

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

No.

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

The Labour Code does not allow the granting of parental leave to be postponed for justifiable reasons related to the operation of the organisation.

- 5.4.10 Are there special arrangements for small firms?

No.

- 5.4.11 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?

There are no modalities for the leave (time off) as such, but the entitlement to a parental allowance can be prolonged under specific conditions. If the child is ill for a long period or is disabled, the entitlement to a parental allowance also continues to apply when the child attends a special rehabilitation institution or a kindergarten for children with disabilities for a maximum of four or six hours a day (six hours are for pre-school disabled children; if at least one of the parents is disabled it is four hours a day).⁷

- 5.4.12 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. The Czech Labour Code includes general equal treatment provisions, including employees taking parental leave.⁸ The same Act also includes a strong degree of protection for employees on maternity leave and parental leave or employees taking care of children. Section 53 of the Labour Code prohibits giving notice to an employee during the period of protection, i.e. (inter alia) 'at a time when a female employee is pregnant or when a female employee is on maternity leave or when a female or male employee is on parental leave.' If an employee has been given notice prior to the commencement of the period of protection and the notice period is to expire during the period of protection, the period of protection shall not be included in the notice period. The employment relationship shall only end upon the expiry of the remaining part of the notice period after the period of protection has expired, unless the employee notifies the employer that he/she does not require the employment relationship to be extended.

⁷ Compare Section 31 Paragraph 3 of Act No. 117/1995 Coll.

⁸ Compare Section 16 of the Labour Code.

- 5.4.13 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?

Czech law guarantees a right to return to the same job or, if this is not possible, to an equivalent or similar job consistent with the employment contract. According to Section 47 of the Labour Code: 'if a female employee commences work after the termination of maternity leave or a male employee commences work after the termination of parental leave within the scope of the time for which a female employee is entitled to take maternity leave, the employer shall be obliged to assign him/her to the original work and workplace. If this is not possible because the original work has ceased to exist or a workplace has been terminated, the employer shall assign him/her according to the employment contract'. For parental leave after the period of maternity leave until the child reaches the age of three, there is a general requirement in Section 38 for the employer to assign work to the employee according to the employment contract.

- 5.4.14 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, for example if correct notice is given to an employee on parental leave, it can only have effect after the parental leave period has finished (Sec. 54 of the Labour Code).

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

During the period of parental leave, the employment relationship is suspended and maintained.

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

Yes, healthcare is normally provided; the employment relationship still exists so a worker on parental leave is entitled to all social security payments.

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

During parental leave, the worker is provided with sickness benefits and then state social support benefits; there is no remuneration from the employer.

- 5.4.18 Does the social security system in your country provide for an allowance during parental leave?

During parental leave there is entitlement to a parental allowance, which can be received for a maximum of four years. This is provided for all parents in all sectors. The amount and duration can be subject to the choice of the parent. If both parents take parental leave at the same time only one will receive the parental allowance. Parental allowance is provided until a total amount of approximately EUR 8 500 (CZK 220 000) has been obtained during a maximum four-year period. A parent may choose the amount of parental allowance and thus the period of its duration subject to the condition that at least one parent in the family is participating in sickness insurance and has earned a

certain amount of salary.⁹ The maximum monthly parental allowance can be EUR 445 (CZK 11 500). The minimum parental allowance is EUR 147 (CZK 3 800).¹⁰

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

Czech legislation in general is generous towards parents with small children. This is especially true with regard to the lengths of the periods of parental leave, and the entitlements to parental allowance, where the provisions are more favourable than what the Directive requires.

5.5 Paternity leave

5.5.1 Does national legislation provide for paternity leave?

No.

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, there is only the protection of people (also fathers) who take parental leave. See above.

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, under Part 8 of the Labour Code.

