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# Country report

## Gender equality



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# **Country report**

## **Gender equality**

How are EU rules transposed into  
national law?

## **Hungary**

Lídia Hermina Balogh

Reporting period 1 January 2018 – 31 December 2018

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# 1 Introduction

## 1.1 Basic structure of the national legal system

The Hungarian legal system is a continental legal system following primarily German legal traditions. It is governed by a strict statutory hierarchy, in which lower level statutes must never contradict higher ranking statutes.

The most important principles are laid down by the Constitution (the Fundamental Law of Hungary). Constitutional rules are expounded by laws, while detailed regulation is provided by government and ministerial decrees.

The ruling Fidesz-KDNP right-wing coalition (*Fidesz – Magyar Polgári Szövetség – Kereszténydemokrata Néppárt*; Fidesz Hungarian Civic Alliance – Christian Democratic People's Party) has structurally reorganised the Hungarian state and fundamentally modified the Hungarian legal system since 2010. The previous constitution was also replaced on 25 April 2011 with a new Fundamental Law<sup>1</sup> by the representatives of the ruling coalition, which gained a two-thirds majority in the Parliament.<sup>2</sup> The Fundamental Law has been amended seven times by the same coalition following its adoption in order to address domestic political problems through legislation; however, none of the amendments related to gender equality issues. From a gender perspective, the most important feature is that the fifth amendment did not alter the notion of the family, which was introduced by the fourth amendment of the Fundamental Law. This established that a family is based on a marriage between a man and a woman, thereby excluding heterosexual cohabiting couples, same-sex couples and single parents.

While international human rights treaties are integrated into the domestic legal system through their promulgation in the form of acts of the Parliament, courts as a rule refuse to apply these norms directly. They are at times applied as points of reference if concurring interpretation of domestic law is possible.

Gender equality is guaranteed by the Fundamental Law.<sup>3</sup> The framework rules on equal treatment are regulated by the Equal Treatment Act (Act CXXV of 2003, on Equal Treatment and Promotion of Equal Opportunities),<sup>4</sup> which contains an open-ended list of protected grounds (19 characteristics and the 20th element: 'any other situation, attribution or condition of a person or group'). The basic concepts of the Equal Treatment Act are to be applied throughout the entire legal system.

Claims arising from gender equality cases may be adjudicated by the Equal Treatment Authority and/or by the civil and labour courts, depending upon the merits of the case and the aims of the claimant.<sup>5</sup> As the most dissuasive sanction that the Equal Treatment Authority can apply is a public fine, a claimant who seeks financial compensation or reinstatement in their original job must proceed through the court system.

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<sup>1</sup> Hungary, Fundamental Law of Hungary (*Magyarország Alaptörvénye*), 25 April 2011. An unofficial English translation of the current version published on the website of the Hungarian Government, is available at: [http://www.kormany.hu/download/f/3e/61000/TheFundamentalLawofHungary\\_20180629\\_FIN.pdf](http://www.kormany.hu/download/f/3e/61000/TheFundamentalLawofHungary_20180629_FIN.pdf).

<sup>2</sup> See the overview in English ('Voting: Decisions requiring a qualified majority'), published on the website of the Hungarian National Assembly, available at: <http://www.parlament.hu/en/web/housVoting: Decisions requiring a qualified majority-of-the-national-assembly/laws-requiring-a-two-thirds-qualified-majority>.

<sup>3</sup> Hungary, Fundamental Law of Hungary (*Magyarország Alaptörvénye*), 25 April 2011, Article 15(2)-(3).

<sup>4</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003.

<sup>5</sup> Note: during the reorganisation of the judiciary, which took place in 2011, the labour courts had been integrated with the administrative courts.

The court system is organised on four levels: the courts of first instance, two levels of appellate courts, and the Supreme Court (*Kúria*).<sup>6</sup> The Constitutional Court adjudicates issues in relation to conformity with the Fundamental Law and constitutional complaints.<sup>7</sup>

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

The gender equality directives of the EU were transposed by the following pieces of national legislation:

- The Fundamental Law of Hungary, i.e. the Constitution (fundamental rights should be available for everyone without discrimination on grounds of race, colour, sex, disability, language, religion, political or other opinion, national or social origin, property, birth or any other status;<sup>8</sup> families, children, women, the elderly and persons living with disabilities should be protected by the state);<sup>9</sup>
- Act V of 2013 on the Civil Code (the right to non-discrimination is protected as an inherent right);<sup>10</sup>
- Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities<sup>11</sup> (transposing and implementing: Council Directive 75/117/EEC of 10 February 1975, Council Directive 76/207/EEC of 9 February 1976, Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002, Council Directive 79/7/EEC of 19 December 1978, Council Directive 86/378/EEC of 24 July 1986, Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006, Council Directive 86/613/EEC of 11 December 1986, Council Directive 92/85/EEC of 19 October 1992, Council Directive 96/34/EC of 3 June 1996, Council Directive 97/80/EC of 15 December 1997, Council Directive 2004/113/EC of 13 December 2004, Council Directive 2010/18/EU of 8 March 2010);
- Act I of 2012 on the Labour Code<sup>12</sup> (transposing and implementing: Council Directive 75/117/EEC of 10 February 1975, Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002, Council Directive 76/207/EEC of 9 February 1976, Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006, Council Directive 92/85/EEC of 19 October 1992, Council Directive 96/34/EC of 3 June 1996, Council Directive 2010/18/EU of 8 March 2010);
- Act CXCIX of 2011 on Civil Servants<sup>13</sup> (transposing and implementing: Council Directive 75/117/EEC of 10 February 1975, Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002, Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006, Council Directive 92/85/EEC of 19 October 1992, Council Directive 96/34/EC of 3 June 1996, Council Directive 2010/18/EU of 8 March 2010);
- Act CCV of 2012 on the Status of Military Personnel<sup>14</sup> (transposing and implementing: Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002, Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006, Council Directive 92/85/EEC of 19 October 1992, Council Directive 96/34/EC of 3 June 1996, Council Directive 2010/18/EU of 8 March 2010);

<sup>6</sup> See the overview in English on the judicial system, published on the website of the Courts of Hungary, available at: <https://birosag.hu/en/judicial-system>.

<sup>7</sup> See the overview in English on the competences of the Constitutional Court, published on the website of the Constitutional Court of Hungary (22 May 2017), available at: <https://hunconcourt.hu/competences/>.

<sup>8</sup> Hungary, Fundamental Law of Hungary (*Magyarország Alaptörvénye*), 25 April 2011, Article XV (2).

<sup>9</sup> Hungary, Fundamental Law of Hungary (*Magyarország Alaptörvénye*), 25 April 2011, Article XV (5).

<sup>10</sup> Hungary, Act V of 2013 on the Civil Code (2013. évi V. törvény a Polgári Törvénykönyvről), 26 February 2013, Articles 2:42-43.

<sup>11</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003.

<sup>12</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012.

<sup>13</sup> Hungary, Act CXCIX of 2011 on Civil Servants (2011. évi CXCIX. törvény a közszolgálati tisztviselőkről), 30 December 2011.

<sup>14</sup> Hungary, Act CCV of 2012 on the Status of Military Personnel (2012. évi CCV. törvény a honvédek jogállásáról), 18 December 2012.



- Act XXXIII of 1992 on the Legal Status of Public Servants<sup>15</sup> (transposing and implementing: Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002, Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006, Council Directive 96/34/EC of 3 June 1996, Council Directive 2010/18/EU of 8 March 2010);
- Act C of 2012 on the Criminal Code<sup>16</sup> (transposing and implementing: Council Directive 76/207/EEC of 9 February 1976 and Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011);
- Act LXXXI of 1997 on State Pensions<sup>17</sup> (transposing and implementing: Council Directive 79/7/EEC of 19 December 1978);
- Act LXXXIII of 1997 on the Benefits of Compulsory Health Insurance<sup>18</sup> (transposing and implementing: Council Directive 86/613/EEC of 11 December 1986; Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010);
- Act LXXXII of 1997 on Private Pension and Private Pension Funds<sup>19</sup> (transposing and implementing: Council Directive 79/7/EEC of 19 December 1978);
- Act CXVII of 2007 on Occupational Pensions and its Institutions<sup>20</sup> (transposing and implementing: Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006, Council Directive 2004/113/EC of 13 December 2004);
- Act XCVI of 1993 on Voluntary Mutual Insurance Funds<sup>21</sup> (transposing and implementing: Council Directive 2004/113/EC of 13 December 2004);
- Act LXXXVIII of 2014 on the Business of Insurance<sup>22</sup> (transposing and implementing: Council Directive 2004/113/EC of 13 December 2004);
- Act CXXXIX of 2013 on the National Bank of Hungary<sup>23</sup> (transposing and implementing: Council Directive 2004/113/EC of 13 December 2004);
- Act CXCI of 2011 on the Benefits of Persons with an Altered Ability to Work<sup>24</sup> (transposing and implementing: Council Directive 79/7/EEC of 19 December 1978, Council Directive 96/34/EC of 3 June 1996, Council Directive 2010/18/EU of 8 March 2010);
- Act CXL of 2004 on the General Rules of the Proceedings and Services of Public Administrative Authorities<sup>25</sup> (transposing and implementing: Council Directive 79/7/EEC of 19 December 1978, Council Directive 2004/113/EC of 13 December 2004);
- Act XLII of 2015 on the Service Relationship of Professional Members of Law Enforcement Organisations<sup>26</sup> (transposing and implementing: Directive 2006/54/EC

<sup>15</sup> Hungary, Act XXXIII of 1992 on the Legal Status of Public Servants (1992. évi XXXIII. törvény a közalkalmazottak jogállásáról), 2 June 1992.

