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# Country report

## Gender equality



Czech Republic  
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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 2018 – 31 December 2018

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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 specialised 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 procedural aspects and decide on extraordinary remedies. The Constitutional Court oversees the constitutionality of legislation, as well as the case law of the general courts.

Legal competence concerning gender equality is distributed among government institutions comprising the Ministry of Labour and Social Affairs;<sup>1</sup> the Ministry of Justice;<sup>2</sup> and the Ministry of Education.<sup>3</sup> 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. There is also the Government Council for Equal Opportunities for Women and Men, a permanent government advisory body in the area of creating equal opportunities for women and men, under the auspices of the Office of Government.<sup>4</sup> In addition, Parliament (composed of the Chamber of Deputies and the Senate) is responsible for adopting laws and acts; only courts are responsible for making decisions in individual cases.

The Public Defender of Rights<sup>5</sup> is a Czech equality body, which is also responsible for gender equality. The Public Defender of Rights cannot make decisions in individual cases, but can only publish reports and opinions. These have moral weight, but are not legally binding.

### **1.2 List of main legislation transposing and implementing the directives**

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

- 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).

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<sup>1</sup> Ministry of Labour and Social Affairs: [www.mpsv.cz/en/](http://www.mpsv.cz/en/).

<sup>2</sup> Ministry of Justice: [www.justice.cz/](http://www.justice.cz/).

<sup>3</sup> Ministry of Education, Youth and Sports: [www.msmt.cz/?lang=2](http://www.msmt.cz/?lang=2).

<sup>4</sup> Government Council for Equal Opportunities for Women and Men: [www.vlada.cz/cz/pracovni-a-poradni-organy-vlady/rada-pro-rovne-prilezitosti/the-government-council-for-equal-opportunities-for-women-and-men-29830/](http://www.vlada.cz/cz/pracovni-a-poradni-organy-vlady/rada-pro-rovne-prilezitosti/the-government-council-for-equal-opportunities-for-women-and-men-29830/).

<sup>5</sup> Public Defender of Rights: [www.ochrance.cz/en/discrimination/](http://www.ochrance.cz/en/discrimination/).

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.

### **1.3 Sources of law**

The main sources of gender equality law are considered to be national legislation, especially the Anti-discrimination Act and also other legal acts listed above. International treaties are part of the Czech legal system once they have been ratified by Parliament and officially declared as binding in the Collection of International Treaties (Article 10 of the Czech Constitution). Rulings of the Constitutional Court of the Czech Republic in which an act or a part thereof has been abolished as being unconstitutional are considered a source of law as well.

Opinions of the equality body – the Public Defender of Rights – play an important role in legal argumentation in discrimination disputes. However, the Public Defender of Rights cannot decide a case, this competence is restricted to the courts. Some authoritative scholarly interpretations are, for example, quoted by the Constitutional Court in its rulings, but they are not considered a source of law.



## **2 General legal framework**

### **2.1 Constitution**

The Czech Charter of Fundamental Rights and Freedoms (Constitutional Act No. 2/1993 Coll.), which is part of the Czech Constitution, guarantees equal rights and freedoms to all human beings. 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.'

In the Czech Constitution, there is no ban on discrimination *stricto sensu*.

There are no further articles in the Constitution or the Charter of Fundamental Rights and Freedoms pertaining to equality between men and women.

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. Nevertheless, according to the case law of the Czech Constitutional Court, fundamental rights and their principles may influence and extend into horizontal relations.<sup>6</sup> However, a party to a case cannot explicitly rely on the Constitution in horizontal relations.

### **2.2 Equal treatment legislation**

Czech legislation contains special equal treatment legislation, in particular the Anti-Discrimination Act. This act prohibits discrimination, including sex discrimination.

Under Section 2, the Anti-Discrimination Act defines the right to equal treatment as the right not to be discriminated against. A number of grounds apart from sex are also covered: race, ethnic origin, nationality, sexual orientation, age, disability, religion and belief or opinions.

The Anti-Discrimination Act provides a definition of sex discrimination. Article 2(3) states that discrimination on the grounds of pregnancy, maternity or paternity or sexual identification is also considered discrimination on grounds of sex. Czech legislation uses the term 'gender identification' which means the same as 'gender identity'.

Prohibition of discrimination can be found in the Labour Code. Section 16(2) states: 'Any discrimination, in particular discrimination on grounds of sex, sexual orientation, racial or ethnic origin, nationality, citizenship, social origin, gender, language, health, age, religion or belief, property, marital and family status is prohibited in employment relationships, relationship or duties to family, political or other sentiments, membership and activities in political parties or political movements, trade unions or employers' organisations; discrimination on grounds of pregnancy, maternity, paternity or sexual identification is considered to be discrimination on grounds of sex.'

Section 4 of the Employment Act also prohibits explicitly discrimination by stating that:

'Any discrimination is prohibited when exercising the right to employment. The right to employment cannot be denied to a citizen on the grounds of sex, sexual

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<sup>6</sup> The judgment of the Constitutional Court Pl. ÚS 38/06 of 3 April 2007 ECLI:CZ:US:2007:Pl.US.38.06.1 states '[t]he fundamental right or 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 (or freedoms) is not a public authority, but a private party.'

orientation, racial or ethnic origin, nationality, citizenship, social origin, gender, language, health, age, religion or belief, property, marital and family status and the relationship or duties to family, political or other beliefs, membership and activities in political parties or political movements, trade unions or employers' organisations; discrimination on grounds of pregnancy, maternity, paternity or sexual identification is considered to be discrimination on grounds of sex.'

Special acts, e.g. the Civil Service Act, include separate provisions on the prohibition of discrimination which are very similar to the above-mentioned provisions.

### **3 Implementation of central concepts**

#### **3.1 General (legal) context**

##### **3.1.1 Surveys on the definition, implementation and limits of central concepts of gender equality law**

In the last five years, very few surveys have been conducted on the definition, implementation and limits of central concepts of gender equality law. Many studies have been published on specific topics, such as on harmonising family and private life or on the gender pay gap etc., but none of them properly tackles central concepts of gender equality law.

##### **3.1.2 Other issues**

The Czech Republic is famous for its scepticism as regards equal treatment and anti-discrimination. There are still significant problems in jurisdiction, where there is difficulty with accepting a discrimination complaint and properly shifting the burden of proof. NGOs working on equal treatment are often attacked. Currently, a proposal to amend the Anti-Discriminations Act is pending. It is likely that the proposal will be rejected by the Parliament, or at least the proposed legislation will probably be heavily attacked, as substantial criticism has already been put forward.

On the other hand, the Public Defender of Rights is very active in the field of discrimination, not only in issuing opinions (there is an electronic database of all opinions issued by the Public Defender of Rights),<sup>7</sup> but also as regards organising conferences and publishing their results.<sup>8</sup>

##### **3.1.3 General overview of national acts**

The most relevant and general definition of central concepts is included in the Anti-Discrimination Act. This act provides definitions of direct and indirect discrimination, harassment and sexual harassment etc. The definitions are fully in compliance with the EU directives.

##### **3.1.4 Political and societal debate and pending legislative proposals**

There has been no political or societal debate on central concepts of gender equality. Currently, an important proposal for Anti-Discrimination Act amendment has been presented, in order to introduce *actio popularis* and provide for an equal shift of the burden of proof for all grounds (currently gender and race are preferred).<sup>9</sup> This amendment does not touch the central concepts of gender equality.

#### **3.2 Sex/gender/transgender**

##### **3.2.1 Definition of gender and sex**

Czech legislation does not provide definitions of gender or sex. It is not expected that a definition of gender will be included in Czech legislation in the near future. In fact, a major debate has been launched on the Istanbul Convention and the definition of gender and gender stereotypes included in this Convention have been strongly criticised. The

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<sup>7</sup> Public Defender of Rights, searchable database of opinions: <https://eso.ochrance.cz/Vyhledavani/Search>.

<sup>8</sup> Public Defender of Rights, publications of conference proceedings: [www.ochrance.cz/diskriminace/nase-publikace/](http://www.ochrance.cz/diskriminace/nase-publikace/). English version: [www.ochrance.cz/en/discrimination/our-publications/](http://www.ochrance.cz/en/discrimination/our-publications/).

<sup>9</sup> Czech Republic, proposal for an amendment to the Anti-Discrimination Act: [www.psp.cz/sqw/historie.sqw?o=8&t=424](http://www.psp.cz/sqw/historie.sqw?o=8&t=424).

very negative attitude of some groups is basically connected to general ignorance of the basic concepts of discrimination.

### 3.2.2 Protection of transgender, intersex and non-binary persons

Section 2 paragraph 4 of the Anti-Discrimination Act 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/EC.<sup>10</sup>

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. This means that gender reassignment is actually covered by the Anti-Discrimination Act, even if it is not expressly mentioned.

### 3.2.3 Specific requirements

The Public Defender of Rights has only issued one opinion on this and there is no case law in this regard. The Public Defender of Rights had to identify whether there had been any discrimination based on gender identification on the part of the Ministry of the Interior, which refused to change the identification number of an individual with a neutral gender identity, from which it would be clear that this person had a neutral gender identity. The main argument of the Ministry was that the legal conditions had not been satisfied, as the individual in question had not undergone surgery in order to have a neutral gender identity. The Public Defender of Rights, in its opinion, accepted the argument of the Ministry of the Interior and stated that it is only the Constitutional Court or Parliament which could change the legislation in question. At the same time, the opinion defined as possibly discriminatory the communication of the Ministry with the individual, as they had been addressed as a man, even though they had repeatedly rejected a male identity.<sup>11</sup>

## 3.3 Direct sex discrimination

### 3.3.1 Explicit prohibition

Under Section 3 paragraph 2 of the Anti-Discrimination Act, '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/EC.

### 3.3.2 Prohibition of pregnancy and maternity discrimination

Discrimination based on pregnancy, maternity and paternity is defined as discrimination based on sex, under Section 2 paragraph 4 of the Anti-Discrimination Act. This complies with Directive 2006/54/EC and even exceeds the requirement of the Directive as regards paternity.

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<sup>10</sup> Bouckova, P., Havelkova, B., Koldinska, K., Kuhn, Z., Whelanova, M. (2016), *Antidiskriminační zákon - komentář* (Anti-Discrimination Act – Commentary), C.H. Beck. Prague. 2. edition.

<sup>11</sup> Opinion of the Public Defender of Rights No. 206/2012/DIS, of 29 June 2015.

### 3.3.3 Specific difficulties

In the Czech legislation, there are no specific difficulties, as regards the application of the concept of direct discrimination. However, women of child-bearing age are often discriminated against in the labour market: employers still tend to hire a young man, rather than a woman who might marry and have children. This is connected with deeply rooted gender stereotypes which assume it is women who take care of babies and look after children when they are ill.<sup>12</sup>

## 3.4 Indirect sex discrimination

### 3.4.1 Explicit prohibition

Section 3 paragraph 1 of the Anti-Discrimination Act provides a definition of indirect discrimination, as it 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 translation of EU law, so it complies.

### 3.4.2 Statistical evidence

National case law uses statistics as evidence in order to prove that indirect discrimination occurred. For example, in case 30 Cdo 4277/2010, of 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. The burden of proof can then be shifted to the defendant.<sup>13</sup>

In addition, in case I.ÚS 2482/13, of 26 May 2014, the Constitutional Court, in relation to 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. In this concrete case, they were required.

### 3.4.3 Application of the objective justification test

National courts have not yet used the objective justification test in discrimination cases, for all prohibited grounds. There is, however, a wide range of case law mentioning objective justification, but in other areas.<sup>14</sup>

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<sup>12</sup> According to statistics, 98 % of people who receive parental allowance (provided until the child is four years old) are women.

<sup>13</sup> Similarly, see judgement of the Supreme Court 21 Cdo 2754/2014, of 28 January 2016 ECLI:CZ:NS:2016:21.CDO.2754.2014.1.

<sup>14</sup> E.g. the objectively justifiable reasons for the opinion of the Constitutional Court, as argued in case IV ÚS 301/05, of 13 November 2007 ECLI:CZ:US:2007:4.US.301.05.2.

#### 3.4.4 Specific difficulties

The author does not see any specific difficulties in applying the concept of indirect sex discrimination. The case law is in accordance with the European case law and national legislation.<sup>15</sup>

### 3.5 Multiple discrimination and intersectional discrimination<sup>16</sup>

#### 3.5.1 Definition and explicit prohibition

There is no definition or explicit prohibition of multiple discrimination in Czech legislation and there is currently no proposal pending which aims to incorporate the concept of multiple and/or intersectional discrimination into national legislation.

Anti-discrimination remedies in the Czech Republic allow scope for applicants to simultaneously invoke several grounds of discrimination in the same claim or, more accurately, there is nothing in Czech legislation to prevent this. However, the possibility is not used in practice in the Czech Republic.