An employer shall allow a male or female employee to be absent from work during the provision of care to a sick family member and to a child younger than ten years of age. This will apply when, for serious reasons, the child cannot be placed in the care of an educational facility or school. In addition, this will apply if the person otherwise caring for the child has become ill or has been placed in quarantine, or if that person has undergone a check or treatment at a health service facility. The employee shall not be entitled to any wage compensation for this period, but will be entitled to the sickness insurance benefit. Furthermore, an employer may provide an employee with time off for other serious reasons, particularly for attending to serious personal, family and property matters that an employee is unable to attend to outside working hours. In collective agreements or companies' internal rules, the rights of male/female employees to take time off may be extended, or wage compensation in excess of the above may be granted, and their scope may be extended to also include additional instances entitling a male or female employee to time off or to wage compensation.

If the employee provides a medical certificate verifying the illness of the child, there are no maximum limits per year for these absences based on the age of the child or any other criteria. Not even for other situations described above are there any further

⁹ Sec. 30 para 3 of the State Social Support Act states that it is 70 % of 30 times the daily basis for assessment, which is defined according to the Sickness Insurance Act.

¹⁰ More detailed information on the amounts of parental allowance can be found at the official website of the Ministry of Labour and Social Affairs, available at: <http://www.mpsv.cz/en/1603>, accessed 10 September 2015.

specifications of the conditions for requesting the above-mentioned time off. There is no limitation on how often per year these periods of time off from work can be taken.

Legal provisions place no limitations on the length of such periods of time off from work. It is possible to agree with the employer that the employee makes up for such periods of absence from work. An employer, however, has no legal obligation to enable an employee to make up for the period of absence, so the employee might lose his/her income due to this time off work.

5.7 Leave in relation to surrogacy

5.7.1 Is parental leave available in case of surrogacy?

No.

5.8 Leave sharing arrangements

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

Yes, under Sec. 196 of the Labour Code.

The parents of the child are entitled to take maternity and parental leave concurrently; as regards time off work, there is no need to share. The employer must grant a female employee maternity leave and parental leave if requested. Parental leave is granted to the mother of the child at the end of her maternity leave (the general duration of maternity leave is 28 weeks; the period can be extended up to 37 weeks if the woman gives birth to two or more children at the same time). The father of the child is entitled to parental leave from the day that the child is born, for the amount of time applied for until the child reaches the age of three. The employer must guarantee time off, and the maternity benefit received from sickness insurance can be shared if there is a written contract to this effect between the mother and father of the child. The right to maternity benefit can be shared after the child reaches the age of six weeks (Sec. 32(1)e) of Act No. 187/2006 Coll. on sickness insurance). Although this time off afforded to fathers is termed 'parental leave', this is a matter of terminology only and is not a specific right.

There are no specific conditions or limitations, parents can take the leave concurrently (the employer is obliged to provide the leave). If the maternity benefit is shared, the father (or the husband of the mother of the child) can receive it if he concludes a written agreement with the mother that it is he who takes care of the child.

The leave has to be taken on a full-time basis. However, it is possible to combine the entitlement to a parental allowance (which usually follows maternity benefit) with unlimited working activity. The entitlement to a parental allowance does not terminate if the parent recommences work. If, for example, a grandmother takes care of the child and both parents work, nothing changes, even if the child is very small, and the entitlement can remain until the child reaches four years of age. If the child is placed in a kindergarten, it is slightly different if the child is under two years of age. The entitlement in this case can only be retained if the child does not remain there for longer than 46 hours per month.

The size of the employer does not play any role.

The entitlement is not modulated according to the size of the employer.

National law does not provide for paternity leave.

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

Actually not, parental leave (as well as time off) may be taken simultaneously, but parental allowance can be taken only once, and parents can alternate when claiming this right.

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. Part-time work is provided for specific groups of workers by Section 241 Paragraph 2 of the Labour Code, which states that 'Where a female or male employee taking care of a child who is under 15 years of age, or a pregnant female employee, or an employee who can prove that he or she, mostly on his or her own, systematically cares for a mainly or fully bedridden person, requests to work only part time or requests some other suitable adjustment to his or her weekly working time and/or hours, the employer is obliged to comply with such a request, unless this is impossible for serious operational reasons.' It should be added that Czech law provides specific categories of workers with the right to work less – e.g. 37 hours per week (instead of 40) for a full salary. This relates to employees working with, for example, psychiatric patients, bedridden people, handicapped persons etc.