<sup>16</sup> Hungary, Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), 13 July 2012.

<sup>17</sup> Hungary, Act LXXXI of 1997 on State Pensions (1997. évi LXXXI. törvény a társadalombiztosítási nyugellátásról), 25 July 2007.

<sup>18</sup> Hungary, Act LXXXIII of 1997 on the Benefits of Compulsory Health Insurance (1997. évi LXXXIII. törvény a kötelező egészségbiztosítás ellátásairól), 25 July 1997.

<sup>19</sup> Hungary, Act LXXXII of 1997 on Private Pension and Private Pension Funds (1997. évi LXXXII. törvény a magánnyugdíjról és a magánnyugdíjpénztárakról), 25 July 1997.

<sup>20</sup> Hungary, Act CXVII of 2007 on Occupational Pensions and its Institutions (2007. évi CXVII. törvény a foglalkoztatói nyugdíjról és intézményeiről), 26 October 2007.

<sup>21</sup> Hungary, Act XCVI of 1993 on Voluntary Mutual Insurance Funds (1993. évi XCVI. törvény az önkéntes kölcsönös biztosító pénztárakról), 6 December 1993.

<sup>22</sup> Hungary, Act LXXXVIII of 2014 on the Business of Insurance (2014. évi LXXXVIII. törvény a biztosítási tevékenységről), 22 December 2014.

<sup>23</sup> Hungary, Act CXXXIX of 2013 on the National Bank of Hungary (2013. évi CXXXIX. törvény a Magyar Nemzeti Bankról), 26 September 2013.

<sup>24</sup> Hungary, Act CXCI of 2011 on the Benefits of Persons with an Altered Ability to Work and the Amendment of Certain Laws (2011. évi CXCI. törvény a megváltozott munkaképességű személyek ellátásairól és egyes törvények módosításáról), 29 December 2011.

<sup>25</sup> Hungary, Act CXL of 2004 on the General Rules of the Proceedings and Services of Public Administrative Authorities (2004. évi CXL. törvény a közigazgatási hatósági eljárás és szolgáltatás általános szabályairól), 28 December 2004.

<sup>26</sup> Hungary, Act XLII of 2015 on the Service Relationship of Professional Members of Law Enforcement Organisations (2015. évi XLII. törvény a rendvédelmi feladatokat ellátó szervek hivatásos állományának szolgálati jogviszonyáról), 24 April 2015.

- of the European Parliament and of the Council of 5 July 2006, Council Directive 92/85/EEC of 19 October 1992, Council Directive 96/34/EC of 3 June 1996, Council Directive 2010/18/EU of 8 March 2010);
- Act LXVIII of 1997 on the Service Status of Judicial Employees<sup>27</sup> (transposing and implementing: Council Directive 96/34/EC of 3 June 1996, Council Directive 2010/18/EU of 8 March 2010);
- Act CLXII of 2011 on the Status and Remuneration of Judges<sup>28</sup> (transposing and implementing: Council Directive 96/34/EC of 3 June 1996, Council Directive 2010/18/EU of 8 March 2010);
- Act CLXIV of 2011 on the Status of the Chief Public Prosecutor, Prosecutors and Other Prosecutorial Employees and the Prosecutorial Career<sup>29</sup> (transposing and implementing: Council Directive 96/34/EC of 3 June 1996, Council Directive 2010/18/EU of 8 March 2010).

### 1.3 Sources of law

Hungary has a dualist system, i.e. international treaties are transposed into its domestic legislation through adopting acts.

The main sources of gender equality law are the law adopting the CEDAW Convention, the Fundamental Law of Hungary,<sup>30</sup> the Act on the Civil Code,<sup>31</sup> and the Act on the Labour Code.<sup>32</sup> However, the Act on Equal Treatment and the Promotion of the Equality of Opportunities (Equal Treatment Act)<sup>33</sup> is considered to be the most important source of law; this transposed the EU *acquis* on anti-discrimination, including gender equality.

The interpretive decisions of the Constitutional Court, the jurisprudence of the Hungarian Supreme Court (*Kúria*), the jurisprudence of Labour and Administrative Courts and the Civil Courts, as well as the decisions of the Equal Treatment Authority are normative sources of law on gender equality in Hungary. The Equal Treatment Authority issues also opinions on the interpretation of the equality law that are considered to be indicative for the interpretation of the Equal Treatment Act.

<sup>27</sup> Hungary, Act LXVIII of 1997 on the Service Status of Judicial Employees (*1997. évi LXVIII. törvény az igazságügyi alkalmazottak szolgálati jogviszonyáról*), 23 July 1997.

<sup>28</sup> Hungary, Act CLXII of 2011 on the Status and Remuneration of Judges (*2011. évi CLXII. törvény a bírák jogállásáról és javadalmazásáról*), 2 December 2011.

<sup>29</sup> Hungary, Act CLXIV of 2011 on the Status of the Chief Public Prosecutor, Prosecutors and Other Prosecutorial Employees and the Prosecutorial Career (*2011. évi CLXIV. törvény a legfőbb ügyész, az ügyészek és más ügyész-ségi alkalmazottak jogállásáról és az ügyészi életpályáról*), 28 November 2011.

<sup>30</sup> Hungary, Fundamental Law of Hungary (*Magyarország Alaptörvénye*), 25 April 2011.

<sup>31</sup> Hungary, Act V of 2013 on the Civil Code (*2013. évi V. törvény a Polgári Törvénykönyvről*), 26 February 2013.

<sup>32</sup> Hungary, Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012.

<sup>33</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (*2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról*), 28 December 2003.

## 2 General legal framework

### 2.1 Constitution

#### 2.1.1 Constitutional ban on sex discrimination

The issue of gender equality is discussed in the Fundamental Law of Hungary (the constitution) in relation to the issue of equality before the law.<sup>34</sup> The Fundamental Law explicitly states that 'women and men shall have equal rights.'<sup>35</sup> Another provision of the Fundamental Law provides that fundamental rights should be available for everyone without discrimination, and in particular without discrimination on grounds of race, colour, sex, disability, language, religion, political or other opinion, national or social origin, property, birth or any other status.<sup>36</sup>

#### 2.1.2 Other constitutional protection of equality between men and women

One provision in the Fundamental Law, related to the issue of gender equality, is considered controversial because of the paternalistic approach it adopts: 'By means of separate measures, Hungary shall *protect* families, children, women, the elderly and persons living with disabilities.'<sup>37</sup>

### 2.2 Equal treatment legislation

The framework rules on equal treatment are included in the Equal Treatment Act.<sup>38</sup> This Act plays a central role in equal treatment legislation because it defines the grounds of discrimination and the basic concepts of equality law to be applied throughout the entire legal system. It also regulates the mission, the structure and the roles of the most important equality body, the Equal Treatment Authority.

The evaluation of the Equal Treatment Act has changed since its enactment, when it was considered (at least by the wider public) to be a breakthrough that would lead to a legal system in which equal treatment would be not only a mere legal principle (as it was in the socialist era) but a collection of rules that are intended to be implemented. An NGO umbrella organisation, the Hungarian Women's Lobby (*Magyar Női Érdekvégyesítő Szövetség*), produced a lengthy in-depth analysis of the draft act,<sup>39</sup> although this was ignored during the legislative process. However, the past 15 years have substantiated the original critique of the legislation, and the Equal Treatment Act is now regarded as a rather unsuccessful result of initial good intentions. Although at first glance the Act did indeed transpose the EU *acquis* (and some international law norms), the principles of equal treatment have in practice remained on paper rather than permeating the entire legal system. In sum, not enough substantive or effective protection was generated by the new rules (see e.g. that the phenomenon of maternity-related discrimination is still widespread).

The formal transposition can equally be criticised, because it uses unclear terms and definitions, established a weak Equal Treatment Authority, and has regulated sanctions

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<sup>34</sup> Hungary, Fundamental Law of Hungary (*Magyarország Alaptörvénye*), 25 April 2011, Article XV (1).

<sup>35</sup> Hungary, Fundamental Law of Hungary (*Magyarország Alaptörvénye*), 25 April 2011, Article XV (3).

<sup>36</sup> Hungary, Fundamental Law of Hungary (*Magyarország Alaptörvénye*), 25 April 2011, Article XV (2).

<sup>37</sup> Hungary, Fundamental Law of Hungary (*Magyarország Alaptörvénye*), 25 April 2011, Article XV (5).

<sup>38</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003.

<sup>39</sup> See: 'The position and the suggestions of the Hungarian Women's Lobby's regarding the Bill on Equal Treatment and the Promotion of the Equality of Opportunities' (*A Magyar Női Érdekvégyesítő Szövetség [röviden: Női Érdek] véleménye és javaslatai az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról szóló törvényjavaslathoz*), 27 November 2003, available at: <http://www.nokjoga.hu/sites/default/files/filefield/2003-eselyegy-tv-kritikaja-noierdek.pdf>.

that are not sufficiently dissuasive. Consequently, the legal protection provided by the Equal Treatment Act is rather limited.