The current legislative architecture of protection against discrimination in the Czech Republic could impede the judicial recognition of multiple/intersectional discrimination as regards different legislation on the shifting of the burden of proof. In fact, as regards access to employment and gainful activity (Directives 2006/54/EC and 2000/78/EC), all grounds are taken into account and the shift of the burden of proof is envisaged. Section 133a of the Civil Disputes Order provides for wide material scope (access to healthcare, education, publicly provided services including housing, goods and services, social care and other public services) in relation to discrimination on the ground of ethnic origin or race. Regarding sex discrimination, only access to goods and services has been included.

#### 3.5.2 Case law and judicial recognition

There is no case law on multiple discrimination yet.

### 3.6 Positive action

#### 3.6.1 Definition and explicit prohibition

Positive action is allowed through Section 7 paragraphs 2 and 3 of the Anti-Discrimination Act which 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 eligibility for the performance of employment or an occupation is 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 Article 157(4) TFEU.

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<sup>15</sup> See following judgments of the Czech Constitutional Court: Pl. ÚS 27/12, of 7 January 2013 ECLI:CZ:US:2013:Pl.US.27.12.2; II. ÚS 1609/08, of 30 April 2009 ECLI:CZ:US:2009:2.US.1609.08.2; Pl. ÚS 29/08, of 21 April 2009 ECLI:CZ:US:2009:Pl.US.29.08.1; Pl. ÚS 83/06, of 12 March 2008 ECLI:CZ:US:2008:Pl.US.83.06.1; I. ÚS 2482/13, of 24 May 2014 ECLI:CZ:US:2014:1.US.2482.13.1.

<sup>16</sup> See for more information: Fredman, S. (2016) *Intersectional discrimination in EU gender equality and non-discrimination law*, European network of legal experts in gender equality and non-discrimination, available at [www.equalitylaw.eu/downloads/3850-intersectional-discrimination-in-eu-gender-equality-and-non-discrimination-law-pdf-731-kb](http://www.equalitylaw.eu/downloads/3850-intersectional-discrimination-in-eu-gender-equality-and-non-discrimination-law-pdf-731-kb).

### 3.6.2 Conceptual distinctions between 'equal opportunities' and 'positive action' in national law

As derives from Section 7(2) of the Anti-Discrimination Act quoted above, positive action is defined as measures aimed at ensuring equal treatment and equal opportunities. Currently, there are no conceptual distinctions in case law or opinions of the Public Defender of Rights to be found.

### 3.6.3 Specific difficulties

In practice, there is very little evidence of positive action. This provision is clearly drafted in the Anti-Discrimination Act, but employers or other entities are rather hesitant to use it.

### 3.6.4 Measures to improve the gender balance on company boards

The Czech Republic has not adopted any measures yet to improve the gender balance on company boards and there are no concrete proposals which are pending, nor are there any policy measures aimed at addressing the issue.

### 3.6.5 Positive action measures to improve the gender balance in other areas

There are no other positive action measures to improve the gender balance in other fields to be mentioned. In 2015, the Minister for Human Rights at the time<sup>17</sup> proposed amending the Electoral Act in order to introduce a 40 % quota for women on political candidate lists. However, this proposal was rejected by the government.<sup>18</sup>

## 3.7 Harassment and sexual harassment

### 3.7.1 Definition and explicit prohibition of harassment

Harassment is defined in Section 4, paragraph 1 of the Anti-Discrimination Act, which states that: '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.

### 3.7.2 Scope of the prohibition of harassment

The scope of the definition is actually mentioned in the quoted Section 4, paragraph 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.

### 3.7.3 Definition and explicit prohibition of sexual harassment

Section 2, paragraph 2 defines sexual harassment as direct discrimination, which is prohibited by the Anti-Discrimination Act. Section 4, paragraph 2 states: 'Sexual harassment shall mean any conduct of a sexual nature under paragraph 1 above'. In the

<sup>17</sup> The Minister of Human Rights used to be part of the Government. Today, there is just the Government Commissioner for Human Rights, a function, which forms part of the Office of Government.

<sup>18</sup> See e.g. [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/](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/).

view of the expert, this complies with the EU definition, which is to be found in the Recast Directive.

#### 3.7.4 Scope of the prohibition of sexual harassment

The scope of the definition is mentioned in Section 4 paragraph 1 quoted 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.

#### 3.7.5 Understanding of (sexual) harassment as discrimination

Section 2, paragraph 2 defines harassment as direct discrimination, which is prohibited by the Anti-Discrimination Act.

#### 3.7.6 Specific difficulties

In the Czech Republic, sexual harassment as a concept is largely rejected by the majority of society. This is very much connected with gender stereotypes. A very interesting example was the #MeToo campaign, which was much disputed and often not understood. In addition, the still ongoing debate on Istanbul Convention showed how deeply stereotypes are rooted in Czech society and how difficult it will be to finalise the ratification process.

### **3.8 Instruction to discriminate**

#### 3.8.1 Explicit prohibition

Section 4, paragraph 4 of the Anti-Discrimination Act defines an instruction to discriminate as, 'the conduct of a person who misuses the subordinate position of another to discriminate against a third party'. Section 2, paragraph 2 considers an instruction to discriminate to be a prohibited form of discrimination.

Section 4, paragraph 5 of the Anti-Discrimination Act also defines incitement to discrimination as, 'the conduct of a person who persuades, confirms or encourages another to discriminate against a third party'. Section 2, paragraph 2 considers incitement to discrimination to be a prohibited form of discrimination.

#### 3.8.2 Specific difficulties

There are currently no specific difficulties to be mentioned.

### **3.9 Other forms of discrimination**

Section 2, paragraph 5 of the Anti-Discrimination Act states: 'Discrimination is also behaviour where a person is treated less favourably on the basis of an alleged characteristic'. The act covers all the grounds mentioned above: race, ethnic origin, nationality, sexual orientation, age, disability, religion, belief or opinions. The cited provision covers assumed/alleged discrimination.

In this regard, Section 16 of the Labour Code should also be mentioned, as the scope of this provision is quite broad. It states: 'Employers are obliged to ensure equal treatment of all employees in terms of their working conditions, remuneration for work and other payments in cash and in kind, training and opportunities for career advancement'.



### **3.10 Evaluation of implementation**

The Czech legislation which implements the EU law concepts discussed in this chapter is quite satisfactory, as regards the level of implementation. Sometimes, the implementation provisions slightly exceed EU law. This might be connected with certain traditional concepts, e.g. with generous social protection.

What is very problematic, however, is the daily application of these concepts and of anti-discrimination law in general. Czech society is quite sceptical as regards identifying discrimination in legal relationships, including employment. There have only been a few discrimination cases and there are very few researchers (of whom just a handful of lawyers) who systematically tackle the issue of discrimination.

Generally speaking, the most concerning issue in the Czech context is how relatively good legislation can be enforced in practice, so that the law can serve to improve gender equality.

### **3.11 Remaining issues**

There are no remaining issues regarding the central concepts of gender equality law.

## **4 Equal pay and equal treatment at work (Article 157 of the Treaty on the Functioning of the European Union (TFEU) and Recast Directive 2006/54)**

### **4.1 General (legal) context**

#### **4.1.1 Surveys on the gender pay gap and the difficulties linked of realising pay**

The following recent studies on the gender pay gap may be of interest:

The study *Gender pay gap – a problem for all of us*<sup>19</sup> shows how the problem of pay inequalities is perceived by the Czech public as well as by individual expert groups which address this issue. It also includes personal experiences of people in specific labour market environments. As the first such publication in the Czech context, it also maps the perspectives of individual actors on wage bargaining, monitoring and possible solutions to unequal pay. In addition to perspectives of employers and workers, it also includes the viewpoint of the state and its legislative and control bodies, such as the State Labour Inspection Office, the Labour Office, trade unions and unions, employers' organisations and the Public Defender of Rights Office. The book also provides recommendations for addressing the gender pay gap at national level as well as in the public administration, education and private sectors.

The study *Gender pay gap in the Czech Republic*<sup>20</sup> presented the following key findings.

The Czech Republic is a country with one of the highest levels of pay inequalities between women and men in the same working position and at the same workplace. While in Western European countries the gender pay gap for the same job and for work of the same value is 5 %, women in the Czech Republic are paid on average 11 % less than men for the same job with the same employer.

The widest gender pay gap sorted by level of education can be found between men and women with university or high school education and this even applies to the pay gap in the case of equal work with the same employer (10 %). The pay gap between university-educated women and men has increased in the past 10 years.

The comparison of the public and private sectors shows that gender pay gaps are generally lower in the public sector, but they are still significant there. The salaries of women and men performing the same work for the same employer in the public sector differ on average by 5 %, as compared to a pay gap which is roughly double this in the private sphere.

Differences can be found in different areas of the labour market: in the financial and insurance sectors and in the construction sector, the gender pay gap is very wide; women in these sectors receive 17 % or 14 % less than men working in the same job. In contrast, women receive 5-6 % less than men working in the same job in the education and administration sectors.

The average gender pay gap between women and men aged 25 to 55 was approximately 26 % in 2016.

The differences in the individual positions and characteristics of men and women, such as leadership, full-time jobs, education, age, etc., account for only 0.54 percentage

<sup>19</sup> Křížková, A., Marková Volejníčková, R., Vohlídalová, M. (2018), *Genderové nerovnosti v odměňování: problém nás všech (Gender pay gap – a problem for all of us)*. Sociologický ústav AV ČR: Praha. Available at: [www.soc.cas.cz/publikace/genderove-nerovnosti-v-odmenovani-problem-nas-vsech](http://www.soc.cas.cz/publikace/genderove-nerovnosti-v-odmenovani-problem-nas-vsech).

<sup>20</sup> Křížková, A., Pospíšilová, K., Maříková, H., Marková Volejníčková, R. (2018), *Rozdíly v odměňování žen a mužů v ČR (Gender pay gap in the Czech Republic)*, MPSV: Praha. Available at: [www.mpsv.cz/files/clanky/35208/Studie\\_c.2\\_pro\\_web.pdf](http://www.mpsv.cz/files/clanky/35208/Studie_c.2_pro_web.pdf).

points of the explained part of the gender pay gap, which itself represents 11 percentage points of the unadjusted gender pay gap in the Czech Republic. The segregation of women and men into different jobs contributes 3.53 percentage points to the explained part of the gender pay gap, which is almost one-third of the explained part of the gender pay gap.

The largest portion of the explained part of the gender pay gap is caused by company / workplace characteristics (such as average wages in the workplace and sector) and gender segregation into different companies / workplaces.

Women are better paid in categories in which they are more represented.

Another study by the same team of gender researchers<sup>21</sup> presented the following key findings.

Gender differences in pay are the result of cultural aspects of society as a whole and gender stereotypes that cause female work to be undervalued. This is also significantly related to the lack of transparency in remuneration systems and a certain 'taboo' around the topic of remuneration in Czech society. Trade union attitudes and negotiations play an important role in this respect, as well as employers and other actors. Remuneration inequalities are fundamentally reflected in the structure of the labour market, in particular gender segregation and different employment rates among men and women. Harmonising work and private life is difficult, as there is a lack of childcare facilities, especially for children under the age of two years. The situation in relation to care for elderly people is similarly difficult.

Analysis of the gender pay gap by different factors has highlighted which groups of people are at risk of the highest gender pay gap. From a job perspective, the biggest gender pay gap is seen in highly specialised professions and managerial positions, as well as in jobs with a very small representation of women.

#### 4.1.2 Surveys on the difficulties of realising equal treatment at work

As an example of surveys on the difficulties in realising equal treatment at work following can be mentioned.

The study on parental benefits<sup>22</sup> concludes that the 2008 reform of the parental allowance (the main family benefit for parents of children under four years of age) contributed positively to the employment of mothers, especially women with higher education. It showed that there is interest among young mothers in returning to the labour market.

Equal treatment of men and women in access to politics is discussed in a study on the development of access by men and women to politics in 2003-2013.<sup>23</sup>

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<sup>21</sup> Křížková, A., Pospíšilová, K., Maříková, H., Marková Volejníčková, R. (2017), *Aktuální rozdíly v odměňování žen a mužů v ČR. Hluboká analýza statistik a mezinárodní srovnání* (Current differences in the remuneration of women and men in the Czech Republic. In-depth analysis of statistics and international comparison), MPSV: Praha.