The child must be younger than 15 years of age. The employee who is taking care of a bedridden person has to prove this. This is usually done by a certificate issued by a Labour Office, which provides such a person with a caring allowance.

None of the types of leave can be taken in the form of working part time. It is however possible to take the parental allowance and at the same time to work – even full time – if another adult person (older than 18 years) takes care of the child.

The employer is obliged to comply with the request to work reduced hours, unless this is impossible for serious operational reasons. Serious operational reasons are defined under the determined case law. The only relevant reason for such a refusal can be serious operational reasons. There is no right to return to prior working arrangements. However, Czech employers prefer full-time workers, so as soon as the employee decides to return to his/her prior working hours, the employer is usually more than happy to allow this.

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

Yes. An adjustment of working patterns is regulated by the same provision as part-time work and an adjustment of working hours and working patterns follows exactly the same principles – see Sec. 241 par. 2 of the Labour Code quoted above.

The following individuals are entitled to an adjustment of working patterns: a female or male employee taking care of a child who is under the age of 15 years of age; a pregnant female employee; or an employee who can prove that he or she, mostly on his or her own, systematically cares for an entirely or almost entirely bedridden person.

The child must be younger than 15 years of age. The employee who is taking care of a bedridden person has to prove this. This is usually done by a certificate issued by a Labour Office, which provides such a person with a caring allowance.

The employer is obliged to comply with the request to work reduced hours, unless this is impossible for serious operational reasons. Serious operational reasons are defined under the determined case law.

The only relevant reason for such a refusal can be serious operational reasons. There is no right to return to prior working arrangements. However, Czech employers prefer full-time workers, so as soon as the employee decides to return to prior working hours, the employer is usually more than happy to allow this.

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

No.

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?

Yes, under Sec. 86 and 87 of the Labour Code.

A collective agreement or an employer's internal regulations may provide for working hours to be 'banked'; they can then be used within a maximum of 26 weeks (this can be prolonged by a collective agreement for up to 52 weeks). The employer establishes an account where working hours and wages can be banked and a plan of the working hours for each working day can be set out.

This provision is not used for the needs of parents, but rather for the needs of employers who employ workers for seasonal work.

6. Occupational pension 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. Remark: The system of occupational pensions, or to put it better, the system of pension savings was established from 1 January 2013 onwards by Act No. 426/2011 Coll., on pension savings. This Act established a new pension scheme. However, the scheme includes almost no aspects of occupational pensions, even though it was declared to be a 'second-pillar' system. It is a voluntary system, which could have been joined by opting out of the first pillar with a 3 % obligatory contribution and at least another 2 % from individual savings. The system was administered by private subjects called pension companies. However, as of 12 November 2014 the Government decided to abolish this scheme, effective from 1 January 2016. By this date, everything shall be transferred to the third pillar 'individual savings. From July 2015 onwards it is no longer possible to enter into the system by means of a new agreement (Act No. 163/2015 Coll.). The only aspect of occupational social security schemes can be found in Act No. 427/2011 Coll. on supplementary pension savings. The EU law regarding occupational pensions has been transposed through the Anti-Discrimination Act, in order to fulfil the implementing obligation, with almost no real effect in daily practice. In the view of the expert, there exists no occupational scheme in the Czech Republic; although they are termed otherwise, the 'occupational' schemes are in fact third-pillar schemes. However, some aspects of occupational schemes can be found in Act No. 427/2011 Coll.

Sec. 8 and 9 of the Anti-Discrimination Act regulate the prohibition of discrimination on grounds of sex in 'occupational social security schemes'¹¹ in more detail, according to EU law.

Sec. 1 par. 3 of Act No. 427/2011 Coll. states that the rights and obligations established within the supplementary pension saving scheme cannot be at odds with the principle of equal treatment.