As far as the implementation of EU definitions is concerned, the Hungarian concepts in some respects go beyond the relevant EU regulations, for example with regard to how the definitions of direct and indirect discrimination and unlawful segregation protect members of vulnerable groups against unequal treatment (although this is relevant primarily with respect to cases concerning the unlawful segregation of Roma children in schools, rather than in gender equality case law). In many other contexts, the concepts elaborated by the Hungarian equality law are more limited than those in Directive 2006/54/EC, as explained below.

The Equal Treatment Act includes a non-exhaustive list of protected grounds:<sup>40</sup>

a) sex, b) racial origin, c) colour, d) nationality, e) ethnic minority, f) mother tongue, g) disability, h) state of health, i) religious or ideological conviction, j) political or other opinion, k) *family status*, l) *motherhood (pregnancy) or fatherhood*, m) sexual orientation, n) *sexual identity*, o) age, p) social origin, q) financial status, r) the part-time nature or fixed term of the employment relationship or other relationship aimed at work, s) membership of a trade union, t) any other status, characteristic feature or attribute (hereinafter collectively: characteristics).

The spectrum of prohibited grounds is thus much wider than what is required by the EU *acquis*, although in the Equal Treatment Act the issue of sex discrimination is given less emphasis, and the gender equality directives could have been more rigorously transposed through a separate law. The early critique of this arrangement (comprehensive anti-discrimination law instead of specific gender equality legislation), articulated by the Hungarian Women's Lobby, still appears to be plausible, i.e. that the Equal Treatment Act is 'unable to deal with the specific forms of discrimination that occur in the case of the different grounds, and especially on grounds of gender' and that Act 'does not deal with several major fields of discrimination, such as discrimination occurring in the court procedures'.<sup>41</sup>

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<sup>40</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 8.

<sup>41</sup> See: Krizsán, A., Pap, E. (2005): 'Equal Opportunities for Women and Men: Monitoring law and practice in Hungary' (*Monitoring law and practice in new member states and accession countries of the European Union*), Open Society Institute Network Women's Program, Foundation for the Women of Hungary, Budapest, p. 13, available at: [https://www.opensocietyfoundations.org/uploads/7c3013c0-8293-428b-aca4-7a8462eaaef6/eowmhungary\\_0.pdf](https://www.opensocietyfoundations.org/uploads/7c3013c0-8293-428b-aca4-7a8462eaaef6/eowmhungary_0.pdf).

### 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

According to the conclusions of a 2018 study undertaken on the case law of the Equal Treatment Authority relating to gender stereotypes, relevant decisions do not necessarily significantly impact the general public's awareness of the issue. However, the Authority has made an apparent effort to abolish gender stereotypes in order to promote equality, especially in cases relating to access to employment, where issues of 'manly'/'womanly' jobs and the 'masculine'/'feminine' look of applicants were disputed.<sup>42</sup>

##### 3.1.2 Other issues

There are no further issues to mention regarding the central concepts of gender equality law.

##### 3.1.3 General overview of national acts

The concepts of (gender) equality law, e.g. direct discrimination, indirect discrimination, harassment, unlawful segregation and instruction to discriminate are defined in the Equal Treatment Act, and all anti-discrimination provisions in various laws must be interpreted in accordance with this Act.<sup>43</sup>

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

On 9 August 2018, it was announced that the Hungarian Government plans to abolish the master's programme on Gender Studies at the (public) Eötvös Loránd University and to withdraw accreditation of the MA in Gender Studies at the (private) Central European University in Budapest. As pointed out in the European Parliament's resolution from September 2018,<sup>44</sup> a misinterpretation of the concept of gender dominates the public discourse in Hungary, and the European Parliament deplores the wilful misinterpretation of the terms 'gender' and 'gender equality'.<sup>45</sup> It also condemns the attacks on free teaching and research, particularly on gender studies; the aim of which is to analyse power relationships, discrimination, and gender relations in society and to find solutions to forms of inequality, and which has become the target of defamation campaigns. The European Parliament calls for the fundamental democratic principle of 'educational freedom' to be

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<sup>42</sup> Sipos, A. (2018), *'Eladónót keresünk! Az Egyenlő Bánásmód Hatóság nemi sztereotípiákkal kapcsolatos döntései'* ('Saleswomen are needed! Case law of the Equal Treatment Authority relating to gender stereotypes'), *Fundamentum*, no. 1, pp. 73-86, available at: <http://fundamentum.hu/sites/default/files/fundamentum-18-1-06.pdf>.

<sup>43</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 2.

<sup>44</sup> European Parliament (2018), Resolution of 12 September 2018 on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded (2017/2131(INL)), P8\_TA-PROV (2018)0340, Brussels, 12 September 2018, available at: [http://www.europarl.europa.eu/doceo/document/TA-8-2018-0340\\_EN.html?redirect](http://www.europarl.europa.eu/doceo/document/TA-8-2018-0340_EN.html?redirect).

<sup>45</sup> The European Parliament's Resolution from September 2018 does not elaborate this claim, i.e. does not explain how these terms/concepts are misinterpreted in public discourse. However, a study launched by the FEMM Committee of the EP a few weeks earlier (in June 2018), addresses this issue: 'The first news about misinterpreting the word "gender" and creating the concept "gender ideology" that undermines families and cultures shocked and surprised feminists, gender studies scholars, gender equality experts and civil servants who worked with gender mainstreaming in the first years of the millennia, especially as they were said to be the main proponents of such an ideology.' See: European Parliament (2018), Backlash in Gender Equality and Women's and Girls' Rights, PE 604.955– June 2018, available at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2018/604955/IPOL\\_STU\(2018\)604955\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2018/604955/IPOL_STU(2018)604955_EN.pdf).

fully restored and safeguarded. However, in October a government decree was passed, according to which MA programmes in Gender Studies will no longer be available in Hungary from the academic year of 2019/2020 onwards.<sup>46</sup>

### 3.2 Sex/gender/transgender

#### 3.2.1 Definition of 'gender' and 'sex'

Neither the concept of 'gender' nor 'sex' is defined in national legislation or case law. It should be noted that the Hungarian language does not differentiate between these concepts; the same noun (*nem*) is used to refer to both.<sup>47</sup> In Hungarian social science literature, the adjective 'social' is attached to this noun (*társadalmi nem*) to refer to gender, and the adjective 'biological' is attached to the same noun to refer to sex (*biológiai nem*); however, this differentiation is not reflected in legal interpretation.

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

Transgender, intersex and non-binary person are protected from discrimination under the category of 'gender/sexual identity' (*nemi identitás*) under Article 8(n) of the Equal Treatment Act.<sup>48</sup>

#### 3.2.3 Specific requirements

Protection against discrimination based on gender/sexual identity is provided without any specific requirements.

### 3.3 Direct sex discrimination

#### 3.3.1 Explicit prohibition

Direct discrimination is defined in Hungarian law, but not specifically 'direct sex discrimination'. Direct discrimination occurs if a person or a group is/are treated less favourably on the ground of his/her/their protected characteristic than any other person or group of persons in a comparable situation.<sup>49</sup>

The Equal Treatment Authority endorses the concept of direct discrimination. It did so, for example, in 2018 in a case in which a civil servant working in a public health institution on labour, fire security and safeguarding complained that her salary was lower than those men who worked in the same field.<sup>50</sup>

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<sup>46</sup> Hungary, Government Decree No. 188/2018. (X. 12.) on the amendment of Government Decree No. 283/2012. (X. 4.) on the System of Teacher Education, on the Rules of Choosing a Major, and on the Registry of Education Majors; and of Government Decree No. 139/2015. (VI. 9.) on the Registry of Higher Education Degree Programmes and on the Application of New Programmes to the Registry (A Kormány 188/2018. (X. 12.) Korm. rendelete a tanárképzés rendszeréről, a szakosodás rendjéről és a tanárszakok jegyzékéről szóló 283/2012. (X. 4.) Korm. rendelet, valamint a felsőoktatásban szerezhető képesítések jegyzékéről és új képesítések jegyzékbe történő felvételéről szóló 139/2015. (VI. 9.) Korm. rendelet módosításáról), 12 October 2018, Article 3.

<sup>47</sup> See e.g.: Vasvári, L.O. (2011) 'Grammatical Gender Trouble and Hungarian Gender[lessness]. Part I: Comparative Linguistic Gender', *Hungarian Cultural Studies*, Vol. 4, pp. 143-170, available at: <https://ahea.pitt.edu/ojs/index.php/ahea/article/download/40/31>.

<sup>48</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 8 Point (n).

<sup>49</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 8.

<sup>50</sup> Hungary, Hungary, Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) Decision No. EBH/152/2018.

According to the Equal Treatment Act,<sup>51</sup> in cases of alleged direct discrimination the principle of equal treatment is not violated by an action a) that limits a basic right of the entity brought into a disadvantageous position in order to enforce another basic right in an unavoidable situation, assuming that such a limitation is suitable for this purpose and is also in proportion thereto; or b) that is found by an objective consideration to have a reasonable explanation directly related to the relevant relationship in cases not referred to in point a). Notably, exemption is not allowed<sup>52</sup> in cases involving direct discrimination based on race, colour, nationality or ethnicity;<sup>53</sup> however, in order to comply with Directive 2006/54 this exemption should also extend to sex and maternity discrimination cases. Moreover, since the Recast Directive allows exemptions only in relation to indirect discrimination, the provision in the Hungarian legislation that allows exemptions in the cases listed above does not comply with the EU definition of direct discrimination.