Available at: [www.rovnaodmena.cz/wp-content/uploads/2017/12/Aktu%C3%A1ln%C3%AD-rozd%C3%ADly-v-odm%C4%9B%C5%88ov%C3%A1n%C3%AD-%C5%BEen-a-mu%C5%BE%C5%AF-v-%C4%8CR.pdf](http://www.rovnaodmena.cz/wp-content/uploads/2017/12/Aktu%C3%A1ln%C3%AD-rozd%C3%ADly-v-odm%C4%9B%C5%88ov%C3%A1n%C3%AD-%C5%BEen-a-mu%C5%BE%C5%AF-v-%C4%8CR.pdf).

<sup>22</sup> Pertold-Gebická, B. (2018) *Impact of parental benefits reform in 2008 on mothers' occupational allocation*. Cerge Idea. Available at: [https://idea.cerge-ei.cz/files/IDEA\\_Studie\\_8\\_2018\\_Dopady\\_reformy\\_rodicovskych\\_prispevku/mobile/index.html#p=4](https://idea.cerge-ei.cz/files/IDEA_Studie_8_2018_Dopady_reformy_rodicovskych_prispevku/mobile/index.html#p=4).

<sup>23</sup> Šprincová, V., Adamusová, M. (2014) *Politická angažovanost žen v České republice* (Political engagement of women in the Czech Republic). Formu 50%. Available at: [https://aa.ecn.cz/img\\_upload/666f72756d35302d6669313030313139/politicka-angazovanost-zen-v-ceske-republice\\_forum\\_1.pdf](https://aa.ecn.cz/img_upload/666f72756d35302d6669313030313139/politicka-angazovanost-zen-v-ceske-republice_forum_1.pdf).

Based on modern experimental methods, an IDEA study<sup>24</sup> did not confirm gender discrimination by employers in the selection of new employees (men versus women with children).

#### 4.1.3 Other issues

In this context, there are no other issues.

#### 4.1.4 Political and societal debate and pending legislative proposals

The Ministry of Labour and Social Affairs runs a large-scale project called '22 % to Equality' (the general gender pay gap in the Czech Republic amounts to 22 %). The studies mentioned in Section 4.1.1 are a result of this project.

The Government Office is currently preparing a Gender Equality Action Plan, which is due to be published in 2020, and a Government Strategy for Equal Treatment for Men and Women 2020-2024.

### 4.2 Equal pay

#### 4.2.1 Implementation in national law

Section 110 of the Labour Code states that all employees shall be remunerated equally if they perform equal work or work of equal value.

#### 4.2.2 Definition in national law

Section 5, paragraph 1 of the Anti-Discrimination Act defines pay using the term 'remuneration', which 'shall mean any compensation, 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.

#### 4.2.3 Explicit implementation of Article 4 of Recast Directive 2006/54

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.

Section 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. 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.

#### 4.2.4 Related case law

With regard to the gender pay gap, currently just one relevant case may be mentioned.

A woman worked as a head physician at a hospital and, compared to her male colleagues, she was earning considerably less. The Public Defender of Rights did not open an investigation, but offered the attorney a legal consultation in an opinion No.

<sup>24</sup> Bartoš, V. (2015) *(Ne)Diskriminace žen v důsledku mateřství* ((Non)Discrimination of women as a consequence of motherhood). Cerge Idea. Available at [https://idea.cerge-ei.cz/files/IDEA\\_\(Ne\)diskriminace\\_zen\\_studie/mobile/index.html](https://idea.cerge-ei.cz/files/IDEA_(Ne)diskriminace_zen_studie/mobile/index.html).

89/2012/DIS/JKV issued in June 2012. The Public Defender of Rights came to the conclusion that if a female employee proves a difference in remuneration compared to her male colleagues performing work of equal value, it is up to the employer to provide evidence that the difference is not connected to the gender of the employee. If the employer remunerates their employees according to a system which lacks transparency, they must prove in a potential legal proceeding that the system is set up to be neutral and does not lead to discrimination in remuneration.

The court had to decide whether the position of the head physician was different because different departments at the hospital differ from each other (i.e. it was not the same job for which the same remuneration would be required) or whether it was, indeed, work of the same value within the meaning of Section 110 of the Labour Code.

The Court concluded that work of the same value must be defined carefully, taking into account e.g. number of medical procedures performed, whether it is a surgical field or not, the ability of the head physician to ensure the functioning of the department by attracting a large number of patients (with financial resources), length of practice, expertise and the reputation of the primary practitioner in the field.<sup>25</sup> The Court also concluded that an assumption that the work was of the same value cannot be derived just from the fact that the labour contracts of the two employees in question were very similar.

#### 4.2.5 Permissibility of pay differences

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.

#### 4.2.6 Requirement for comparators

There is no case law where a concrete case has been discussed as a case of discrimination and a comparator was not present.

#### 4.2.7 Existence of parameters for establishing the equal value of the work performed

Section 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. 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.

#### 4.2.8 Other relevant rules or policies

There are no other relevant rules or policies to be mentioned.

#### 4.2.9 Wage transparency

Wage transparency is one of the weaknesses of Czech national legislation. There is no obligation of the employer in this regard, moreover, there are still many employment contracts where employees are obliged to keep silence about their salary.

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<sup>25</sup> Czech Republic, Judgement No. 78 EC 1342/2011 of the District Court in Blansko, of 30 June 2015. No ECLI available.

#### 4.2.10 Implementation of the transparency measures set out by European Commission's Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women

This recommendation has not really been much taken into account. Currently, however, a new Government Action Plan on Equal Pay is being prepared, which should be published by spring 2020.

#### 4.2.11 Other measures, tools or procedures

There is nothing more to be mentioned.

### **4.3 Access to work, working conditions and dismissal**

#### 4.3.1 Definition of the personal scope (Article 14 of Recast Directive 2006/54)

Equal access to employment, vocational training, working conditions etc. are guaranteed to all employees in the public and private sectors. Section 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.

General provisions of the Anti-Discrimination Act (especially Section 1, paragraph 1) provide for equal treatment in access to employment, vocation, entrepreneurship, self-employment etc.

National legislation does not include a definition of a worker, but there is a definition of 'dependent work' in Section 2 of the Labour Code: '(1) dependent work is work that is performed in a relationship of the employer's superiority and the employee's subordination, on behalf of the employer, according to the employer's instructions. The employee performs such work for the employer in person. (2) Dependent work must be performed for a wage, salary or remuneration for work, at the employer's expense and liability, during working hours at the employer's workplace, or at another agreed place'.

#### 4.3.2 Definition of the material scope (Article 14(1) of Recast Directive 2006/54)

Sections 1 and 5 of the Anti-Discrimination Act.

Section 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.

Section 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, it is therefore covered by Act No. 435/2004 Coll.

#### 4.3.3 Implementation of the exception on occupational activities (Article 14(2) of Recast Directive 2006/54)

Section 6 paragraph 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.'

#### 4.3.4 Protection against the non-hiring, non-renewal of a fixed-term contract, non-continuation of a contract and dismissal of women connected to their state of pregnancy and/or maternity

National law provides for special protection against the non-hiring, non-prolongation of contracts and dismissal of women, in relation to their state of pregnancy and/or maternity (e.g. Section 16, 47 and 53 of the Labour Code). The level of protection is sufficient.

#### 4.3.5 Implementation of the exception on the protection for women in relation to pregnancy and maternity (Article 28(1) of Recast Directive 2006/54)

No exception on protection for women, in particular as regards pregnancy and maternity, has been implemented in Czech law.

#### 4.3.6 Particular difficulties

There are no particular difficulties related to the application and implementation of national law in relation to equal access to work, vocational training, employment contracts, working conditions, promotion and protection against dismissal on grounds connected to sex. The legislation is sufficiently generous and protective.

The problem is in the practical application of the law. Women often face discriminatory questions during recruitment processes, as most women are carers, their career is often interrupted for more than five years (due to very long parental leave, which may last until the child is three years old). Women often do not obtain higher positions in companies, as they are involved in caring for sick children or elderly parents. They are believed not to be as loyal employees as their male counterparts.

#### 4.3.7 Positive action measures (Article 3 of Recast Directive 2006/54)

Positive action is allowed through Section 7, paragraph 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.'

In fact, no significant positive action measures can be reported. The legislative provision on positive measures only exists on paper.

#### **4.4 Evaluation of implementation**

Directives on equal access to employment are well implemented in the legislation, the practical application remains a problem. Discrimination in access to employment still occurs, but there are almost no cases: women do not usually take cases to court, as it takes a long time, is costly and the outcome is by no means sure.

#### **4.5 Remaining issues**

There are no remaining issues.



## **5 Pregnancy, maternity and leave related to work-life balance for workers (Directive 92/85, relevant provisions of Directives 2006/54 and 2010/18)<sup>26</sup>**

### **5.1 General (legal) context**

#### **5.1.1 Surveys and reports on the practical difficulties linked to work-life balance**

There is one general study by Eurofound in which data from the Czech Republic are included.<sup>27</sup>

The study came to the conclusion that a good number of countries with available data continue to have low levels of participation by fathers (Bulgaria, Croatia, Czech Republic, Hungary and Romania), despite some partial growth (Estonia for those receiving lower amounts of compensation or Slovakia).

In 2018 the Public Defender of Rights published a Recommendation on Work-Life Balance in the Civil Service.<sup>28</sup> This Recommendation is addressed, in particular, to ministries and calls for more personnel focusing on work-life balance on a daily basis and on ministries establishing their own services, especially childcare.

A series of studies on some (especially economic) aspects of harmonising family and working life is available at: <http://idea-en.cerge-ei.cz/publicationslist>. The studies reflect the realities of the Czech institutional setting and demographic situation. With few exceptions, the studies contain new empirical findings supported by original IDEA research based on the best data available for this purpose in the Czech Republic.

The study, *Czech women – potential of the country not used*,<sup>29</sup> showed in the form of age profiles of employment that the Czech Republic is experiencing a significantly higher decline in the employment of women of child-bearing age than in the Western countries of France, the United Kingdom and the USA. At the same time, it also showed that participation in the labour market is very high for Czech women before and after the typical age of motherhood. Subsequently, however, participation decreases more sharply again in older women than in the countries under comparison. Relatively early retirement may be associated with older Czech women taking up caring roles either for elderly parents (in the case of insufficient supply of palliative care, for example) or to provide 'grandmother' services, due to a lack of crèches and nurseries (see future IDEA studies).

The study entitled *Public financing for more pre-school places pays off*<sup>30</sup> analyses the costs and benefits of supporting places in schools. The results showed that once the direct and indirect, immediate and long-term costs and revenues were included, one

<sup>26</sup> See Masselot, A. (2018) *Family leave: enforcement of the protection against dismissal and unfavourable treatment*, European network of legal experts in gender equality and non-discrimination, available at [www.equalitylaw.eu/downloads/4808-family-leave-enforcement-of-the-protection-against-dismissal-and-unfavourable-treatment-pdf-962-kb](http://www.equalitylaw.eu/downloads/4808-family-leave-enforcement-of-the-protection-against-dismissal-and-unfavourable-treatment-pdf-962-kb) and McColgan, A. (2015) *Measures to address the challenges of work-life balance in the EU Member States, Iceland, Liechtenstein and Norway*, European network of legal experts in gender equality and non-discrimination, available at [www.equalitylaw.eu/downloads/3631-reconciliation](http://www.equalitylaw.eu/downloads/3631-reconciliation).

<sup>27</sup> Eurofound (2019), *Parental and paternity leave – Uptake by fathers*, Publications Office of the European Union, Luxembourg.

<sup>28</sup> Available at: [www.ochrance.cz/fileadmin/user\\_upload/projekt\\_ESF/2018\\_0157\\_Doporuceni\\_VOP\\_sladovani\\_02\\_WEB.PDF](http://www.ochrance.cz/fileadmin/user_upload/projekt_ESF/2018_0157_Doporuceni_VOP_sladovani_02_WEB.PDF).

<sup>29</sup> Kalíšková, K., Münich, D. (2012) *Češky: nevyužitý potenciál země* (Czech women: potential of the country not used), Idea – Cerge EI. Available at: [http://idea.cerge-ei.cz/documents/kratka\\_studie\\_2012\\_03.pdf](http://idea.cerge-ei.cz/documents/kratka_studie_2012_03.pdf).

<sup>30</sup> Kalíšková, K., Münich, D., Pertold, F. (2016) *Veřejná podpora míst ve školkách se vyplatí: analýza výnosů a nákladů* (Public financing for more pre-school places pays off: analysis of benefits and costs), Idea – Cerge EI Available at: [https://idea.cerge-ei.cz/files/IDEA\\_Studie\\_3\\_2016\\_Verejna\\_podpora\\_mist\\_ve\\_skolkach/mobile/index.html](https://idea.cerge-ei.cz/files/IDEA_Studie_3_2016_Verejna_podpora_mist_ve_skolkach/mobile/index.html).

place at a public nursery represents a net financial income of approximately CZK 10 000 per year for public budgets. In addition to this, it is necessary to add additional non-financial income (benefit) for parents and the increased motivation to have children.