Sec. 10 of Act No. 427/2011 Coll. states that it is not against the principle of equal treatment if the contribution of the employer to its employee's supplementary pension savings differ with regard to the risk, complexity or difficulty of the work performed, if this is stipulated in the collective agreement or in the employer's internal regulations.

6.2 Is the personal scope of national law relating to occupational social security schemes 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 of the national law relating to occupational social security schemes is practically the same as that in Art. 6 of Directive 2006/54. Sec. 8 par. 3 and 4 of the Anti-Discrimination Act states that the provisions relating to occupational social security schemes also apply to self-employed persons and professional associations in which these persons participate and which are based on the principle of affiliation to an occupation and also to persons whose activity is interrupted due to illness, maternity or an accident, persons seeking employment, retired people, disabled employees or former employees.

¹¹ This terminology is used in order to comply with EU legislation.

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

Also the material scope, as regulated in Sec. 8 par. 1 of the Anti-Discrimination Act, is the same as that specified in Art. 7 of Directive 2006/54. The above-mentioned provision states that '[w]here an employer provides employees, former employees and their family members with monetary performance or performance corresponding to a monetary value in order to substitute or supplement the benefits provided from the basic scheme of social protection covering (1) sickness, (2) invalidity, (3) old age, including early retirement, (4) occupational injury and occupational disease, 5. unemployment, [or] other monetary or non-monetary performance having the characteristics of social benefits, particularly survivors' or family benefits, to the extent that they are paid by the employer to the employee on grounds of employment, the employer shall be obliged not to discriminate on the ground of sex.'

This provision is an example of "copy and paste" implementation of the EU law.

6.4 Have the exclusions from the material scope as specified in Article 8 of Directive 2006/54 been implemented in national law?

Yes, in Sec. 9 of the Anti-Discrimination Act.

This provision excludes from its material scope: 'a) individual contracts for self-employed persons, b) employee schemes for self-employed persons intended for only one member, c) insurance contracts to which the employer is not a party in the case of salaried employees, d) optional provisions of schemes of social protection for persons offered to participants individually to guarantee them (1) additional benefits, or (2) a choice of date on which the normal benefits for self-employed workers will start, or a choice between several benefits, e) employee schemes in so far as benefits provided from these systems are financed by contributions paid by employees on a voluntary basis.'

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?

Sec. 8 par. 2 of the Anti-Discrimination Act states that 'Men and women must have, in particular, a) equal access to an occupational social security scheme, b) equal entitlement to the provision of performance, c) equal conditions for the origin, duration and retention of the entitlement to performance, d) equally compulsory or voluntary affiliation to a scheme, e) equal rules for the provision of performance, particularly the age limit, the duration of employment or the period of affiliation to a scheme, f) equal conditions for the suspension of performance or the acquisition of entitlement to benefits paid during maternity leave or family-related leave, g) entitlement to an equal scope of performance upon the fulfilment of the same conditions, h) an equal method for calculating the amount of the employer's or employee's contributions, i) an equal method for calculating the amount of performance including increases due in respect of a spouse or for dependants, j) equal conditions for the reimbursement of contributions to an employee when the employee leaves the scheme without having fulfilled the conditions guaranteeing a deferred right to long-term benefits, k) an equal method for determining retirement age for the purposes of granting a pension from an occupational social security scheme.'

There are no laws or cases determining when the above-mentioned obligations are violated.

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

Yes. Sec. 9 par. 3 of the Anti-Discrimination Act states that when setting different levels of benefit in connection with the application of necessary measures taking account of actuarial calculation factors which differ according to sex in the case of defined-benefit schemes and in the case of funded defined-benefit employee schemes, certain elements may be unequal where the inequality of the amounts results from the effects of the use of actuarial factors which differ according to sex at the time when the scheme's funding is implemented does not constitute a violation of the obligation to comply with the principle of equal treatment for men and women.

There is no case law on this.