Certain relationships are excluded from the scope of the Equal Treatment Act: family law relationships; relationships between relatives; relationships of ecclesiastical entities directly connected with the activities of the religious life of churches; and relationships in respect of membership between members of NGOs, and relationships in political parties. This further limits the scope of situations to which the definitions of Directive 2006/54 apply, including direct discrimination.

For employment discrimination cases, the Equal Treatment Act used to establish an additional, somewhat broad and vaguely worded exemption,<sup>54</sup> which was modified in 2017 and entered into force on 1 January 2018, as described below. Most importantly, the amendment<sup>55</sup> has reduced the scope of the exemption from any kind of employment situation to only the hiring process, and the wording of the provision is clearer. The reasoning behind the drafting of this provision originates from a progressive resolution by the Labour Department of the Supreme Court in 1977,<sup>56</sup> which established the first rule on discrimination in adjudication. In 1992, when the previous Labour Code was implemented, the resolution was partly modified, and in 2003, the main text was transposed into the Equal Treatment Act. This transposition was incorrect because the text was used to limit the notion of discrimination, which was never the intention of the Labour Department when it adopted the resolution. This original mistake was partly corrected in 2007, when an amendment was added that prohibited the application of the exemption to direct pay discrimination cases if the grounds of discrimination were sex, racial origin,

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<sup>51</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 7(2).

<sup>52</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 7(3).

<sup>53</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 8(b)-(e).

<sup>54</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 22(1) Point (a).

<sup>55</sup> Act L of 2017 amending certain Acts in respect of the entry into force of the Act on the Code of General Administrative Procedure and the Act on the Code of Administrative Court Procedure (2017. évi L. törvény az általános közigazgatási rendtartásról szóló törvény és a közigazgatási perrendtartásról szóló törvény hatálybalépésével összefüggő egyes törvények módosításáról), 16 May 2017, Article 226(2).

<sup>56</sup> Hungary, Supreme Court, Labour Department (*Legfelsőbb Bíróság Munkaügyi Kollégiuma*), Position No. MK 97 (MK. 97. számú állásfoglalás). This resolution was repealed in 2016 by the Employment Administrative-Labour Department of the Supreme Court, arguing that the subject is properly regulated by legislation, so there is no longer any need for the resolution. See: Hungary, Supreme Court, Administrative-Labour Department (*Kúria Közigazgatási-Munkaügyi Kollégiuma*), Opinion No.4/2016 (III. 21.). KMK (4/2016 (III. 21.). KMK vélemény), 21 March 2016.



colour, nationality, belonging to a national minority.<sup>57</sup> Following the 2017 amendment, this provision now reads:<sup>58</sup>

‘It does not constitute an unlawful violation of equal treatment

- a) if the discrimination, in the course of hiring, by reason of the nature of the work or the working conditions [in which they are carried out], is based on a genuine and determining occupational requirement, and its objective is legitimate and proportionate.’
- b) As the phrase ‘in the course of hiring’ was added to the paragraph, the scope of the exemption has been reduced from any employment scenario to situations where the distinction takes place during the hiring process. Furthermore, the wording of the paragraph is far clearer than the previous version. As the amendment repeats the wording of Article 14(1) of the Recast Directive in a fairly faithful manner, its interpretation will become easier.’<sup>59</sup>

In relation to the issue of direct discrimination based on sex/maternity, the Equal Treatment Advisory Board (*Egyenlő Bánásmód Tanácsadó Testület*) issued a position paper on the questions eligible to be asked by employers at job interview, i.e. that employers are not supposed to ask questions about the family situation and personal plans (especially regarding childbearing) of the applicants.<sup>60</sup>

### 3.3.2 Prohibition of pregnancy and maternity discrimination

Discrimination on the grounds of pregnancy and maternity, and also on the ground of paternity, is explicitly prohibited by the Equal Treatment Act.<sup>61</sup>

### 3.3.3 Specific difficulties

The courts tend to broadly interpret the provisions that narrow the scope of the Equal Treatment Act or establish an exemption from the definitions of the basic concepts of equal treatment.

Furthermore, the unspecific, all-embracing nature of the Equal Treatment Act gives the false impression that it is enough to refer to discrimination in general without indicating the protected ground on which basis legal redress is claimed. This is problematic because there are still many cases being adjudicated by the Supreme Court and the Equal Treatment Authority where the claimant failed to specify the protected ground on which his/her discrimination claim is based, while this would be necessary for shifting the burden of proof to the respondent.<sup>62</sup>

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<sup>57</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 17/A., Article 22(2).

<sup>58</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 22(1) Point (a).

<sup>59</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 22(1) Point (a).

<sup>60</sup> Equal Treatment Advisory Board (*Egyenlő Bánásmód Tanácsadó Testület*) (2007), Position No. 1/2007. TT on the questions eligible to be asked by employers at job interviews (1/2007. TT. sz. állásfoglalás az állásinterjún feltehető munkáltatói kérdésekről), February 2007, available at: <https://www.egyenlobanasmod.hu/hu/jogszabaly/tanacsado-testulet-2007-februari-allasfoglalasa-az-allasinterjun-feltehető-munkaltatoik>.

<sup>61</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 8 Point (l).

<sup>62</sup> E.g. Supreme Court (*Kúria*) Decision in Principle No. 24/2018 in Labour Law, available at: <https://kuria-birosag.hu/hu/elvhat/242018-szamu-munkaugyi-elvi-hatarozat>.



Gender-stereotypes are also deeply rooted in Hungarian public opinion, as illustrated by a case of the Equal Treatment Authority: a male parking inspector was obliged by his employer to shorten his long hair that he had worn in a ponytail for the past few years (he had been given several warnings, and one day he was not allowed to start his shift – he was told to go home, and his working day was considered as absence without leave. He then went on sick leave, and later his employment was terminated by mutual agreement). The company argued that long hair was a security risk, because the inspector could have been grabbed by his hair and pulled to the ground. The inspector claimed that he had been discriminated against due to his sex, because this policy was not applied to female employees. In their defence, the employer contended that long hair is an important external element of female gender identity and that long hair looks slovenly and ungroomed on men, and male employees were expected to defend female employees if they are attacked. The Equal Treatment Authority established direct discrimination based on sex, and prohibited the employer from engaging in similar discrimination in the future (meanwhile, the employer provided compensation for the day of absence without leave).<sup>63</sup> In the author's opinion, the employer was evidently so insensitive to gender issues that they tried to defend themselves in an equal treatment case before an equal treatment authority with a sexist argument.

### **3.4 Indirect sex discrimination**

#### **3.4.1 Explicit prohibition**

Indirect discrimination is defined in Hungarian law, but not specifically indirect sex discrimination. According to the Equal Treatment Act,<sup>64</sup> indirect discrimination occurs when a provision that is not considered to be direct discrimination and apparently complies with the principle of equal treatment, places any person or any group with a protected characteristic (as defined in Article 8)<sup>65</sup> at a considerably larger disadvantage compared to other persons or groups in a similar situation. The concept of indirect discrimination in the Equal Treatment Act refers to a 'considerably larger disadvantage' compared to a 'disadvantage' as specified in Directive 2006/54, thus the definition in Hungarian legislation is narrower than that stipulated by EU law.

The exemption laid down in the Equal Treatment Act makes the scope of indirect discrimination in the Equal Treatment Act even narrower compared to the provision in Directive 2006/54. According to Hungarian legislation,<sup>66</sup> the principle of equal treatment is not violated by a conduct, measure, condition, omission, instruction or practice (hereafter referred to collectively as a 'disposition') that a) limits a basic right of someone in order to enforce another person's basic right in an unavoidable situation, assuming that such a limitation is suitable for this purpose and is also in proportion thereto; or b) is found by an objective consideration to have a reasonable explanation directly related to the relevant relationship in cases not referred to in point a). The exemption stipulated in point a) is narrower than the objective justification test, as it refers to the constitutionally protected basic rights, but the exemption described in point b) is far wider than the objective justification test; therefore, the definition of indirect discrimination is considerably narrower than specified in Article 2(1)(b) of Directive 2006/54.

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<sup>63</sup> Hungary, Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) Decision No. EBH/103/2017.

<sup>64</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 9.

<sup>65</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 8.

<sup>66</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 7(2).

### 3.4.2 Statistical evidence

Statistical evidence is only marginally part of the sex discrimination litigation, and relatively recently. The use of statistical evidence is not required either by law or by custom in indirect discrimination cases.

However, the parties to indirect discrimination cases may opt to present statistical evidence to the Equal Treatment Authority or the courts. This occurred in a landmark case adjudicated by the Equal Treatment Authority in 2017; an important stepping-stone in the Hungarian anti-discrimination case law, because it sets a good example of how to investigate indirect wage discrimination cases and how to collect, examine and evaluate statistical evidence. In this case, female workers claimed that they were victims of indirect discrimination when they had not received the extra '13th month payment' (an in-cash benefit) due to being on sick leave with their children. The preconditions for the benefit had been set by the applicable collective agreement. Only employees who were away from work less than 25 days per year were eligible to receive the benefit. The calculation of the workers' days of absence did not include the annual paid holiday, work-related illness, or illness which needed in-patient hospital care. The mothers of young children claimed that even though the regulations appeared neutral, they were disproportionately detrimental and discriminatory towards mothers with children under the age of 12, which is the age limit for eligibility for sickness payments based on children's rights under the social security scheme. The Equal Treatment Authority conducted a detailed statistical investigation comparing the number of workers who were and were not eligible for the benefit and the total number of workers, and the number of female workers who had and did not have children under the age of twelve. The statistical investigation showed that the rule determined by the collective agreement was disproportionately disadvantageous to female workers with young children compared to those male or female workers who had no children. On the basis of this statistical evidence, the Equal Treatment Authority concluded that indirect discrimination had occurred, and ordered the employer to eliminate it. The Equal Treatment Authority obliged the employer to reconsider the eligibility criteria of the benefit, and it prohibited the employer from engaging in any further similar discrimination. It obliged the employer to send a written report on the measures that it had taken to eliminate the discrimination within 60 days.