*Why European women are saying no to (more) babies*<sup>31</sup> is a study produced for the Czech context which mediates a significant finding of foreign research, showing that the barrier to higher birth rates in the Czech Republic (and some other countries) is the low willingness among women to have children (or more children) and not a lack of willingness among men (fathers). The reason for this is the complexity of combining childcare and careers, which mostly affects mothers.

A study on the tax system<sup>32</sup> shows that the Czech system of taxes and levies is set so that it financially disadvantages the participation of mothers of small children in the labour market. In addition, the study also includes a specific proposal to change the parametric reform of the insurance system, which could significantly improve the situation, with a financially viable solution for the state budget.

*Supporting families with children through the tax and welfare system*<sup>33</sup> shows that the Czech system of support for families with children focuses too much on direct financial support through social benefits, at the expense of indirect support. In fact, there is a lack of publicly subsidised services for families, such as high-quality preschool care facilities.

A study on the relationship between employment of women and parental leave<sup>34</sup> shows that Czech women who take long periods of parental leave have interrupted careers and this causes significant loss of human capital. The professional development of mothers is thus negatively affected by several years of interruption after returning to work. The study estimates that reducing the parental leave period would lead mothers to have access to better jobs, even several years after their return from parental leave. This may be due to the fact that their career will not be interrupted for so long, so that human capital is not lost.

*From maternity to unemployment*<sup>35</sup> documents the negative effects of maternity and parenting on women's unemployment after maternity / parental leave.

Another study documents the negative effects of motherhood on women's lifetime earnings.<sup>36</sup> The widest gender pay gap has been found among workers aged 35-39 years old (32 %) and workers with multiple pre-school-age children (people with one child – 20 %; two children – 32 %; and three children – 35 %).

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<sup>31</sup> Doepke, M., Kindermann F. (2017) Proč ženy v Evropě nechtějí mít více dětí (Why European women are saying no to (more) babies), Idea – Cerge EI Available at: <https://idea.cerge-ei.cz/files/IDEA Studie 1 2017 Proc zeny v Evrope nechteji mit vice deti/mobile/index.html>.

<sup>32</sup> Šatava, J. (2016) Daňový systém snižuje motivaci matek s menšími dětmi k práci: doporučení a jeho vyhodnocení (The tax system reduces motivation to return to work among mothers with young children: recommendations and evaluation), Idea – Cerge EI Available at: <https://idea.cerge-ei.cz/files/IDEA Studie 18 2016 Danovy system a motivace matek k praci/mobile/index.html>.

<sup>33</sup> Šatava, J. (2016) Podpora rodin s dětmi prostřednictvím daňově dávkového systému (Supporting families with children through the tax and welfare system), Idea – Cerge EI Available at: <https://idea.cerge-ei.cz/files/IDEA Studie 5 2016 Danova podpora rodin s detmi/mobile/index.html>.

<sup>34</sup> Pertold-Gebická, B. *Impact of parental benefits reform in 2008 on mothers' occupational allocation*. Cerge Idea. Study 8/2018. Available at: <https://idea.cerge-ei.cz/files/IDEA Studie 8 2018 Dopady reformy rodicovskych prispevku/mobile/index.html#p=4>.

<sup>35</sup> Bičáková, A., Kalíšková, K. *Od mateřství k nezaměstnanosti: postavení žen s malými dětmi na trhu práce* (From maternity to unemployment: women with young children returning to the labour market) Idea – Cerge EI Available at: <https://idea.cerge-ei.cz/files/IDEA Studie 8 2015 Od materstvi k nezamestnanosti/mobile/index.html>.

<sup>36</sup> Pytlíková, M. (2015) *Rozdíly ve výši výdělku ve vztahu k mateřství a dítěti v rodině* (Wage differences related to motherhood and children in the family), Idea – Cerge EI Available at: <https://idea.cerge-ei.cz/files/IDEA Studie 11 Rozdily vydelku ve vztahu k materstvi/mobile/index.html>.

Finally, a study on pensions<sup>37</sup> quantifies the negative impact of maternity on the amount of old-age pension. The study calculates that motherhood and parenthood reduces women's retirement benefits by an average of several hundred Czech crowns (CZK) per month. This is caused by both lower levels of employment and lower earnings due to parenthood. However, the average reduction in women's retirement benefits due to parenthood never exceeds 8 %.

#### 5.1.2 Other issues

The Czech Republic is one of the countries with the lowest number of part-time workers. If people do work part-time, they are mainly women with family responsibilities.

Parental leave in the Czech Republic is very long – three years of parental leave and the applicable benefit (parental allowance) can be received until the child reaches four years of age. 98 % of people who claim the benefit and remain at home with the child are women.

In the Czech Republic there are not enough childcare facilities. Childcare facilities for small babies are almost non-existent and such services are not commonly used. In 2018, there was a proposal for children to be entitled to a kindergarten place from the age of two (currently the entitlement is from three years old). This proposal was rejected.

#### 5.1.3 Overview of national acts on work-life balance issues

Acts on work-life balance issues 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. 234/2014 Coll., on the civil service;
- Act No. 561/2004 Coll., Schools Act;
- Act No. 187/2006 Coll., on sickness insurance;
- Act No. 117/1995 Coll., on state social support.

#### 5.1.4 Political and societal debate and pending legislative proposals

Work-life balance is not an important topic for societal debate, the debate is more focused on social support for families. However, in such a debate, it is automatically assumed that it is women who care for children or elderly people. There is no proposal for e.g. an act on work-life balance and current benefits are constantly being increased. This is more for political (populist) reasons than due to a real interest in work-life balance in the Czech Republic.

## 5.2 Pregnancy and maternity protection

#### 5.2.1 Definition in national law

The national legislation 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/EEC.

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<sup>37</sup> Šatava, J. (2016) *Vliv mateřství na výši starobního důchodu* (Impact of motherhood on retirement benefits), Idea – Cerge EI Available at: [https://idea.cerge-ei.cz/files/IDEA\\_Studie\\_13\\_Vliv\\_materstvi\\_na\\_starobni\\_duchod/mobile/index.html](https://idea.cerge-ei.cz/files/IDEA_Studie_13_Vliv_materstvi_na_starobni_duchod/mobile/index.html).

#### 5.2.2 Obligation to inform employer

There is no concrete obligation for a pregnant woman to inform her employer of her pregnancy.

#### 5.2.3 Case law on the definition of a pregnant worker, a worker who has recently given birth and/or a worker who is breastfeeding

There is no particular case law in this regard.

#### 5.2.4 Implementation of protective measures (Article 4-6 of Directive 92/85)

Section 41 of 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 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 may 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.

#### 5.2.5 Case law on issues addressed in Article 4 and 5 of Directive 92/85

There is no case law on this issue, employers do not have problems with transferring pregnant women if necessary.

#### 5.2.6 Prohibition of night work

Night work is not generally prohibited for pregnant women, but there is an obligation for the employer to transfer a pregnant or breastfeeding woman, or a mother until nine months after delivery, from night work to day work, if she requests this (Section 41 of the Labour Code).

#### 5.2.7 Case law on the prohibition of night work

There is no case law.

#### 5.2.8 Prohibition of dismissal

Pregnant women and parents looking after children under three years of age who are on parental leave are protected against dismissal by Section 53 of the Labour Code.

A woman on maternity leave (and an employee on parental leave for the period that maternity leave can last) can only be dismissed if the employer's business or a relevant part thereof ceases to operate (Section 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 eight weeks before her estimated date of delivery) can be dismissed if the necessary conditions for immediately ceasing the labour relationship are met.

If, for example, the employee's labour relationship ceases, for instance, because it was a relationship for a finite period, maternity benefit continues to be paid from the sickness insurance system.

#### 5.2.9 Redundancy and payment during maternity leave

An employee on maternity leave cannot be made redundant. The maternity leave is protected and an employee on maternity leave can be dismissed only in the case of a business ceasing to operate.

#### 5.2.10 Employer's obligation to substantiate a dismissal

The employer is always obliged to indicate substantiated grounds for the dismissal in writing. In fact, Section 48 of the Labour Code states: '(1) A notice of termination must be in writing, otherwise it shall not be taken into account. (2) The employer may give notice to the employee only on the grounds expressly provided for in Section 52. ... (4) If the employer gives notice to the employee (Section 52), he must define the reason in the notice in fact so that it cannot be confused with another reason. The reason for the termination may not be changed subsequently.'

#### 5.2.11 Case law on the protection against dismissal

There is no significant case law to report.

### 5.3 Maternity leave

#### 5.3.1 Length

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

#### 5.3.2 Obligatory maternity leave

Section 195, paragraph 5 of the Labour Code 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'. This means there is a 14-week obligatory period of maternity leave before and after the birth and it should not end less than six weeks after the birth.

#### 5.3.3 Legal protection of employment rights (Article 5, 6 and 7 of Directive 92/85)

Article 41 of the Labour Code, in connection with order No. 180/2015 Coll., on prohibited work and workplaces,<sup>38</sup> 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 temporarily transfer her to more suitable work for an equal wage. Similar rules apply to mothers for nine months after the birth of their children and to breastfeeding women. Pregnant women who carry out night work may request to be transferred to day work and the employer may 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.

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<sup>38</sup> Czech Republic, 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 may exceptionally perform such work because of vocational training (Decree on prohibited work and workplaces).

#### 5.3.4 Legal protection of rights ensuing from the employment contract

According to Section 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 the same job must be guaranteed and, after a return from parental leave (which can last for up to three years), the same job as agreed in the labour agreement shall be guaranteed by the employer.

#### 5.3.5 Level of pay or allowance

Maternity benefit (financial assistance during maternity) is paid from the sickness insurance system (Sections 32-38 of the Sickness Insurance Act), in the same way as 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, so maternity benefit is higher.

The ceiling for the payment for 2019 is CZK 40 080, which is approximately EUR 1 545 per month.

#### 5.3.6 Additional statutory maternity benefits

Some large foreign firms provide maternity benefits but the author is unfortunately unable to give a specific example, although the practice does occur, albeit fairly rarely.

#### 5.3.7 Conditions for eligibility (Article 11(4) of Directive 92/85)

Sections 32-38 of the Sickness Insurance Act set out the conditions of eligibility for maternity benefit.

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 period<sup>39</sup> 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 caring 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 care for the child switching to the father, the payment of maternity benefit to the mother is halted and it is then paid to the father from his sickness insurance, if he fulfils the conditions for entitlement to its payment, and vice versa.

#### 5.3.8 Right to return to the same or an equivalent job (Article 15 of Directive 2006/54)

The Labour Code provides for the right to return to the same job and workplace after maternity leave and to the same type of work after parental leave.

According to Section 47 of the Labour Code, after maternity leave, the mother (or a father 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 Section 47 of the Labour Code. This provision is also applicable to civil servants. If the woman returns after a longer period (parental leave can last a maximum of three years), she is entitled to the job defined in her labour

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<sup>39</sup> 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.

contract. The Labour Code does not mention anything about an improvement in working conditions.

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

#### 5.3.9 Legal right to share maternity leave

Section 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 the child is born, for the amount of time applied for until the child reaches the age of three. The employer must guarantee leave, 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 (Section 32(1)e) of Act No. 187/2006 Coll. on sickness insurance).

There are no specific conditions or limitations and 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 must 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 attend there for more than 46 hours per month.

Maternity benefit must be taken by one or the other parent full-time, it is not possible to share it on a part-time basis.

The basis on which leave is taken is imposed by law, as explained above.

The size of employer does not play any role as a qualifying condition, nor is the nature of the entitlement adjusted according to the size of the employer.

The sharing arrangement for maternity leave, as described above, operates separately. Paternity leave as a leave only does not exist, parental leave is taken by the father, if he applies for paternity benefit. Paternity benefit can be taken only until the child reaches six weeks of age, this benefit has different conditions and paternity benefit is separate.

#### 5.3.10 Case law

An opinion of the Public Defender of Rights can be mentioned in this regard.

It was issued in the case of a researcher who wanted to gain access to a publicly subsidised grant aimed at supporting post-doctoral researchers. One of the conditions to receiving the support was that the person had to have obtained a doctoral degree no more than three years ago. The researcher – a woman – argued that such a condition was discriminatory for (mainly) women with parental responsibilities. The Public Defender of Rights did not find enough reasons to identify discrimination in this particular case. In its opinion No. 39/20132 / DIS the Public Defender of Rights concluded that discrimination did not take place.

### 5.4 Adoption leave

#### 5.4.1 Existence of adoption leave in national law

Section 197 of the Labour Code provides for adoption leave.

According to the above-mentioned provision, adoption leave can last until the child reaches three years of age; if a child is older than three years of age, but younger than seven, when adopted, the leave can be taken for 22 weeks. In 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.