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.

No.

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?

All social security schemes are gender-neutral (with the exception that there are different pensionable ages for men and women – discussed below). However, there are no specific provisions explicitly mentioning the principle of equal treatment.

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

The statutory social security schemes apply to the entire working population; Czech legislation therefore complies with Art. 2 of Directive 79/7.

7.3 Is the material scope of national law relating to statutory social security schemes 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 statutory social security schemes provide protection against all risks mentioned by Directive 79/7. The material scope of national law is not broader.

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

Yes, exclusions from the material scope specified in Art. 7(1) a) and b) of Directive 79/7 have been implemented. The Czech statutory pension system applies a different pensionable age for men and women and it also allows only women to reduce their pensionable age if they have raised more than one child. Whereas there is one pensionable age for men, which is gradually being increased, there are differences in the pensionable age for women according to the number of children they have raised. This does not apply to men, even if a man has raised his children alone. The pensionable age will be equal for men and women in 2044, when people born in 1977 will reach 67 years of age. Until then, the current discrimination against men seems to be maintained by legislation. This practice has not been changed following the ECtHR ruling in *Andrle*,¹² or even following the CJEU ruling in *Soukupova*.¹³

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

No.

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.

¹² *Andrle v the Czech Republic* [2011] nyr. (Application no. 6268/08).

¹³ Case C-401/11 *Blanka Soukupová v Ministerstvo zemědělství* [2013] ECR nyr.

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. The Directive has been transposed by a number of Acts, of which the most relevant are: Act No. 198/2009 Coll., the Anti-Discrimination Act; Act No. 89/2012 Coll., the Civil Code; Act No. 455/1991 Coll., the Trade Licencing Act; Act No. 435/2004 Coll., the Employment Act; Act No. 155/1995 Coll., on pension insurance; Act No. 187/2006 Coll., on sickness insurance; Act No. 48/1997 Coll., on health insurance; Act No. 349/1999 Coll., on the public defender of rights; and Act No. 586/1992 Coll., on income tax.

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)

Article 2(a) of the Directive has been transposed by several Acts which define several types of self-employment. The definitions differ slightly and are included especially in the Pension Insurance Act, the Civil Code and the Trade Licencing Act.

The definition of self-employment can be found in the Pension Insurance Act, which defines this activity as an insured one. Section 9 defines self-employment as independent activity in agriculture, trade based on the Trade Licencing Act, the activity of an associate in a public trading company, activity as a freelance artist, some special activities provided with special authorisation and all other activities performed in the person's own name and subject to their own responsibility for the purpose of making a profit.

The Civil Code defines 'entrepreneur' in its Section 420 as follows: 'Whoever performs, independently on their own account and responsibility, a trade or employment in a similar manner with the intent to do so consistently for profit is considered, with regard to this business, to be entrepreneurs.'

Last, but not least, the Trade Licencing Act defines trade as 'any systematic activity conducted independently, under the conditions stipulated in this act, by a natural person or legal person in its own name and subject to its own responsibility for the purpose of making a profit.'

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 to be part of the same category and there is no particular risk that, for example, 'small entrepreneurs' or 'business persons' will not be covered. The agricultural sector is not treated any differently.

Life partners are recognised if they live together with the self-employed person and have a common household. Persons providing help are insured in the social security scheme as self-employed persons and it is possible to divide the income from self-employed activity among them and the self-employed person for the purposes of taxes and social security.¹⁴ There is no other law which specifically deals with the term 'persons providing help.'

¹⁴ Section 9 of Act No. 155/1995 Coll. and Section 13 of Act No. 586/1992 Coll. on income taxes.

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 more restricted or broader than specified in Article 4 Directive 2010/41/EU?

Article 4(1) has been generally transposed through the Anti-Discrimination Act. There is no specific provision that would explicitly mention the principle of equal treatment in connection with self-employed persons. No modification of the implementation compared to the repealed self-employment directive has occurred and so no additional protection for self-employed persons is provided by Czech legislation.