The Equal Treatment Authority did not impose a fine in this case.<sup>67</sup>

### 3.4.3 Application of the objective justification test

The objective justification test provided by the Equal Treatment Act<sup>68</sup> has been applied very liberally by the courts in Hungary.

It is widespread practice that certain elements of wages are only paid to employees who have not been on sick leave at all or have been on sick leave for only a limited period of time. In a case published in 2008,<sup>69</sup> the employer did not pay any bonuses and did not provide wage increases to employees who had been on sick leave for longer than 15 days in the year in question. The plaintiff argued that this policy indirectly discriminated against mothers with young children – especially single mothers – who might be away from work for longer periods due to the illness of their child, compared to other employees. The employer argued that it had to keep its manpower low and meet its deadlines in order to remain competitive on the market. According to the court, this argument provided a

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<sup>67</sup> Hungary, Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) Decision No. EBH/130/2017. See the description of the case in English: <https://www.equalitylaw.eu/downloads/4594-hungary-employer-obliged-to-reconsider-conditions-13th-month-payment-for-female-workers-pdf-149-kb>.

<sup>68</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 7(2).

<sup>69</sup> Supreme Court (*Legfelsőbb Bíróság*) Decision in Principle No. BH 253/2008 in Labour Law.

reasonable explanation that was directly related to employment, and therefore objectively justified the policy.

#### 3.4.4 Specific difficulties

According to the case law, the exemption provided by the Equal Treatment Act<sup>70</sup> allows defendants to justify almost any kind of indirect discrimination.

### 3.5 Multiple discrimination and intersectional discrimination<sup>71</sup>

#### 3.5.1 Definition and explicit prohibition

Neither multiple nor intersectional discrimination is addressed explicitly in national legislation.

In 2018, the Equal Treatment Authority issued a report on the concept of multiple discrimination and the implementation of the concept in its jurisprudence.<sup>72</sup> The report describes international and EU legal and policy frameworks and jurisprudence on multiple/intersectional discrimination. The Equal Treatment Authority found in its analysis that while the Equal Treatment Act does not contain explicit regulation of multiple and/or intersectional discrimination, the Equal Treatment Authority does have the authority to examine such claims. Since the Authority has already done so, this has given it the opportunity to examine discrimination based on multiple protected grounds and their inter-connectivity in discrimination cases. The report includes a collection of recent case law on multiple/intersectional discrimination cases decided by the Equal Treatment Authority. These include the case of a Roma woman who was harassed verbally by medical staff when she gave birth in a public hospital (see details below at 3.5.2);<sup>73</sup> a case where a mayor harassed Roma women who were working within the framework of the local public work programme (the case involved sexual harassment and racist insults as well);<sup>74</sup> and a case where female workers were not granted the extra '13th month payment' due to being on sick leave with their children (see details above at 3.4.2).<sup>75</sup>

#### 3.5.2 Case law and judicial recognition

Hungarian case law on gender-based discrimination does not yet recognise the specialist nature of cases when multiple discrimination and/or intersectional discrimination occurs. However, in a case on indirect wage discrimination, the Equal Treatment Authority noted in its decision that the disadvantages of being a woman and having a young child accumulated and resulted in multiple and intersectional discrimination, although it did not discuss the issue any further.<sup>76</sup> In 2016, the Equal Treatment Authority also established harassment in the case of a Romani woman who claimed that she was verbally abused by some members of the medical staff when she was giving birth in a public hospital (she

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<sup>70</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 7(2) Point (b).

<sup>71</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 <https://www.equalitylaw.eu/downloads/3850-intersectional-discrimination-in-eu-gender-equality-and-non-discrimination-law-pdf-731-kb>.

<sup>72</sup> Equal Treatment Authority (Egyenlő Bánásmód Hatóság) (2018), 'A többszörös diszkrimináció megjelenése az Egyenlő Bánásmód Hatóság joggyakorlatában' (Multiple discrimination in the jurisprudence of the Equal Treatment Authority ), EBH-füzetek, No. 5, available at: [https://www.egyenlobanasmod.hu/sites/default/files/kiadvany/5\\_teljes\\_HU.pdf](https://www.egyenlobanasmod.hu/sites/default/files/kiadvany/5_teljes_HU.pdf).

<sup>73</sup> Hungary, Equal Treatment Authority (Egyenlő Bánásmód Hatóság) Decision No. EBH/349/2016. See the description of the case in English: <https://www.equalitylaw.eu/downloads/4069-hungary-roma-woman-harassed-in-hospital-while-giving-birth-pdf-110-kb>.

<sup>74</sup> Hungary, Equal Treatment Authority (Egyenlő Bánásmód Hatóság) Decision No. EBH/467/2016.

<sup>75</sup> Hungary, Equal Treatment Authority (Egyenlő Bánásmód Hatóság) Decision No. EBH/130/2017.

<sup>76</sup> Hungary, Equal Treatment Authority (Egyenlő Bánásmód Hatóság) Decision No. EBH/130/2017.

was told, among other things, that 'you, Gypsies, only give birth for the money, anyways'). Whereas the Equal Treatment Authority only reviewed her claim based on her belonging to a nationality and skin colour and established the discrimination on these multiple grounds, it failed to recognise the intersectional discrimination stemming from the vulnerability of the victim's status of motherhood/pregnancy and her sex, despite the fact that her motherhood/pregnancy was inherently linked to her being harassed, and that both sex and motherhood/pregnancy are explicitly listed as protected grounds under the Equal Treatment Act.<sup>77</sup>

### 3.6 Positive action

#### 3.6.1 Definition and explicit prohibition

Positive action is mentioned in the fourth modification of the Fundamental Law, stating that 'equal opportunities and social convergence shall be promoted by introducing special measures.'<sup>78</sup> The rules on such measures are regulated by the Equal Treatment Act,<sup>79</sup> which states that positive action might be implemented by an Act, a Government decree based on the Act, or by a collective agreement, and that such positive action must not violate fundamental rights, grant an unconditional preference, or exclude the consideration of individual aspects.

This definition complies with Article 157(4) of TFEU.

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

In Hungary, 'equal opportunities' is a self-standing legal concept, and both the terms 'equality of opportunities' (*esélyegyenlőség*) and 'inequality of opportunities' (*esélyegyenlőtlenség*) are used.

Positive action measures are considered legally as exceptions to the non-discrimination principle, or regarded as a way of fulfilling the non-discrimination principle in practice.

The concept of 'equality of opportunities' and the non-discrimination principle are interconnected in a non-hierarchical relationship; the title of the key piece of legislation is: 'Act on Equal Treatment and the Promotion of the Equality of Opportunities'.

The definition of positive action measure ('preferential treatment') in the Equal Treatment Act is: 'a measure aimed at the elimination of an expressly identified social group's objectively substantiated inequality of opportunities'.<sup>80</sup>

The types of positive action measures are not specified, only the criteria; i.e. that positive action:

- 'Should be based on an Act of Parliament, on a government decree based on an Act or on a collective contract, effective for a definite term or until a specific condition is met';<sup>81</sup> and

<sup>77</sup> Hungary, Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) Decision No. EBH/349/2016.

<sup>78</sup> Hungary, Fundamental Law of Hungary (*Magyarország Alaptörvénye*), 25 April 2011, Article XV (4).

<sup>79</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 11.

<sup>80</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról) Article 11, Paragraph (1).

<sup>81</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról) Article 11, Paragraph (1)(a).

- 'Shall not violate any basic rights, shall not provide unconditional advantage, and shall not exclude the consideration of individual circumstances'.<sup>82</sup>

### 3.6.3 Specific difficulties

The role of political objections against certain kinds of positive measures, especially quota-like measures, is crucial. The Hungarian government is keen to reject the 'interference' of the EU in domestic issues. For instance, in 2012 and in relation to the debates on company board gender quotas to be introduced in the EU, the Minister for Human Resources claimed that 'it's not Brussels' business'.<sup>83</sup> Moreover, the governmental discourse tends to be conservative (essentialist) regarding gender roles. For instance, a spokesperson of the Ministry of Foreign Affairs stated, in 2012, 'the proportion of men and women differs by fields and sectors; it is natural, that certain jobs are more popular amongst men, while women prefer other jobs'.<sup>84</sup>

Quota-like positive action measures are controversial in Hungary not just because of the role of the EU (as a promoter of certain types of quotas), but also for historical reasons,<sup>85</sup> specifically the negative experiences from the era of 'State socialism'. During the period of Soviet dominance (from 1949 until 1989) a number of quotas were applied in non-democratic institutions, including the single-party parliament, aimed at securing seats not just for women, but for representatives of various social groups (youth, workers, farmers, etc.).