#### 5.4.2 Protection against dismissal (Article 16 of Directive 2006/54)

Sections 53 and 197 of the Labour Code provide for protection against dismissal for workers on adoption leave.

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 organisation has ceased operations. 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 for biological parents. The Labour Code is silent as regards improvements in working conditions.

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

#### 5.4.3 Case law

No relevant case law has been published yet.

### 5.5 Parental leave

#### 5.5.1 Implementation of Directive 2010/18

The Labour Code and Act No. 117/1995 Coll. on state social support (hereinafter the State Social Support Act) apply. The first act regulates parental leave, the second one the parental allowance.



### 5.5.2 Applicability to public and private sectors (Clause 1 of Directive 2010/18)

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

### 5.5.3 Scope of the transposing legislation

The national legislation on parental leave is applicable to both the public and private sectors. 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 entitled to parental leave. However, most agency workers work on a fixed-term basis, so the above also applies to them.

### 5.5.4 Length 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 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 three) has not been changed since it was introduced. The maximum length of parental leave is three years (but parental allowance may be provided until the child reaches four years of age). There is no difference in the duration of parental leave in the public sector and the private sector. The maximum age of the child 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 for the first year and for the father to take parental leave for another year or more when the mother returns to work.

### 5.5.5 Age limits

Workers are entitled to parental leave until the child reaches the age of three years, but parental allowance can be taken until the child reaches four years.

### 5.5.6 Individual nature of the right to parental leave

The right to parental leave is individual for each of the parents and it can also be taken simultaneously (Section 196 of the Labour Code), 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. There is also no need to reserve part of the parental leave for each parent on a 'take it or leave it' basis.

### 5.5.7 Transferability of the right to parental leave

There is no necessity to transfer parental leave, as both parents can take it at the same time.

### 5.5.8 Form of parental leave

Parental leave, provided by an employer, is in general meant as full-time leave.

The situation is different for parental allowance: 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. Until the child reaches two years of age, he or she may be placed in a kindergarten for a maximum of 46 hours per month. After the child reaches the age of two, they may also be placed in a kindergarten and 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) – Section 32 of the State Social Support Act.

#### 5.5.9 Work and/or length of service requirements (Clause 3(b) of Directive 2010/18)

There are no work or length of service requirements.

#### 5.5.10 Notice period

There is no notice period, the employee is even entitled to prolong their parental leave as often as they want, until the child reaches three years of age. The maximum length of parental leave is therefore three years. The employer is obliged to accept any prolongation of parental leave (Section 196 of the Labour Code).

#### 5.5.11 Postponement of parental leave (Clause 3(c) of Directive 2010/18)

There are no circumstances defined in which the employer is allowed to postpone the granting of parental leave for justifiable reasons related to the operation of the organisation. The employer must always respect the wish of employee and provide parental leave accordingly.

#### 5.5.12 Special arrangements for small firms (Clause 3(d) of Directive 2010/18)

There are no special arrangements for small firms.

#### 5.5.13 Special rules and exceptional conditions for parents of children with a disability or long-term illness (Clause 3(3) of Directive 2010/18)

There are no such exceptional arrangements for the leave.

The only special arrangements are connected with parental allowance. According to the State Social Support Act, the entitlement to parental allowance can be prolonged under specific conditions. If a child is ill for a long period or is disabled, the entitlement to parental allowance also continues to apply if 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 for pre-school disabled children; if at least one of the parents is disabled it is four hours a day).<sup>40</sup>

#### 5.5.14 Measures addressing the specific needs of adoptive parents (Clause 4 of Directive 2010/18)

No special measures have been adopted to address the specific needs of adoptive parents. In relation to parental leave, they are considered as parents.

Nevertheless, Section 197 of the Labour Code specifies some issues in connection with adoptive and foster parents: 'The right to maternity and parental leave shall also be granted to an employee who has taken the child into their care, replacing the care of the parents on the basis of a decision by the competent authority, or a child whose mother

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<sup>40</sup> Compare Section 31 Paragraph 3 of Act No. 117/1995 Coll.

has died... Parental leave shall be valid from the date responsibility is assumed for the child until the day when the child reaches the age of three years... If responsibility for a child is taken after the age of three, but no older than seven years of age, parental leave shall be granted for 22 weeks. If responsibility for a child is taken before the age of three so that the period of 22 weeks has elapsed after they reach the age of three, parental leave expires 22 weeks from the date responsibility for the child is assumed.'

#### 5.5.15 Provisions protecting workers against less favourable treatment or dismissal (Clause 5(4) of Directive 2010/18)

The Czech Labour Code includes general equal treatment provisions, including employees taking parental leave.<sup>41</sup> 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.

#### 5.5.16 Right to return to the same or an equivalent job (Clause 5(1) of Directive 2010/18)

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.

#### 5.5.17 Maintenance of rights acquired or in the process of being acquired by the worker (Clause 5(2) of Directive 2010/18)

The worker on parental leave is protected against dismissal during parental leave (Section 53 of the Labour Code). There are only a few (and strict) exceptions, such as notice in the event that the employer ceases to exist, specified in Section 54 of the Labour Code. If correct notice is given to an employee on parental leave, it can only have effect after the parental leave period has finished (Section 54 of the Labour Code). Otherwise, the worker on parental leave is protected and after parental leave can return to his/her work according to his/her labour contract (see Section 47 of the Labour Code).

#### 5.5.18 Status of the employment contract or relationship during parental leave

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

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<sup>41</sup> Compare Section 16 of the Labour Code.

#### 5.5.19 Continuity of entitlement to social security benefits

Continuity of entitlement to social security benefits is guaranteed by Czech law. Healthcare continues to be provided in the usual way; the employment relationship still exists so a worker on parental leave is entitled to all social security payments. During parental leave, it is the State which pays healthcare contributions.

#### 5.5.20 Remuneration

During parental leave, there is no remuneration from the employer. The worker is provided with maternity benefit paid by the sickness insurance system during maternity leave and then state social support benefits – parental allowance from the public social security system.

#### 5.5.21 Social security allowance

Until the child reaches the age of four, so in most cases during parental leave, there is entitlement to parental allowance (Section 32 of the State Social Support Act), which can be received for a maximum of four years. This allowance is part of the State Social Support system, which is a non-contributory system of family benefits, financed from the state budget. 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 up to a total amount of approximately EUR 8 500 (CZK 220 000), or EUR 12 220 (CZK 330 000) if twins are born, for 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.<sup>42</sup> As of 1 January 2018, the maximum monthly parental allowance can be EUR 1 185 (CZK 32 000). The minimum parental allowance is EUR 147 (CZK 3 800).

The parental allowance will be further increased in the future, but no further legislation in this regard has been adopted yet.

#### 5.5.22 More favourable provisions (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 (maximum three years of time off and maximum four years of receiving parental allowance) and the entitlements to parental allowance, where the provisions are more favourable than required by the Directive.

#### 5.5.23 Case law

An opinion of Public Defender of Rights may be mentioned in this regard.

The case was about the conditions for applicants for public financial support for projects to employ graduates of doctoral study programmes involved in research and development teams in postdoctoral positions.

Doubts arose as to whether the condition of a cut-off date of three years after obtaining a PhD could disadvantage those applicants who had taken maternity or parental leave in the meantime since obtaining their doctoral degree and whether there was discrimination on grounds of sex. In her submission, the complainant had obtained her

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<sup>42</sup> Section 30, paragraph 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.

doctoral degree in 2007 and shortly thereafter, in November 2007, she went on maternity and parental leave, which she had taken continuously for five years. By the time she applied for her project, she no longer met the requirement of having obtained a doctoral degree within the last three years.

The Public Defender of Rights concluded that in this case not even indirect discrimination could be identified. If there had been another candidate who, like the complainant, obtained a doctorate degree in 2007, he or she would have been rejected in the same competition. This condition would be as hard for women as for men.

## **5.6 Paternity leave**

### **5.6.1 Existence of paternity leave in national law**

As of 1 February 2018 new legislation came into force which provides fathers of newborn children with paternity allowance for one week within the first six weeks after the child is born. The benefit is the same amount as maternity benefit – 70 % of the daily salary, paid from sickness insurance.

### **5.6.2 Protection against unfavourable treatment and/or dismissal (Article 16 of Directive 2006/54)**

For purposes of protection against unfavourable treatment or dismissal, fathers who receive paternity benefit are on parental leave.

The Czech Labour Code includes general equal treatment provisions, including employees taking parental leave.<sup>43</sup> 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.

### **5.6.3 Case law**

There is no specific case law to date, as the legislation is too new.

## **5.7 Time off/care leave**

### **5.7.1 Existence of care leave in national law (Clause 7 of Directive 2010/18)**

Under Part 8 of the Labour Code, an employer shall allow a male or female employee to be absent from work to care for a sick family member or a child younger than ten years of age. This applies when, for serious reasons, the child cannot be placed in the care of an educational facility or school. In addition, this applies if the person otherwise caring for the child has become ill or has been placed in quarantine or if that person is undergoing a check-up or treatment at a healthcare facility. The employee shall not be entitled to any wage compensation for this period, but will be entitled to a sickness insurance benefit known as caring benefit (60 % of daily salary for each day). Furthermore, an employer may provide an employee with leave for other serious reasons, particularly for attending to serious personal, family and property matters

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<sup>43</sup> Compare Section 16 of the Labour Code.

which they are unable to attend to outside working hours. In collective agreements or companies' internal rules, the rights of male and 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.

Provided the employee provides a medical certificate verifying the illness of the child, there are no maximum limits per year for these absences or any other criteria. The child must be younger than ten years. Even for the other situations described above there are no further specifications of the conditions for requesting 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. However, the employer has no legal obligation to enable an employee to make up for the period of absence, so the employee might lose their income due to this time off work. The employee receives sickness benefit, as described above.

As of 1 July 2018, the Labour Code also envisages care leave for purposes of long-term care. According to Section 192a of the Labour Code, the employer is obliged to provide an employee with time off for up to three months in order to allow them to take care of a sick person who has been discharged from hospital. The employer can refuse to provide this time off for serious operational reasons. During this care leave, the employee is entitled to a sickness benefit known as long-term care allowance. According to Section 41a et seq. of the Sickness Insurance Act, the amount of this allowance is 60 % of the person's daily salary.

#### 5.7.2 Case law

There is no special case law to report.

### **5.8 Leave in relation to surrogacy**

No parental leave or other leave is provided in case of surrogacy.

### **5.9 Flexible working time arrangements**

#### 5.9.1 Right to reduce or extend working time

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, people with disabilities etc.

The child must be younger than 15 years of age. The employee who is taking care of a bedridden person must prove that they are confined to bed. This is usually done through a certificate issued by a Labour Office, which provides the carer with a care allowance.

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

The employer is obliged to comply with a request to work reduced hours, unless this is impossible for serious operational reasons. Serious operational reasons are defined in the relevant case law. Serious operational reasons are the only relevant reason for a refusal. 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 their prior working hours, the employer is usually more than happy to allow this.

There are no further eligibility criteria. The size of the employer is not a qualifying condition. There are no measures in place specifically to encourage men to make use of the right to reduce or extend working time.

#### 5.9.2 Right to adjust working time patterns

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 Section 241, paragraph 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 under the age of 15; 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 must prove they are confined to bed. This is usually done through a certificate issued by a Labour Office, which provides the carer with a care allowance.

The employer is obliged to comply with a request to adjust working time patterns, unless this is impossible for serious operational reasons. Serious operational reasons are defined in the relevant case law.

There is no right to return to prior working time arrangements.

There are no further eligibility criteria. The size of the employer is not a qualifying condition. There are no measures in place specifically to encourage men to make use of the right to adjust working time patterns.

#### 5.9.3 Right to work from home or remotely

National law does not provide for a right to work from home or remotely. This does not mean, however, that this possibility is not used by employers and employees. There is only no entitlement of the employee to such flexibility.

#### 5.9.4 Other legal rights to flexible working arrangements

Under Sections 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 extended 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 to meet the needs of employers who employ workers for seasonal work.