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?

The Czech Republic generally allows positive action, as allowed by the anti-discrimination directives, under Sec. 7 par. 2 of the Anti-Discrimination Act. No specific action has been taken by the State in favour of self-employed women. Only a few initiatives have been taken, e.g. by self-employed women themselves aimed at providing consultancy and information support to women who want to start working as a self-employed person.¹⁵

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

No. Self-employed workers are covered in practically the same way as employees under the Czech social protection system. They are insured by pension insurance and health insurance (covering healthcare expenditure) on an obligatory basis; the system of sickness insurance (covering sickness benefits in cash) is open to any self-employed person who wishes to be insured, and participation in sickness insurance is voluntary.

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

Yes, under Sec. 32-38 of Act No. 187/2006 Coll. on Sickness Insurance.

The maternity benefit meets the requirement of sufficiency, as the amount is 70 % of the previous income. None of the criteria for sufficiency under Article 8(3) have been explicitly used.

According to the Sickness Insurance Act, the insured person (including the self-employed) is entitled to financial aid during maternity if the necessary conditions are met. Among these conditions there is also a requirement for a previous insurance period: 270 days in the last two years. In some cases, this waiting period can cause problems for self-employed women. As participation in the system is voluntary for self-employed persons, many of them prefer not to participate and not to pay contributions, especially when they are starting their business. If a self-employed woman becomes pregnant shortly after she started paying contributions, she may be facing a difficult situation, as she will not be entitled to the benefit, which is quite generous. The maternity benefit is provided for 28 or 37 weeks, from which 6 weeks can be claimed before the planned date of confinement. The maternity allowance is granted on a mandatory basis if the self-employed person is insured (the participation of self-employed persons is voluntary, as explained in the previous section).

Temporary replacements and services are not available.

¹⁵ Information available at <http://www.svazpodnikatelek.cz/projektove-poradenstvi>, and <http://www.odyssey-network.cz/cz/nase-sluzby/pro-women-odyssey>, both accessed 6 September 2015.

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, under Sec. 8 and 9 of the Anti-Discrimination Act.

Equal treatment in occupational social security schemes applies also to self-employed persons. The details are explained above when discussing the general implementation of equal treatment in occupational social security schemes. There are no specific provisions applied 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?

Not specifically. Equal access to employment is guaranteed in general for all types of workers, including self-employed persons, as explained above when discussing the personal scope of equal access to employment.

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, under Sec. 1 of the Anti-Discrimination 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.

There is no specification of the material scope relating to access to goods and services. The Anti-Discrimination Act only guarantees equal access to goods and services.

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

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.

Sec. 6 par. 7 of the Anti-Discrimination Act states that '[t]he exclusive or primary supply of goods and services available to the public shall not constitute discrimination on grounds of sex, if the provision of the goods and services exclusively or primarily to members of one sex is objectively justified by a legitimate aim and the means of achieving that 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, under Sec. 2769 of Act No. 89/2012 Coll., Civil Code.

The above-mentioned provision reads: 'If an insurer, when determining the amount of contributions or the calculation of indemnity, has considered nationality, racial or ethnic origin or any other aspect contrary to the principle of equal treatment under any other Act, any increase in premiums or a reduction of insurance benefits shall not be taken into account. This applies also if, when determining the amount of insurance or the indemnity for the calculation, pregnancy or maternity were taken into consideration.'

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.

As a reaction to the *Test-Achats* ruling, Act No. 99/2013 Coll. on amending certain acts in relation to insurance and pensions has been adopted in connection with the abolition of derogations from the principle of equal treatment in European Union law (from 20 March 2013). The Insurance Contract Act has been amended as follows: 'In determining the amount of premiums or insurance benefit calculation it is forbidden to apply the criterion contrary to the principle of equal treatment. This applies even if it is a consideration when determining the amount of premiums or insurance benefit calculation in pregnancy or motherhood. This does not affect the use of age or the state of health as a determining factor in the determination of premiums and the calculation of insurance

benefits for the insurance risk, which is the evaluation of the insurance risk based on relevant and accurate actuarial and statistical data, and if the difference in the amount of premiums or insurance benefits is appropriate.’ This provision covers all new insurance contracts and any extension of the insurance period for insurance contracts concluded before the effective date of the amendment. The Insurance Activity Act has been amended by provisions regarding administrative sanctions in relation to infringements of the principle of equal treatment and the duty of an insurance undertaking to adjust technical reserves accordingly.