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

Hungary has not adopted any measures that aim to improve the gender balance on company boards.

Although Hungary is lagging far behind compared to Western and other Central European countries in the participation of women on both company boards and in executive positions,<sup>86</sup> there is no major debate on this issue in either the media or in governmental and non-governmental organisations. However, in 2016 an NGO umbrella organisation, the Hungarian Women's Lobby (*Magyar Női Érdekvégyesítő Szövetség*), launched a policy paper on gender equality in decision-making in the field of the economy.<sup>87</sup>

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

Hungary has not adopted measures that aim to improve gender balance in any other fields, e.g. in political decision-making, despite the fact that women's participation in elected bodies is extremely low in Hungary:

<sup>82</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról) Article 11, Paragraph (2).

<sup>83</sup> HVG.hu (2012), 'Balog a női kvótáról: "Ez nem Brüsszel dolga"' (Balog on the gender quota: 'It's not Brussels' business'), *HVG.hu*, 28 September 2012, [https://hvg.hu/karrier/20120928\\_Balog\\_a\\_noi\\_kvotarol\\_ez\\_nem\\_Brusszel\\_dolg](https://hvg.hu/karrier/20120928_Balog_a_noi_kvotarol_ez_nem_Brusszel_dolg).

<sup>84</sup> Magyar Nemzet (2012), 'Hazánk komoly jelentőséget tulajdonít a nők egyenjogúságának' (Our country seriously considers the issue of women's equal status), *Magyar Nemzet*, 6 September 2012, <https://magyarnemzet.hu/archivum/gazdasag-archivum/hazank-komoly-jelentoseget-tulajdonit-a-nok-egyenjogusaganak-4208957/>.

<sup>85</sup> See e.g.: Balogh, L. (2014) 'A nemek közötti egyenlőség normái a "gender-ideológia" diskurzusának tükrében' (The norms of gender equality, in the light of the 'gender ideology' discourse), *Állam- és Jogtudomány*, Vol. 55, No. 4, pp. 3-25.

<sup>86</sup> Dunavölgy, M. (2017), 'Hol a legmácsóbbak a vállalatok?' (Where are the most 'Macho' enterprises?), *Index*, 7 November 2017, available at: [https://index.hu/gazdasag/defacto/2017/11/07/skandinav\\_modelle\\_vagy\\_skandinav\\_krimi/](https://index.hu/gazdasag/defacto/2017/11/07/skandinav_modelle_vagy_skandinav_krimi/).

<sup>87</sup> Nagy, B. (2016) 'Nemek közötti egyenlőség a gazdasági döntéshozatalban' (Gender equality in decision-making in the field of economy), in *A Magyar Női Érdekvégyesítő Szövetség közpolitikai ajánlásai* (Policy papers of the Hungarian Women's Lobby), Budapest, Hungarian Women's Lobby (*Magyar Női Érdekvégyesítő Szövetség*), ed. Juhász, B.; p. 17-23.

- the proportion of female MPs was 11 % (22 women out of 199) after the elections in 2018,<sup>88</sup> and in 2014, 9.5 % (19 women out of 199);<sup>89</sup>
- the current, 'Fourth Orbán-Government' consists of one woman (Minister Without Portfolio for the Development of Public Assets)<sup>90</sup> and 13 men;<sup>91</sup> the previous 'Third Orbán-Government', set up in 2014, was an all-male government.<sup>92</sup>

### 3.7 Harassment and sexual harassment

#### 3.7.1 Definition and explicit prohibition of harassment

According to the Equal Treatment Act, harassment is conduct of a sexual or other nature violating human dignity related to the relevant person's protected characteristics with the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment faced by the person in question.<sup>93</sup> This definition is in compliance with Article 2(1)(c) of Directive 2006/54.

In 2008, the Equal Treatment Advisory Board (*Egyenlő Bánásmód Tanácsadó Testülete*) issued a position paper on the concepts of harassment and sexual harassment.<sup>94</sup>

The number of harassment cases heard by the Equal Treatment Authority on the grounds of sex or maternity has ranged between one and five during the past few years. According to the case law, harassment is established if the behaviour is long lasting and/or severe in nature. For instance, in 2017, the Equal Treatment Authority found harassment in the case of a female truck driver who claimed to have been harassed by her employer because her requests for repair work on her vehicle had been systematically ignored, the chief mechanic had made degrading remarks about the claimant by referring to her sex, and the CEO of the company aimed to stop the conflict by advising them not to talk to each other.<sup>95</sup>

In 2016, the Equal Treatment Authority also found harassment in the case of a Roma woman who claimed that she was verbally abused when she was giving birth in a public hospital.<sup>96</sup> Notably, the Equal Treatment Authority reviewed the claim based on 'belonging to a national minority' and 'skin colour', and made only a note on the vulnerable situation of women in labour,<sup>97</sup> although the ground of maternity/pregnancy (protected under the Equal Treatment Act) was also relevant, in the opinion of this report's author.

<sup>88</sup> As of: 8 May 2018.

<sup>89</sup> As of: 6 May 2014.

<sup>90</sup> See <https://www.kormany.hu/en/news/andrea-bartfai-mager-supports-the-continuation-of-existing-asset-policy>.

<sup>91</sup> Hungary, Prime Minister's Office (*Miniszterelnöki Kabinetiroda*) (2018): 'Orbán Viktor lezárta konzultációit a kormányalakításról' (Viktor Orbán concluded the consultations on setting up the government), 27 April 2018, available at <http://www.kormany.hu/hu/a-miniszterelnok/hirek/orban-viktor-lezarta-konzultacioit-a-kormanyalakitasrol>.

<sup>92</sup> Hungary, Prime Minister's Office (*Miniszterelnöki Kabinetiroda*) (2014): 'Megalakult a harmadik Orbán-kormány' (The third Orbán-government is set up), 6 June 2014, available at <http://www.kormany.hu/hu/hirek/megalakult-a-harmadik-orban-kormany>.

<sup>93</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 10(1).

<sup>94</sup> Equal Treatment Advisory Board (*Egyenlő Bánásmód Tanácsadó Testület*) (2008), Position No. 384/5/2008.(IV.10.) TT. on the concepts of harassment and sexual harassment (384/5/2008.(IV.10.) TT. sz. állásfoglalás a zaklatás és a szexuális zaklatás fogalmáról), 10 April 2008, available at: [https://www.egyenlobanasmod.hu/sites/default/files/content/torveny/szexuális\\_zaklatas.pdf](https://www.egyenlobanasmod.hu/sites/default/files/content/torveny/szexuális_zaklatas.pdf).

<sup>95</sup> Hungary, Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) Decision No. EBH/244/2017.

<sup>96</sup> Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) (2018), 'A többszörös diszkrimináció megjelenése az Egyenlő Bánásmód Hatóság joggyakorlatában' (Multiple discrimination in the jurisprudence of the Equal Treatment Authority), EBH-füzetek, No. 5, available at: [https://www.egyenlobanasmod.hu/sites/default/files/kiadvany/5\\_teljes\\_HU.pdf](https://www.egyenlobanasmod.hu/sites/default/files/kiadvany/5_teljes_HU.pdf).

<sup>97</sup> Hungary, Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) Decision No. EBH/349/2016.



### 3.7.2 Scope of the prohibition of harassment

The scope of the prohibition of harassment is governed by the general anti-discrimination provisions the Equal Treatment Act.

The institutional (personal) scope of the Act covers: (a) the Hungarian State; (b) local and minority municipalities and the bodies thereof; (c) authorities exercising state powers; (d) the armed forces and law enforcement bodies; (e) public foundations, public corporations, trade unions and employers' associations; (f) public utility companies; (g) institutions of public education and higher education; (h) persons and institutions providing social care and child-protection services, as well as child-welfare services; (i) museums, libraries, and community centres; (j) voluntary mutual insurance funds and private pension funds; (k) healthcare institutions; (l) political parties; and (m) budgetary agencies that do not belong to points (a)-(l).<sup>98</sup>

The *relational scope*<sup>99</sup> (or material scope) of the Act, which specifies the legal relationships to which the prohibition of harassment is applied, could be grouped into three subcategories: its employment-related scope (covering work-related legal relationships), its public subsidies-related scope (covering all legal relations related to public subsidies) and its scope with regard to civil law relationships (covering legal relationships through which tenders are made, services are provided and goods are sold to the public).<sup>100</sup>

### 3.7.3 Definition and explicit prohibition of sexual harassment

The original text of the Equal Treatment Act contained only the definition of harassment, which was slightly modified in 2006 in order to include cases of sexual harassment and by inserting into the definition of harassment that a violation of the dignity of the person occurs as a result of unwanted conduct 'of a sexual or other nature.'

In 2008, the Equal Treatment Advisory Board (*Egyenlő Bánásmód Tanácsadó Testülete*) issued a position paper on the concepts of harassment and sexual harassment.<sup>101</sup> This position paper includes a reference to a relevant decision of the Equal Treatment Authority from 2006, which includes, however, a controversial element: it provides a kind of 'victim profile' by claiming that applying the method of harassment occurs especially in those situations where the woman (the victim of harassment) has a 'well-developed and strong self-esteem, identity and personality, which enables her to express assertiveness in words or in actions.'<sup>102</sup>

### 3.7.4 Scope of the prohibition of sexual harassment

The scope of the prohibition of sexual harassment, as a form of harassment, is governed by the general anti-discrimination provisions of the Equal Treatment Act.