### 5.9.5 Case law

There is only one older piece of relevant case law, but it is still quite significant. The Supreme Court stated that to assess the seriousness of operational reasons within the meaning of the Labour Code, the deciding factor is how significant the intervention in the employer's operations would be, if the worker were to be allowed the required shorter working hours or other appropriate working time adjustments compared to working for a set weekly working time. Only if the proper operation (performance of tasks or activities) of the employer is prevented, disrupted or seriously compromised by the application of a female employee caring for a child under 15 for a shorter working day or other appropriate working time adjustment can serious operational reasons be cited by the employer as a reason for refusing to accept the application.<sup>44</sup>

Similarly, the Supreme Court later defined serious operational reasons as follows: 'When assessing whether there are serious operational reasons given by the employer within the meaning of Section 241(2) of Act no. 262/2006 Coll., work is the decisive factor of the employer's operation. When assessing the seriousness of operational reasons, it is necessary to take into account the technical organisational arrangements of the employer, the number of employees working for the employer, the possibility of their substitution and potential for their remuneration. The more employees an employer has, the more easily the employer can comply with a request for shorter working time or other appropriate adjustment of working time, since with a larger number of employees, it is easier for one employee to cover another's duties and more money is available for their remuneration. Serious operational reasons can never prevent a request made by an employee whose tasks or activities do not need to be performed by him or her'.<sup>45</sup>

The Public Defender of Rights issued an opinion, stating: 'If an employee applies to an employer for permission to work from home in order to take care of a child with disabilities, this can be considered as applying the right to equal treatment under the Anti-Discrimination Act. Victimization may occur when an employee claims the right to equal treatment. If the employer did not commit primary discrimination but would punish the employee for opposing the (albeit hypothetical) discrimination, this would be victimisation'.<sup>46</sup>

## 5.10 Evaluation of implementation

The legislation covering leave and time off is generous, which often means that women, as sole carers, are sometimes difficult to hire, because the employer presumes such an employee could be problematic because of her caring responsibilities.

EU law is in general well implemented and, in some instances, Czech legislation exceeds the EU law requirements.

## 5.11 Remaining issues

There are no remaining issues.

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<sup>44</sup> Supreme Court No. 21 Cdo 561/2003 of 17 December 2003 ECLI:CZ:NS:2003:28.CDO.561.2003.1.

<sup>45</sup> Supreme Court No. 21 Cdo 1821/2013 of 18 July 2014 ECLI:CZ:NS:2014:21.CDO.1821.2013.1. Similarly also opinion of Public Defender of Rights 211/2012/DIS of 7 June 2015.

<sup>46</sup> Opinion of Public Defender of Rights 48/2013/DIS/JSK of 5 February 2016.



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

### **6.1 General (legal) context**

#### **6.1.1 Surveys and reports on the practical difficulties linked to occupational and/or statutory social security issues**

As there is currently no system of occupational social security, there are no surveys on this issue.

#### **6.1.2 Other issues related to gender equality and social security**

Maternity benefit is a sickness insurance benefit taken largely by women. If a second child is born right after (or during) parental leave, the benefit is calculated on the basis of a theoretical wage, which is usually not favourable to the mother. The second maternity benefit is therefore usually lower than the first.

In addition, conditions for taking the parental leave are to some extent problematic. As described earlier, parental allowance, paid from state social support, is paid monthly and parents can (under certain conditions) decide the monthly level of the allowance. The total amount for each child is CZK 220 000 (approx. EUR 8 800). If children are born quickly one after the other, the total amount of CZK 220 000 always applies to the youngest child in the family, so that in such a case, part of the total amount for the previous child gets lost, as the previous parental allowance ends as soon as a new one is claimed.

#### **6.1.3 Political and societal debate and pending legislative proposals**

The Ministry of Labour and Social Affairs is working on pension reform and the Commission for Equal and Fair Pensions has been established for this purpose. Narrowing the pension gender gap has been declared among the most important objectives.

Difficulties in taking parental allowance when multiple children are born in quick succession should be tackled soon and, indeed, a proposal for amending the existing rules is currently pending.

### **6.2 Direct and indirect discrimination**

The system of occupational pensions, or to put it better, the system of pension savings was established on 1 January 2013 by Act No. 426/2011 Coll., on pension savings. This Act established a new pension scheme. However, the scheme included almost no aspects of occupational pensions, even though it was declared to be a 'second-pillar' system. It was a voluntary system, which could be 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, the Government proposed to abolish the scheme and Parliament adopted an Act implementing this, Act No. 376/2015 Coll., on termination of pension savings, effective from 1 January 2016. By this date, all the funds acquired under the previous Act were transferred to the third pillar 'individual savings'. Participants in the system were granted the right to transfer the contributions from which they opted out before back to the first-pillar system.

The only example of occupational social security schemes can be found in Act No. 427/2011 Coll. on supplementary pension savings. The employer, for example, might contribute to the supplementary pension savings of their employees.

Section 1, paragraph 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.

Section 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 their employee's supplementary pension savings varies depending on the risk, complexity or difficulty of the work performed, if this is stipulated in the collective agreement or in the employer's internal regulations. This does not mean, however, that the legislator would generally allow indirect discrimination. The above quoted provision on equal treatment must also be adequately applied in cases where the work performed by employees differs.

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, as occupational pension systems as such do not exist in the Czech Republic.

Sections 8 and 9 of the Anti-Discrimination Act regulate the prohibition of discrimination on the grounds of sex in 'occupational social security schemes'<sup>47</sup> in more detail, according to EU law.

### **6.3 Personal scope**

The personal scope of the national law relating to occupational social security schemes is practically the same as that of Article 6 of Directive 2006/54/EC. Section 8, paragraphs 3 and 4 of the Anti-Discrimination Act state that the provisions relating to occupational social security schemes also apply to self-employed people and professional associations to which these individuals belong and which are based on the principle of affiliation to an occupation. They also apply to people whose activity is interrupted due to illness, maternity or an accident, to people seeking employment, retired people, disabled employees and former employees.

### **6.4 Material scope**

The material scope, as regulated in Section 8, paragraph. 1 of the Anti-Discrimination Act, is the same as that specified in Article 7 of Directive 2006/54/EC. The above-mentioned provision states that, '[w]here an employer provides employees, former employees and their family members with monetary remuneration or remuneration 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 EU law.

### **6.5 Exclusions**

Section 9 of the Anti-Discrimination Act 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)

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<sup>47</sup> This terminology is used in order to comply with EU legislation.

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.'

## **6.6 Laws and case law falling under the examples of sex discrimination mentioned in Article 9 of Directive 2006/54**

Section 8, paragraph 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.

## **6.7 Actuarial factors**

Section 9, paragraph 3 of the Anti-Discrimination Act allows sex to be used as an actuarial calculation factor in case of defined-benefit schemes and in the case of funded defined-benefit employee schemes. This applies especially to the amount of contribution.

## **6.8 Difficulties**

There are no difficulties to report.

## **6.9 Evaluation of implementation**

The implementation of EU law is not necessary, as occupational pensions do not exist in the Czech system. Sections 8 and 9 of the Anti-Discrimination Act provide for a more formal implementation, with few consequences in daily practice.

## **6.10 Remaining issues**

There are no remaining issues.

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

### 7.1 General (legal) context

#### 7.1.1 Surveys and reports on the practical difficulties linked to statutory schemes of social security (Directive 79/7)

Regarding statutory social security, a survey on opinions of researchers and experts on inequalities in the Czech pension system may be mentioned. The outcomes of this survey have been published in the form of a publicly accessible presentation.<sup>48</sup> The survey was prepared by the Ministry of Labour and Social Affairs, which established a body called the Commission for Equal and Fair Pensions in February 2019.

One of the main concerns of this Commission currently are the pension inequalities between men and women. The Commission argues that, according to the statistics, there is a 13 % gender pension gap.<sup>49</sup>

#### 7.1.2 Other relevant issues

Maternity benefit is a sickness insurance benefit taken largely by women. If a second child is born right after (or during) parental leave, the benefit is then calculated on the basis of a theoretical amount, which is usually not favourable to the mother, so that the second maternity benefit is usually lower than the first.

In addition, conditions for taking the parental leave are to some extent problematic. As described earlier, parental allowance, paid from state social support, is paid monthly and parents can (under certain conditions) decide the monthly level of the allowance. The total amount for each child is CZK 220 000. If children are born quickly one after the other, the total amount of CZK 220 000 always applies to the youngest child in the family, so that in such a case, part of the total amount for the previous child gets lost, as the previous parental allowance ends as soon as a new one is claimed.

#### 7.1.3 Overview of national acts

The following national acts regulate social security in the Czech Republic:

Act No. 198/2009 Coll., the Anti-Discrimination Act;<sup>50</sup>

Act No. 48/1997 Coll., on health insurance;<sup>51</sup>

Act No. 372/2011 Coll., on health care services;<sup>52</sup>

Act No. 373/2011 Coll., on special healthcare services;<sup>53</sup>

Act No. 155/1995 Coll., on pension insurance;<sup>54</sup>

Act No. 187/2006 Coll., on sickness insurance;<sup>55</sup>

<sup>48</sup> Available in Czech at:

[https://www.mpsv.cz/files/clanky/35610/Dotaznik\\_pro\\_cleny\\_Komise\\_k\\_zasadnim\\_otazkam\\_-\\_vyhodnoceni.pdf](https://www.mpsv.cz/files/clanky/35610/Dotaznik_pro_cleny_Komise_k_zasadnim_otazkam_-_vyhodnoceni.pdf).

<sup>49</sup> Available at:

[www.mpsv.cz/files/clanky/35244/Prezentace\\_z\\_jednani\\_22.3.2019\\_Navrhy\\_k\\_duchodum\\_zen.pdf](https://www.mpsv.cz/files/clanky/35244/Prezentace_z_jednani_22.3.2019_Navrhy_k_duchodum_zen.pdf).

<sup>50</sup> Czech Republic, *Zákon č. 198/2009 Sb., o rovném zacházení a o právních prostředcích ochrany před diskriminací a o změně některých zákonů (antidiskriminační zákon)*. Available at <https://www.zakonyprolidi.cz/cs/2009-198>.

<sup>51</sup> Czech Republic, *Zákon č. 48/1997 Sb., o veřejném zdravotním pojištění a o změně a doplnění některých souvisejících zákonů*. Available at <https://www.zakonyprolidi.cz/cs/1997-48>.

<sup>52</sup> Czech Republic, *Zákon č. 372/2011 Sb., o zdravotních službách a podmínkách jejich poskytování (zákon o zdravotních službách)*. Available at <https://www.zakonyprolidi.cz/cs/2011-372>.

<sup>53</sup> Czech Republic, *Zákon č. 373/2011 Sb., o specifických zdravotních službách*. Available at <https://www.zakonyprolidi.cz/cs/2011-373>.

<sup>54</sup> Czech Republic, *Zákon č. 155/1995 Sb., o důchodovém pojištění*. Available at <https://www.zakonyprolidi.cz/cs/1995-155>.

<sup>55</sup> Czech Republic, *Zákon č. 187/2006 Sb., o nemocenském pojištění*. Available at <https://www.zakonyprolidi.cz/cs/2006-187>.

Act No. 117/1995 Coll., on state social support;<sup>56</sup>  
Act No. 329/2012 Coll., on benefits provided to persons with disabilities;<sup>57</sup>  
Act No. 108/2006 Coll., on social services;<sup>58</sup>  
Act No. 111/2006 Coll., on aid in material need.<sup>59</sup>

#### 7.1.4 Political and societal debate and pending legislative proposals

The Ministry of Labour and Social Affairs is trying to work on pension reform, which is why the Commission for Equal and Fair Pensions has been established. Narrowing the pension gender gap has been declared among the primary objectives.

Difficulties in taking parental allowance when multiple children are born in quick succession should be tackled soon – in fact, a proposal for amending the existing rules is currently pending.

### 7.2 Implementation of the principle of equal treatment for men and women in matters of social security

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.

### 7.3 Personal scope

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

### 7.4 Material scope

The statutory social security schemes provide protection against all risks mentioned by Directive 79/7/EEC. The material scope of national law is the same.

### 7.5 Exclusions

Exclusions from the material scope specified in Article 7(1) a) and b) of Directive 79/7/EEC 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*,<sup>60</sup> or even following the CJEU ruling in *Soukupova*.<sup>61</sup>

<sup>56</sup> Czech Republic, *Zákon č. 155/1995 Sb., o důchodovém pojištění*. Available at <https://www.zakonyprolidi.cz/cs/1995-155>.

<sup>57</sup> Czech Republic, *Zákon č. 329/2011 Sb., o poskytování dávek osobám se zdravotním postižením a o změně souvisejících zákonů*. Available at <https://www.zakonyprolidi.cz/cs/2011-329>.

<sup>58</sup> Czech Republic, *Zákon č. 108/2006 Sb., o sociálních službách*. Available at <https://www.zakonyprolidi.cz/cs/2006-108>.

<sup>59</sup> Czech Republic, *Zákon č. 111/2006 Sb., o pomoci v hmotné nouzi*. Available at <https://www.zakonyprolidi.cz/cs/2006-111>.

<sup>60</sup> *Andrle v the Czech Republic* [2011] nyr. (Application no. 6268/08).

<sup>61</sup> Case C-401/11 *Blanka Soukupová v Ministerstvo zemědělství* [2013] ECR nyr.