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.

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

10.1 Has your country ratified the Istanbul Convention?

No. In the summer of 2015 the Government decided that the IC ratification process shall start.¹⁶ The Ministry of Justice shall be the coordinator of the implementation of the IC. There is currently no debate in Parliament over the issue, and to the knowledge of the expert there is no concern as to the possible financial impact of accession. The process is only at a very preparatory stage.

¹⁶ Information unofficially obtained by the expert, at the time of writing there is no source available.

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, they have been implemented, but there is no case law. Sec. 2 par. 2 and Sec. 4 par. 3 of the Anti-Discrimination Act.

Victimisation shall be considered to be discrimination. Victimisation is defined as any adverse treatment, sanction or disadvantage that has occurred as a result of exercising the rights under the Anti-Discrimination Act.

In the view of the expert, these provisions comply with EU law.

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, under Sec. 133a of the Code of Civil Court Procedure.

The above-mentioned provision states that if the complainant claims facts before the court from which it can be inferred that there has been direct or indirect discrimination by the defendant based on sex, racial or ethnic origin, religion, belief, opinions, disability, age or sexual orientation in the area of working activities or other paid employment including access thereto, occupation, business or other self-employment including access thereto, membership of employees' or employers' associations and membership of, and involvement in, professional chambers or in access to goods and services, it shall be the defendant's responsibility to demonstrate that the principle of equal treatment has not been violated.

In the view of the expert, the rules on the burden of proof comply with EU law. Since the very beginning (since the Anti-Discrimination Act was adopted), the Czech courts have applied the principle of the burden of proof, subject to the condition that the claimant has proved that there was unequal treatment.¹⁷

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?

Sec. 10 of the Anti-Discrimination Act states that (1) In the event of a violation of the rights and obligations following from the right to equal treatment or of discrimination, the person affected by such act shall have the right to claim before the courts, in particular, that the discrimination be refrained from, that the consequences of the discriminatory act be remedied and that (s)he be provided with appropriate compensation. (2) Should a remedy under paragraph 1 above not appear to be sufficient, particularly due to the fact that a person's reputation or dignity or respect in society has been harmed, the person shall also have the right to monetary compensation for non-material damages. (3) The amount of the compensation under paragraph 2

¹⁷ See e.g. the judgment of the Constitutional Court No. II. ÚS 1609/08 from 30 April 2009, or Supreme Court case 21 Cdo 246/2008 from 11 November 2009.

above shall be assessed by the court taking into account the seriousness of the damage and the circumstances under which the right was violated.'

11.3.2 In your opinion, do the remedies and sanctions meet the standards of being effective, proportionate and dissuasive?

In the Czech Republic, monetary compensation is generally not very high, for successful discrimination cases it is usually within the range of CZK 50 000 - 80 000 (approximately EUR 1 850 3 000). The courts apply Sec. 10 of the Anti-Discrimination Act and Sec. 136 of the Code of Civil Procedure. As regards public sanctions, they are regulated by the Act on Labour Inspection, which stipulates in Sec. 11 that for an offence in the area of equal treatment, a fine of up to CZK 1 billion (approximately EUR 37040) may be imposed. Labour inspectorates have never imposed such a high fine. In 2014, for example, labour inspectorates imposed some 50 fines on employers for unequal treatment, the total amount of these fines was approximately CZK 350 000 (around EUR 13 000).¹⁸

11.4 Access to courts

11.4.1 In your opinion, is the access to courts safeguarded for alleged victims of sex discrimination?

Access to the courts is safeguarded and there is no legal obstacle to alleged victims of sex discrimination having access to the courts. Victims, however, are often afraid to appear before the courts and argue that they have been discriminated against by the employer. They fear that the employer will find a way to dismiss their case and especially in small sectors it is very likely that future employers would hesitate before employing a person with the reputation of being a 'troublemaker'.