The institutional (personal) scope of the Act covers: (a) the Hungarian State; (b) local and minority municipalities and bodies thereof; (c) authorities exercising state powers; (d) the

<sup>98</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 4.

<sup>99</sup> See: Freedland M., Kountouris, N. (2012), 'Employment Equality and Personal Work Relations – A Critique of Jivraj v Hashwani', *Industrial Law Journal*, Vol. 41, No. 1, pp. 56-66.

<sup>100</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 5.

<sup>101</sup> Equal Treatment Advisory Board (*Egyenlő Bánásmód Tanácsadó Testület*) (2008), Position No. 384/5/2008.(IV.10.) TT. on the concepts of harassment and sexual harassment (384/5/2008.(IV.10.) TT. sz. állásfoglalás a zaklatás és a szexuális zaklatás fogalmáról), 10 April 2008, available at: [https://www.egyenlobanasmod.hu/sites/default/files/content/torveny/szexualis\\_zaklatas.pdf](https://www.egyenlobanasmod.hu/sites/default/files/content/torveny/szexualis_zaklatas.pdf).

<sup>102</sup> Hungary, Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) Decision No. EBH/69/2006.

armed forces and law enforcement bodies; (e) public foundations, public corporations, trade unions and employers' associations; (f) public utility companies; (g) institutions of public education and higher education; (h) persons and institutions providing social care and child-protection services, as well as child-welfare services; (i) museums, libraries, community centres; (j) voluntary mutual insurance funds and private pension funds; (k) healthcare institutions; (l) political parties; and (m) budgetary agencies that do not belong to points (a)-(l).<sup>103</sup>

The *relational scope*<sup>104</sup> (or material scope) of the Act, which specifies the legal relationships to which the prohibition of harassment is to be applied, could be grouped into three subcategories: its employment-related scope (covering work-related legal relationships), its public subsidies-related scope (covering all legal relations related to public subsidies) and its scope with regard to civil-law relationships (covering legal relationships through which tenders are made, services are provided and goods are sold to the public).<sup>105</sup>

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

Harassment (including harassment of a sexual nature) is defined by the Equal Treatment Act as a violation of the principle of equal treatment.<sup>106</sup>

### 3.7.6 Specific difficulties

The definition of sexual harassment has been developed through the (limited)<sup>107</sup> jurisdiction of the Equal Treatment Authority and the courts, and the Equal Treatment Authority has properly transposed the content of the prohibition of sexual harassment laid down by the Directive. For example, the Equal Treatment Authority imposed a fine on a respondent for habitually making remarks about the attractive appearance of a female co-worker, using a very intimate tone (calling her 'puppy' or 'piglet'), and repeatedly, in public, offering himself as her sexual partner.<sup>108</sup> Similarly, the court of second instance considered it to be sexual harassment when a public servant received text messages of a sexual and threatening nature from his superior.<sup>109</sup>

## 3.8 Instruction to discriminate

### 3.8.1 Explicit prohibition

According to the Equal Treatment Act, instruction to any of the forms of discrimination (direct and indirect discrimination, harassment, including sexual harassment, unlawful segregation, retaliation) is considered to be a violation of the principle of equal treatment.<sup>110</sup>

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<sup>103</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 4.

<sup>104</sup> See: Freedland M., Kountouris, N. (2012), 'Employment Equality and Personal Work Relations – A Critique of *Jivraj v Hashwani*', *Industrial Law Journal*, Vol. 41, No. 1, pp. 56-66.

<sup>105</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 5.

<sup>106</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 7(1), 10(1).

<sup>107</sup> See an overview: Sebestyén, A. (2017), 'Beszéljünk a "jogi értelemben véve is" szexuális zaklatásról' (Let's talk about sexual harassment also from a legal perspective), *Fundamentum*, no. 3-4, pp. 44-48. <http://fundamentum.hu/sites/default/files/fundamentum-17-3-4-06.pdf>.

<sup>108</sup> Hungary, Hungary, Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) Decision No. EBH/365/2011.

<sup>109</sup> Hungary, published as Decision No. BH 347/2011.

<sup>110</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 7(1).



### 3.8.2 Specific difficulties

The existing case law on instruction to discrimination is minimal and, as yet, has not revealed any specific difficulties.

### 3.9 Other forms of discrimination

The Equal Treatment Act details the following on other forms of discrimination:

- Unlawful segregation is a conduct that separates individuals or groups of individuals from other individuals or groups of individuals in a similar situation on the basis of their protected characteristics, without any law expressly allowing for this;<sup>111</sup>
- Retaliation is conduct that causes an infringement, is aimed at an infringement, or threatens an infringement against the person making a complaint or initiating procedures because of a violation of the principle of equal treatment or against a person assisting in such a procedure in relation to these acts.<sup>112</sup>

### 3.10 Evaluation of implementation

There are some gaps in the concepts and consequently some gaps in the full implementation of the EU law concepts.

According to the Equal Treatment Act,<sup>113</sup> in alleged direct discrimination cases the principle of equal treatment is not violated by an action (a) which limits a basic right of the entity brought into a disadvantageous position in order to enforce another basic right in an unavoidable situation, assuming that such a limitation is suitable for this purpose and is also in proportion thereto; or (b) which is found by an objective consideration to have a reasonable explanation directly related to the relevant relationship in cases not referred to in point (a). Similar exemptions are allowed in Directive 2006/54 only in relation to indirect discrimination. Consequently, the definition of direct discrimination does not comply with the EU definition, because it is much narrower by allowing the possibility of an exemption.

With regards to indirect discrimination, the Equal Treatment Act<sup>114</sup> provides narrower protection than the Directive 2006/54, because it states that when a provision that is not considered to be direct discrimination and apparently complies with the principle of equal treatment puts any person or group having a protected characteristic at a considerably larger disadvantage compared with other persons or groups in a similar situation, then this is considered to be indirect discrimination.<sup>115</sup> The concept of indirect discrimination is narrower in the Equal Treatment Act because it stipulates a 'considerably larger disadvantage' compared to a 'disadvantage' as mentioned in Directive 2006/54.

Although in use, the concept of multiple and/or intersectional discrimination is not defined in the Equal Treatment Act. Similarly, sexual harassment is not defined explicitly, and it

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<sup>111</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 10(2).

<sup>112</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 10(3).

<sup>113</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 7(2).

<sup>114</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 9.

<sup>115</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 8.

has been for the Equal Treatment Authority and courts to develop the concept in their respective case law.

The amendment of the provision of the Equal Treatment Act on exemptions by adding the phrase 'in the course of hiring', is to be considered as an important improvement to equal treatment law in Hungary, as it improves the transposition of the EU *acquis* into Hungarian legislation by repeating the wording of Article 14(1) of Directive 2006/54.

### **3.11 Remaining issues**

There are no remaining issues to be mentioned 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 of realising equal pay**

According to the Eurostat, the gender pay gap was 14.2 % in Hungary in 2017, which is slightly lower than the EU average (16 %).<sup>116</sup> However, the authors of an analysis published in 2018 refer to the gender pay gap ranking list of the World Economic Forum (WEF) from 2016, where Hungary is ranked 130<sup>th</sup> out of 140 countries. In addition, the authors point to the fact that the gender pay gap is especially pronounced among the highly educated, and conclude that with the current pace of closing the gap, equality would not be achieved until 2102 in Hungary.<sup>117</sup>

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

No surveys or reports have been published over the last five years regarding the specific factors that prevent the realisation of equal treatment at work.

#### **4.1.3 Other issues**

The previous constitution, unlike the Fundamental Law (the current constitution), expressly guaranteed equal pay for equal work.<sup>118</sup>

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

There has been no political or social debates, and there are no pending legislative proposals on the principles of equal pay and equal treatment at work.

### **4.2 Equal pay**

#### **4.2.1 Implementation in national law**

The rules on equal pay are very briefly regulated in Hungary; only one article of the Labour Code addresses the issue of equal pay, which states that in connection with the remuneration of work the principle of equal treatment must be strictly observed. Remedying the consequences of any breach of this requirement may not result in any violation of, or harm to, the rights of other workers. The Labour Code also includes a provision on work of equal value, stipulating that it should be 'determined based on the nature of the work performed, its quality and quantity, working conditions, the required vocational training, physical or intellectual efforts expended, experience, responsibilities and labour market conditions'.<sup>119</sup>

The Equal Treatment Act also prohibits direct and indirect wage discrimination and refers to the same article in the Labour Code.<sup>120</sup>

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<sup>116</sup> Eurostat (2019), 'Gender pay gap in unadjusted form', available at: [https://ec.europa.eu/eurostat/databrowser/view/sdg\\_05\\_20/default/table?lang=en](https://ec.europa.eu/eurostat/databrowser/view/sdg_05_20/default/table?lang=en).

<sup>117</sup> Simonovits, B., Szeitl, B. (2018) '*Nők és férfiak helyzete – nemzetközi összehasonlításban*' (The situation of women and men – in international comparison), in Kolosi, T., Tóth I. Gy. (eds.) *Társadalmi Riport 2018*, Budapest, TÁRKI, p. 182, available at: [http://www.tarki.hu/sites/default/files/trip2018/166-183\\_simonovits\\_szeitl\\_Nok\\_ferfiak\\_helyzete.pdf](http://www.tarki.hu/sites/default/files/trip2018/166-183_simonovits_szeitl_Nok_ferfiak_helyzete.pdf).