### **7.6 Actuarial factors**

Sex is not used as actuarial factor in statutory social security schemes.

### **7.7 Difficulties**

There are no specific difficulties, apart from those already mentioned above.

### **7.8 Evaluation of implementation**

EU law is well implemented in the field of social security.

### **7.9 Remaining issues**

There are no remaining issues.

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

### **8.1 General (legal) context**

#### 8.1.1 Surveys and reports on the specific difficulties of self-employed workers

The author is not aware of any studies on the specific difficulties of self-employed workers.

#### 8.1.2 Other issues

There are no specific issues to report.

#### 8.1.3 Overview of national acts

The most relevant acts are the following:

Act No. 198/2009 Coll., the Anti-Discrimination Act;<sup>62</sup>

Act No. 89/2012 Coll., the Civil Code;

Act No. 455/1991 Coll., the Trade Licensing 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.

#### 8.1.4 Political and societal debate and pending legislative proposals

There is no political or societal debate and no pending legislative proposals on this issue.

### **8.2 Implementation of Directive 2010/41/EU**

The Directive has been implemented through the following acts:

Act No. 198/2009 Coll., the Anti-Discrimination Act;

Act No. 89/2012 Coll., the Civil Code;<sup>63</sup>

Act No. 455/1991 Coll., the Trade Licensing Act;<sup>64</sup>

Act No. 435/2004 Coll., the Employment Act;<sup>65</sup>

Act No. 155/1995 Coll., on pension insurance;<sup>66</sup>

Act No. 187/2006 Coll., on sickness insurance;<sup>67</sup>

Act No. 48/1997 Coll., on health insurance;<sup>68</sup>

Act No. 349/1999 Coll., on the public defender of rights;<sup>69</sup> and

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<sup>62</sup> Czech Republic, *Zákon č. 198/2009 Sb., o rovném zacházení a o právních prostředcích ochrany před diskriminací a o změně některých zákonů (antidiskriminační zákon)*. Available at <https://www.zakonyprolidi.cz/cs/2009-198>.

<sup>63</sup> Czech Republic *Zákon č. 89/2012 Sb., občanský zákoník*. Available at <https://www.zakonyprolidi.cz/cs/2012-89>.

<sup>64</sup> Czech Republic, *Zákon č. 455/1991 Sb., o živnostenském podnikání (živnostenský zákon)*. Available at <https://www.zakonyprolidi.cz/cs/1991-455>.

<sup>65</sup> Czech Republic, *Zákon č. 435/2004 Sb., o zaměstnanosti*. Available at <https://www.zakonyprolidi.cz/cs/2004-435>.

<sup>66</sup> Czech Republic, *Zákon č. 155/1995 Sb., o důchodovém pojištění*. Available at <https://www.zakonyprolidi.cz/cs/1995-155>.

<sup>67</sup> Czech Republic, *Zákon č. 187/2006 Sb., o nemocenském pojištění*. Available at <https://www.zakonyprolidi.cz/cs/2006-187>.

<sup>68</sup> Czech Republic, *Zákon č. 48/1997 Sb., o veřejném zdravotním pojištění a o změně a doplnění některých souvisejících zákonů*. Available at <https://www.zakonyprolidi.cz/cs/1997-48>.

Act No. 586/1992 Coll., on income tax.<sup>70</sup>

### **8.3 Personal scope**

#### **8.3.1 Scope**

Article 2(a) of the Directive 2010/41/EU has been transposed by several acts which define different types of self-employment. The definitions differ slightly and are included especially in the Pension Insurance Act, the Civil Code and the Trade Licensing Act.

#### **8.3.2 Definitions**

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 Licensing 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 Licensing 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.'

#### **8.3.3 Categorisation and coverage**

All the above mentioned self-employed persons are covered by the legislation.

#### **8.3.4 Recognition of life partners**

Life partners can be defined as helping spouses, they might take part in the self-employed activity and are also covered by the legislation.

### **8.4 Material scope**

#### **8.4.1 Implementation of Article 4 of Directive 2010/41/EU**

Article 4(1) has been generally transposed through the Anti-Discrimination Act.

#### **8.4.2 Material scope**

There is no specific provision that explicitly mentions the principle of equal treatment in connection with self-employed people. No modification of the implementation in relation to the repealed self-employment directive has occurred and therefore no additional protection for self-employed people is provided by Czech legislation.

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<sup>69</sup> Czech Republic, *Zákon č. 89/2012 Sb., občanský zákoník*. Available at <https://www.zakonyprolidi.cz/cs/2012-89>.

<sup>70</sup> Czech Republic, *Zákon č. 586/1992 Sb., občanský zákoník*. Available at <https://www.zakonyprolidi.cz/cs/1992-586>.



## **8.5 Positive action**

The Czech Republic generally allows positive action, as included in the anti-discrimination directives, under Section 7, paragraph 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 for women who want to become self-employed.<sup>71</sup>

## **8.6 Social protection**

Self-employed workers are covered in virtually 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.

There is no specific system of social protection for self-employed people.

## **8.7 Maternity benefits**

According to Sections 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 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 people, 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 starts paying contributions, she may face a difficult situation, as she will not be entitled to the benefit, which is quite generous. Maternity benefit is provided for 28 or 37 weeks, of which six weeks can be claimed before the estimated date of delivery. Maternity allowance is paid to all insured self-employed people (participation by self-employed people is voluntary, as explained in the previous section).

Temporary replacements and services are not available.

## **8.8 Occupational social security**

### **8.8.1 Implementation of provisions regarding occupational social security**

Sections 8 and 9 of the Anti-Discrimination Act provide that equal treatment in occupational social security schemes also applies to self-employed people. The details were explained above when discussing the general implementation of equal treatment in occupational social security schemes. There are no specific provisions applied to self-employed people.

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<sup>71</sup> Information available at [www.svazpodnikatelek.cz](http://www.svazpodnikatelek.cz), and [www.odyssey-network.cz/cz/nase-sluzby/pro-women-odyssey](http://www.odyssey-network.cz/cz/nase-sluzby/pro-women-odyssey).

#### 8.8.2 Application of exceptions for self-employed persons regarding matters of occupational social security (Article 11 of Recast Directive 2006/54)

Exceptions have not been applied, as occupational social security does not exist in the Czech Republic.

### **8.9 Prohibition of discrimination**

Equal access to employment is guaranteed in general for all types of workers, including self-employed people, as explained above when discussing the personal scope of equal access to employment.

### **8.10 Evaluation of implementation**

Equal treatment of self-employed people is not a particularly burning issue in the Czech Republic, therefore it is difficult to evaluate the implementation of the directive. Implementation occurred, but with a focus on form rather than substance.

### **8.11 Remaining issues**

There are no remaining issues.

## **9 Goods and services (Directive 2004/113)<sup>72</sup>**

### **9.1 General (legal) context**

#### **9.1.1 Surveys and reports about the difficulties linked to equal access to and supply of goods and services**

To the knowledge of the expert, there are no specific surveys or reports about difficulties linked to equal access to and supply of goods and services.

#### **9.1.2 Specific problems of discrimination in the online environment/digital market/collaborative economy**

To date, there has only been one monograph on the collaborative economy which, however, does not tackle the issue of equality.<sup>73</sup>

#### **9.1.3 Political and societal debate**

There is currently no debate on equal access to goods and services regardless of sex.

### **9.2 Prohibition of direct and indirect discrimination**

Section 1 of the Anti-Discrimination Act also prohibits discrimination based on sex regarding access to goods and services. This act also defines and prohibits direct and indirect discrimination.

Act No. 634/1992 Coll., on consumer protection states in its Section 6 only that, 'The seller shall not discriminate against the consumer when selling products or providing services'.

### **9.3 Material scope**

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.

### **9.4 Exceptions**

National law does not stipulate exceptions from the material scope regarding the content of media, advertising and education. Act No 231/2001 Coll., on operation of radio and television broadcasting,<sup>74</sup> stipulates that broadcasters may not include commercial communications containing discrimination based on sex, race, colour, language, belief and religion, political or other opinion, national or social origin, belonging to a national or ethnic minority, property, gender, disability, age, sexual orientation or other status (Section 48(1)l). Section 2(3) of Act No. 40/1995 Coll., on regulation of advertisements, reads: 'Advertising must not be contrary to good morals, in particular it must not contain any discrimination on grounds of race, sex or nationality or attack religious or national feelings, endanger morality in a generally unacceptable way, reduce human dignity, or contain pornography, violence or fear-based elements'.

<sup>72</sup> See e.g. di Torella, E. C. and McLellan, B. (2018), *Gender equality and the collaborative economy* European network of legal experts in gender equality and non-discrimination, available at [www.equalitylaw.eu/downloads/4573-gender-equality-and-the-collaborative-economy-pdf-721-kb](http://www.equalitylaw.eu/downloads/4573-gender-equality-and-the-collaborative-economy-pdf-721-kb).

<sup>73</sup> Pichrt, J., Boháč, R., Morávek, J. (2017) *Sdílená ekonomika* (Collaborative economy). Prague: Wolters Kluwer.

<sup>74</sup> Czech Republic, *Zákon č. 231/2001 Sb., o provozování rozhlasového a televizního vysílání a o změně dalších zákonů*. Available at <https://www.zakonyprolidi.cz/cs/2001-231>.

When Directive 2004/113/EC was implemented there was not much debate. Sexist advertising is used quite often in the Czech media and on billboards. In fact, for the last ten years an NGO has organised an anti-prize called 'Sexist Piggy'.<sup>75</sup>

## **9.5 Justification of differences in treatment**

Section 6, paragraph 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'.

## **9.6 Actuarial factors**

Section 2769 of Act No. 89/2012 Coll., Civil Code 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'.

## **9.7 Interpretation of exception contained in Article 5(2) of Directive 2004/113**

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 (of 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.

## **9.8 Positive action measures (Article 6 of Directive 2004/113)**

No positive action measures have been adopted.

## **9.9 Specific problems related to pregnancy, maternity or parenthood**

Some restaurants have problems, for example, in accommodating people with prams and pushchairs.

Recently, the case of a hotel was published and discussed by some media. The hotel publicly declared on its website that families with children under 10 years will not be

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<sup>75</sup> See [www.prasatecko.cz/](http://www.prasatecko.cz/).

provided with accommodation services, as the hotel specialises in adult clients. The hotel was fined by the Czech Trade Inspection Authority.<sup>76</sup>

Another case relates to a mother who decided to breastfeed her child in a bank. The security service expelled her from the premises. As a reaction to this incident, mothers around the country came together on Facebook and decided to breastfeed their children at branches of the bank in question.<sup>77</sup> The bank then apologised and promised that members of its security service would get further training on this issue.

### **9.10 Evaluation of implementation**

The directive has been implemented formally, but there is almost nothing in the Consumers Protection Act regarding discrimination. The only reference is a small section which states that a provider of goods and services shall not discriminate against consumers. This seems insufficient. The Anti-Discrimination Act has to be used in cases of sex discrimination in the provision of goods and services.

### **9.11 Remaining issues**

There are no further remaining issues.

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<sup>76</sup> The only information to be found in the media was here: [www.i60.cz/clanek/detail/21095](http://www.i60.cz/clanek/detail/21095).

<sup>77</sup> The only information to be found in the media was here: [www.radio.cz/en/section/news/mothers-to-hold-breastfeeding-protest-at-banks](http://www.radio.cz/en/section/news/mothers-to-hold-breastfeeding-protest-at-banks).

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

### **10.1 General (legal) context**

#### **10.1.1 Surveys and reports on issues of violence against women and domestic violence**

Recent reports and surveys on violence against women and domestic violence have been gathered in an information booklet published by the Government and entitled *The European Convention on Violence against Women and Domestic Violence – Myths and Facts*.<sup>78</sup>

#### **10.1.2 Overview of national acts on violence against women, domestic violence and issues related to the Istanbul Convention**

The following acts tackle violence against women, domestic violence and issues related to the Istanbul Convention:

Act No. 40/2009 Coll., Penal Code;<sup>79</sup>

Act No. 141/1961 Coll., Penal Procedure Code;<sup>80</sup>

Act No. 45/2013 Coll., on victims of crimes;<sup>81</sup>

Act No. 108/2006 Coll., on social services.<sup>82</sup>

#### **10.1.3 National provisions on online violence and online harassment**

Online violence and online harassment is tackled by the same legislation, there is no special legislation (meaning act).

#### **10.1.4 Political and societal debate**

The political and public debate on the Istanbul Convention has been and still is very emotional. Even though the Czech Republic is not a very religious country, churches, especially the Catholic church (or parts of it), have vehemently attacked the Istanbul Convention, arguing that, if it is ratified, the traditional Czech family will be dismantled and people will be afraid to tell to their children that they are boys or girls and educate them as boys or girls. Many people, including Christian intellectuals, oppose these arguments.