As regards legal provisions on access to the courts, there is currently a pending proposal to amend Sec. 22 par. 3 Act No. 349/1999 Coll. on the public defender of rights, according to which the public defender of rights shall be able to resort to the courts and present discrimination cases, which has not been possible until now. This proposal is pending since January 2015 and in September 2015 it went through the first (of three) reading.¹⁹

11.4.2 In your opinion, is the access to courts safeguarded for anti-discrimination/gender equality interest groups or other legal entities?

According to Sec. 11 par. 1, legal persons established in order to protect the rights of victims of discrimination may provide information on the possibilities of legal assistance and cooperation in the drafting or supplementing of proposals and applications to persons claiming protection against discrimination. They do not have direct access to the courts, although they often represent victims in proceedings.

11.4.3 What kind of legal aid is available for alleged victims of gender discrimination?

Victims of gender discrimination can be assisted by legal entities established for this purpose. There are some NGOs that fall under this definition. One of the most famous and effective is the League of Human Rights²⁰. The office of the Public Defender of Rights (an equality body) is a monitoring body with great moral prestige. Its opinions are not binding, but are very much respected. See below.

¹⁸ See the Annual Report 2014 on labour inspection, available at http://www.suip.cz/files/suip-026cb2f8c1dcae021423a0495cc504e5/rok_2014.pdf, accessed 12 September 2015, p. 119.

¹⁹ It is possible to follow the legislative process at <http://www.psp.cz/sqw/historie.sqw?T=379&O=7>, accessed on 12 September 2015.

²⁰ <http://llp.cz/en/>, accessed 20. January 2016

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 Public Defender of Rights – www.ochrance.cz

This body covers: race or ethnic origin, nationality, sex, age, disability, religion, belief or opinions.

According to Sec. 21 of Act No. 349/1999 Coll. on the Public Defender of Rights, the Public Defender of Rights shall contribute to promoting the right to equal treatment of all persons and, to this end, he/she shall a) provide methodological assistance to victims of discrimination in lodging their proposals for the commencement of proceedings concerning discrimination, b) undertake research, c) publish reports and issue recommendations on discrimination-related issues, d) provide for an exchange of the available information with the relevant European parties.

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?

Social partners hardly play any real role in promoting gender equality in the Czech Republic. There are no legislative provisions.

11.7 Collective agreements

11.7.1 To what extent does your country have? Please indicate the legal status of collective agreements in your country (binding/non-binding, usually declared to be generally applicable or not).

There are no collective agreements that are used as a means to implement EU gender equality law.

12. Overall assessment

The gender equality *acquis* has been implemented in the Czech Republic quite satisfactorily. However, sometimes the implementation has not completely followed the spirit of the EU directives. An example could be the paste and copy method which has been used in the case of occupational pension schemes, where equal treatment is guaranteed in Sec. 8 and 9 of the Anti-Discrimination Act. As there was (and still is) no occupational pension pillar in the Czech pension system and at the same time, it was requested that the relevant parts of the EU law be implemented, some parts of the Recast Directive were taken, translated and put into the Anti-Discrimination Act, which, from the systematical point of view does not seem to have been a very well thought-out step. Sections 8 and 9 shall be used especially if the employer is contributing to the private pension scheme of his employees.

In the view of the expert, there are no good practices to report where Czech law exceeds the requirements of EU law.

The most important work still remains to be done in the area of the acceptance of the anti-discrimination rules by Czech society as a whole (from politicians and judges to the general public and the media). There is still quite a long way to go for the Czech Republic before achieving a society which fully enacts and applies the principle of equal treatment for men and women on a daily basis.

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