### **10.2 Ratification of the Istanbul Convention**

In February 2016 the Government agreed to sign the IC and start the ratification process. The IC was signed in May 2016 and was expected to be ratified by mid-2018.<sup>83</sup>

The IC has been strongly rejected by some representatives of Christian churches and some MPs have led quite a strong campaign against it. It does not seem likely that the Istanbul Convention will be ratified soon.

<sup>78</sup> Vláda ČR (2018) *Úmluva Rady Evropy o prevenci a potírání násilí vůči ženám a domácího násilí: mýty a fakta*. Available at: [www.vlada.cz/assets/ppov/rovne-prilezitosti-zen-a-muzu/Projekt\\_OPZ/Vystupy\\_projektu/Brozura-Umluva-proti-nasili-na-zenach-FINAL.pdf](http://www.vlada.cz/assets/ppov/rovne-prilezitosti-zen-a-muzu/Projekt_OPZ/Vystupy_projektu/Brozura-Umluva-proti-nasili-na-zenach-FINAL.pdf).

<sup>79</sup> Czech Republic, *Zákon č. 40/2009 Sb., trestní zákoník*. Available at <https://www.zakonyprolidi.cz/cs/2009-40>.

<sup>80</sup> Czech Republic, *Zákon č. 141/1961 Sb., o trestním řízení soudním (trestní řád)*. Available at <https://www.zakonyprolidi.cz/cs/1961-41>.

<sup>81</sup> Czech Republic, *Zákon č. 45-2013 Sb., o obětech trestných činů a o změně některých zákonů (zákon o obětech trestných činů)*. Available at <https://www.zakonyprolidi.cz/cs/2013-45>.

<sup>82</sup> Czech Republic, *Zákon č. 108/2006 Sb., o sociálních službách*. Available at <https://www.zakonyprolidi.cz/cs/2006-108>.

<sup>83</sup> See the press release by the Government at: [www.vlada.cz/cz/ppov/rovne-prilezitosti-zen-a-muzu/aktuality/ceska-republika-podepsala-istanbulskou-umluvu-proti-nasili-na-zenach--143594/](http://www.vlada.cz/cz/ppov/rovne-prilezitosti-zen-a-muzu/aktuality/ceska-republika-podepsala-istanbulskou-umluvu-proti-nasili-na-zenach--143594/).

## 11 Compliance and enforcement aspects (horizontal provisions of all directives)

### 11.1 General (legal) context

#### 11.1.1 Surveys and reports about the particular difficulties related to obtaining legal redress

A report by the Public Defender of Rights on victims of discrimination and barriers to enforcing their rights, published in 2015,<sup>84</sup> identified several barriers but with no specific information on family-related leave.

At the same time, discrimination against women on maternity and parental leave has been identified as the most urgent issue in relation to discrimination against women.

The Public Defender of Rights study identified access to information, stereotypes, victimisation and low confidence of a positive outcome in a possible dispute as the most important barriers for victims. As there are only a few cases, victims are often unsure about the possible outcome and feel discouraged from initiating a complaint. This is exacerbated by the fact that even judges often make their decisions according to deep-rooted stereotypes. Victims also often lack money in order to initiate a complaint.<sup>85</sup>

This study further confirms that very few discrimination cases are brought (around 60) and that remedies are quite low – approximately EUR 10 000 on average.

In order to minimise or dismantle these barriers, the Public Defender of Rights recommended supporting awareness-raising campaigns, working more on further education of judges, lawyers, labour inspectors and other professions, supporting campaigns to eradicate stereotypes, increasing monetary remedies, providing better access to justice for victims (bearing in mind the costs of procedures), introducing *actio popularis*, making the reasoning of judgements more detailed, making decision-making by public offices better and more accessible and making fines work better.<sup>86</sup>

The annual reports of the national equality body (the Public Defender of Rights) are rather general, as they cover many issues and topics. They do not highlight enforcement issues in particular.

There is a report by the Public Defender of Rights on harmonising family and professional life in ministries. This study highlights the fact that having a position of coordinator for equal treatment is not effective enough. The coordinator often has other tasks and deals with problems other than those connected with the topic of this study.<sup>87</sup>

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<sup>84</sup> Public Defender of Rights (2015) *Diskriminace v ČR: oběť diskriminace a její překážky v přístupu ke spravedlnosti* (Discrimination in the Czech Republic: victim of discrimination and barriers to access to justice, final report from a survey conducted by the Public Defender of Rights), Brno. Available at: [www.ochrance.cz/fileadmin/user\\_upload/ESO/CZ\\_Diskriminace\\_v\\_CR\\_vyzkum\\_01.pdf](http://www.ochrance.cz/fileadmin/user_upload/ESO/CZ_Diskriminace_v_CR_vyzkum_01.pdf).

<sup>85</sup> Public Defender of Rights (2015) *Diskriminace v ČR: oběť diskriminace a její překážky v přístupu ke spravedlnosti* (Discrimination in the Czech Republic: victim of discrimination and barriers to access to justice, final report from a survey conducted by the Public Defender of Rights), Brno. Available at: [www.ochrance.cz/fileadmin/user\\_upload/ESO/CZ\\_Diskriminace\\_v\\_CR\\_vyzkum\\_01.pdf](http://www.ochrance.cz/fileadmin/user_upload/ESO/CZ_Diskriminace_v_CR_vyzkum_01.pdf), pp. 83-84.

<sup>86</sup> Public Defender of Rights (2015) *Diskriminace v ČR: oběť diskriminace a její překážky v přístupu ke spravedlnosti* (Discrimination in the Czech Republic: victim of discrimination and barriers to access to justice, final report from a survey conducted by the Public Defender of Rights), Brno. Available at: [www.ochrance.cz/fileadmin/user\\_upload/ESO/CZ\\_Diskriminace\\_v\\_CR\\_vyzkum\\_01.pdf](http://www.ochrance.cz/fileadmin/user_upload/ESO/CZ_Diskriminace_v_CR_vyzkum_01.pdf), pp. 138-141.

<sup>87</sup> Šabatová, A., Hampl, S., Maříková, H., Urbániková, M., Kvasnicová, J. (2015) *Sladování pracovního, osobního a rodinného života na ministerstvech ČR* (Reconciling work, personal and family life at the ministries of the Czech Republic), Kancelář VOP. Available at: [www.ochrance.cz/fileadmin/user\\_upload/ESO/101-2017-DIS-JKV-vyzkumna\\_zprava.pdf](http://www.ochrance.cz/fileadmin/user_upload/ESO/101-2017-DIS-JKV-vyzkumna_zprava.pdf), p. 10.

### 11.1.2 Other issues related to the pursuit of a discrimination claim

There are no other specific issues.

### 11.1.3 Political and societal debate and pending legislative proposals

There is a proposal for an amendment to the Anti-Discrimination Act currently pending. The amendment will introduce *actio popularis* and modify the shift of burden of proof, so that it would be shifted for all grounds in all cases of discrimination under the same conditions.<sup>88</sup>

## 11.2 Victimisation

According to Section 2, paragraph 2 and Section 4, paragraph 3 of the Anti-Discrimination Act, victimisation shall be considered to be discrimination. Victimisation is defined as any adverse treatment, sanction or disadvantage that occurs as a result of exercising the rights under the Anti-Discrimination Act.

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

## 11.3 Access to courts

### 11.3.1 Difficulties and barriers related to access to courts

Access to the courts is safeguarded and there is no legal obstacle to alleged victims of sex discrimination having access to the courts. However, victims are often afraid to appear before the courts and argue that they have been discriminated against by their 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, a proposal was presented to amend Section 22, para 3 Act No. 349/1999 Coll. on the Public Defender of Rights, according to which the Public Defender of Rights will be able to present discrimination cases and start proceedings. This proposal had been pending since January 2015 and in February 2017 it was withdrawn. The Public Defender of Rights has maintained the possibility of issuing non-binding opinions, currently collected in an electronic, publicly accessible system.<sup>89</sup>

### 11.3.2 Availability of legal aid

According to Section 11, paragraph 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.

### 11.3.3 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 Rights.<sup>90</sup> 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.

<sup>88</sup> The legislative process had only recently begun at time of writing and can be followed on: [www.psp.cz/sqw/historie.sqw?o=8&t=424](http://www.psp.cz/sqw/historie.sqw?o=8&t=424).

<sup>89</sup> <https://eso.ochrance.cz/Vyhledavani/Search>.

<sup>90</sup> Liga lidských práv (League of Human Rights): <http://llp.cz/en/>.



## **11.4 Horizontal effect of the applicable law**

### **11.4.1 Horizontal effect of relevant gender equality law**

The horizontal effect of gender equality law has not been specifically reflected in Czech legislation or case law. There is nothing of note to report.

### **11.4.2 Impact of horizontal direct effects of the charter after *Bauer***

The horizontal effect of the Charter after *Bauer* has not been specifically reflected in the Czech legislation or case law. There is nothing of note to report.

## **11.5 Burden of proof**

Section 133a of the Code of Civil Procedure states that, if the complainant claims facts before the court from which it can be presumed that there has been direct or indirect discrimination by the defendant, it is the defendant's responsibility to demonstrate that the principle of equal treatment has not been violated. This applies to discrimination 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.

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 put forward facts which show unequal treatment.<sup>91</sup>

## **11.6 Remedies and sanctions**

### **11.6.1 Types of remedies and sanctions**

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

### **11.6.2 Effectiveness, proportionality and dissuasiveness**

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 to 80 000 (approximately EUR 1 850 to 3 000). The courts apply Section 10 of the Anti-Discrimination Act and Section 136 of the Code of Civil Procedure. As regards public sanctions, they are regulated by the Act on Labour Inspection, which stipulates in Section 11 that, for an offence in the area of equal treatment, a fine of up to CZK 1 billion (approximately EUR 37 040) may be imposed. Labour inspectorates have

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<sup>91</sup> See e.g. the judgment of the Constitutional Court No. II. ÚS 1609/08 of 30 April 2009, or Supreme Court case 21 Cdo 246/2008 of 11 November 2009.

never imposed such a high fine. In 2016, for example, labour inspectorates imposed 80 fines on employers for unequal treatment and the fines were very low – around EUR 200.<sup>92</sup>

### **11.7 Equality body**

Public Defender of Rights – [www.ochrance.cz](http://www.ochrance.cz).

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

According to Section 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 everyone and, to this end, 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 exchanges of available information with the relevant European parties.

The Public Defender of Rights is a very respected and active body. It organizes conferences, raises awareness and quite often publishes reports and studies. At the same time, it issues its own opinions in concrete cases. All opinions of the Public Defender of Rights are published and searchable.<sup>93</sup> By law, the Public Defender of Rights is not competent to represent victims before courts, but the body helps applicants through consultations.

### **11.8 Social partners**

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

### **11.9 Other relevant bodies**

There are some important NGOs, such as Gender Studies,<sup>94</sup> the Institute of Sociology,<sup>95</sup> ProFem<sup>96</sup> etc.

There are also relevant public bodies, such as the labour inspectorates and the Labour Office of the Czech Republic, with its regional branches.

### **11.10 Evaluation of implementation**

The legislation is well implemented, but there is still a long way to go in order for equal treatment to be truly enforced.

### **11.11 Remaining issues**

There are no remaining issues.

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<sup>92</sup> See the Annual Report 2016 on labour inspection, available at [www.suip.cz/files/suip-3f221754366f01e240f10778f21fe5fa/rocni-souhrnna-zprava-o-vysledcich-kontrolnich-akci-provedenych-inspekci.pdf](http://www.suip.cz/files/suip-3f221754366f01e240f10778f21fe5fa/rocni-souhrnna-zprava-o-vysledcich-kontrolnich-akci-provedenych-inspekci.pdf), p. 176.

<sup>93</sup> See <https://eso.ochrance.cz/Vyhledavani/Search>.

<sup>94</sup> Gender Studies: <https://genderstudies.cz>.

<sup>95</sup> Sociologický ústav (Institute of Sociology): [www.soc.cas.cz/en](http://www.soc.cas.cz/en).

<sup>96</sup> ProFem: [www.profem.cz/en/](http://www.profem.cz/en/).

## **12 Overall assessment**

The gender equality *acquis* has been transposed in the Czech Republic quite satisfactorily. However, sometimes the implementation has not completely followed the spirit of the EU directives. An example of this is the copy-and-paste method which has been used in the case of occupational pension schemes, where equal treatment is guaranteed in Sections 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 a systematic point of view, does not seem to have been a very well thought-out step. Sections 8 and 9 will be used in particular when the employer is contributing to their employees' private pension schemes.

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 acceptance of anti-discrimination legislation 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 in order to achieve a society which fully enacts and applies the principle of equal treatment of men and women on a daily basis.

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