<sup>118</sup> Hungary, Act XX of 1946. The Constitution of the Hungarian Republic. (1949 évi XX. törvény. A Magyar Köztársaság Alkotmánya), 18 August 1949, Article 78/B (2).

<sup>119</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 12(1).

<sup>120</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 12(1).

#### 4.2.2 Definition in national law

The concept of 'pay' is defined in the Labour Code as 'any remuneration provided directly or indirectly in cash or in kind, based on the employment relationship'; this definition is in compliance with the definition provided by Article 157(2) TFEU.

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

As for the implementation of Article 4 of the Recast Directive 2006/54, the Equal Treatment Act defines direct discrimination and establishes sex as a protected ground,<sup>121</sup> defines indirect discrimination,<sup>122</sup> regulates the institutional scope,<sup>123</sup> and lays down the relational scope of the act;<sup>124</sup> furthermore, it prohibits direct and indirect wage discrimination.<sup>125</sup>

#### 4.2.4 Related case law

In 2018, the Equal Treatment Authority established direct discrimination in a case in which a civil servant working in a public health institution on labour, fire security and safeguarding complained that her salary was lower than men who worked in the same field.<sup>126</sup>

In 2017, in one case, the Equal Treatment Authority skilfully used statistical evidence to establish a case of indirect wage discrimination.<sup>127</sup> In this case, female workers claimed that they were victims of indirect discrimination when they had not received their extra '13th month payment' (an in-cash benefit) due to being on sick leave with their children. The preconditions for this benefit had been set by the applicable collective agreement. Only employees who were away from work less than 25 days per year were eligible to receive the benefit. The calculation of the workers' days of absence did not include the annual paid holiday, work-related illness, or illness which needed inpatient hospital care. The mothers of young children claimed that even though the regulations were seemingly impartial, they were disproportionately detrimental and discriminatory towards mothers with children under the age of 12, which is the age limit for eligibility for sickness payments based on children's rights under the social security scheme. The Equal Treatment Authority conducted a statistical investigation comparing the number of workers who were and were not eligible for the benefit and the total number of workers, and the number of female workers who had and did not have children under the age of 12. The statistical investigation showed that the rule determined by the collective agreement was disproportionately disadvantageous to female workers with young children compared to male or female workers who had no children. On the basis of the statistical evidence, the Equal Treatment Authority established indirect discrimination and ordered the employer to eliminate it.<sup>128</sup> This case is a very important stepping-stone in the Hungarian anti-

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<sup>121</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 8.

<sup>122</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 9.

<sup>123</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 4.

<sup>124</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 5.

<sup>125</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 21 Point f).

<sup>126</sup> Hungary, Equal Treatment Authority (Egyenlő Bánásmód Hatóság) Decision No. EBH/152/2018.

<sup>127</sup> Hungary, Equal Treatment Authority (Egyenlő Bánásmód Hatóság) Decision No. EBH/130/2017.

<sup>128</sup> Hungary, Equal Treatment Authority (Egyenlő Bánásmód Hatóság) Decision No. EBH/130/2017.

discrimination case law, because it sets a good example of how to investigate indirect wage discrimination cases and how to collect, examine and evaluate statistical evidence.

#### 4.2.5 Permissibility of pay differences

According to the Equal Treatment Act, since 2007, exemptions are no longer possible in direct wage discrimination cases.<sup>129</sup>

In the case law, when attempting to justify wage differences, employers frequently refer to their freedom of contract and/or the differences in the bargaining power of different employees. These arguments usually do not save the employers from being liable for wage discrimination, as occurred in a case in which female storekeepers earned 70-100 % less than their male colleagues. The decision of the Equal Treatment Authority<sup>130</sup> was confirmed by the Supreme Court in a published decision.<sup>131</sup> If, however, the employer invests some effort in fabricating an argument about the necessity of the challenged policy because of competitiveness or applying preferential treatment on behalf of the comparator, the employer has a good possibility of winning the case.<sup>132</sup>

#### 4.2.6 Requirement for comparators

In Hungary neither legislation nor case law requires the claimant to point to a particular comparator.

At present, in most of the published cases the arguments are phrased in general terms;<sup>133</sup> for instance, the claimant argues that a preference is awarded to employees in a discriminatory fashion without referring to one particular employee as a comparison. Sometimes the employer uses the pay of other employees to exempt itself from legal liability by demonstrating a lack of discrimination. Usually the arguments on both sides remain at the level of general arguments, even if a list of employees' pay is sent to the court. Nonetheless, the review of the published cases reveals that taking, elaborating, and contrasting the actual pay of the claimant with another concrete employee, significantly improves the claimant's chances of winning the case. In an Equal Treatment Authority case, the monthly wages of two male storekeepers were 45-110 % more than those of their two female colleagues during a longer period of time. The detailed data on monthly wages enabled the claimant (one of the female storekeepers) to prove direct wage discrimination.<sup>134</sup>

In a recent case, a pregnant employee argued that employees who were hired later than her received a higher initial base wage, and therefore she was directly discriminated against due to her pregnancy. The data collected during the proceeding, however, showed that all employees who were hired later than the plaintiff received a higher base wage even before she became pregnant (Hungarian language does not have gender-specific pronouns, thus we can only assume that all the employees involved were female, although it is not stated in the case). Therefore, the Equal Treatment Authority concluded that her pregnancy was not the reason for the difference in wages.<sup>135</sup>

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<sup>129</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 22(2).

<sup>130</sup> Hungary, Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) Decision No. EBH/117/2010.

<sup>131</sup> Supreme Court (*Kúria*) Judgement No. KGD 2013/5.

<sup>132</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 7(2) Point (b).

<sup>133</sup> Supreme Court (*Kúria*), Decision in Principle No. 22/2014. in Labour Law.

<sup>134</sup> Hungary, Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) Decision No. EBH/117/2010.

<sup>135</sup> Hungary, Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) Decision No. EBH/19/2016.

A comparator could also be a hypothetical comparator, because the notions of direct and indirect discrimination both use the phrase 'would be'. According to the knowledge of the author, none of the published case law was based on a hypothetical comparison of wages.

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

According to the Labour Code:

'[t]he equal value of work for the purposes of the principle of equal treatment shall be determined based on the nature of the work performed, its quality and quantity, working conditions, the required vocational training, physical or intellectual efforts expended, experience, responsibilities and labour market conditions'.<sup>136</sup>

The latter criterion ('labour market conditions') was inserted into the paragraph by the new Code in 2012, and according to the intentions of the drafters, the provision aims to open up the possibility for nationwide employers to provide different wages in different parts of the country. Thus, it may be legitimate if a company pays higher salaries for employees working for a Budapest unit, compared to the salaries of employees working for a unit located in the North-Eastern part of the country. This is based on the rationale that the labour market in the capital city is more developed and competitive compared to an economically disadvantaged rural region, where labour market opportunities are rather limited. This criterion fits somewhat oddly within this subsection, as all the other criteria deal with the individual, while the labour market condition reflects the local or national labour market data. According to the views of the author, this added criterion mitigates the effectiveness of the article and provides too much leeway for employers.

#### 4.2.8 Other relevant rules or policies

No other measures, tools or procedures have been developed to lay down parameters for establishing the equal value of work.

#### 4.2.9 Wage transparency

In the public sector, performance or job classification schemes are widespread, which in theory would create a high level of transparency in wages. According to the Act on Civil Servants, the director of the State administrative organ may increase the basic wage of the public servant by 50 % or may reduce it by 20 %.<sup>137</sup> For civil servants working at some specific public institutions the adjustment cannot be bigger than 30 %.<sup>138</sup> The wage adjustment is linked to the result of an evaluation of the performance or the quality of the work done in the previous year, although no detailed regulations exist in this regard. Although equal pay rules are applicable to public servants, the possibility of a severe wage adjustment reduces the transparency of wages, and may also result in a gender-based wage gap in the public sector: according to a study published in 2013, based on microeconomic data, 8 % of the gender wage gap in the public sector does not result from any observed factor, e.g. education, occupational segregation, etc., so it might be the result of unlawful wage discrimination (or may be related to other personal features of public servants: e.g. decision-making capacity, career-orientedness).<sup>139</sup>

<sup>136</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 12(3).

<sup>137</sup> Hungary, Act CXCIX of 2011 on Civil Servants (2011. évi CXCIX. törvény a közszolgálati tisztviselőkről), 30 December 2011, Article 133(3).

<sup>138</sup> Hungary, Act CXCIX of 2011 on Civil Servants (2011. évi CXCIX. törvény a közszolgálati tisztviselőkről), 30 December 2011, Article 134(1).

<sup>139</sup> Lovász, A. (2013), 'Jobbak a nők esélyei a közszférában? A női-férfi bérkülönbség és a foglalkozási szegregáció vizsgálata a köz- és magánszférában' (Do women have better opportunities in the public sector? The gender wage gap and occupational segregation in the public and the private sector), *Budapest Working Papers on the Labour Market*, No. 2, Centre for Economic and Regional Studies, Hungarian Academy of Sciences, Budapest, Hungary.

It is fairly frequent in both the private and public sector that the employer arbitrarily provides better wage conditions for some individuals or some groups of workers. For example, in one case, some groups of nurses working in different departments of the same hospital were entitled to receive hazard bonuses, while other groups of nurses were not, despite working under identical or very similar conditions.<sup>140</sup> During the litigation, the employer stopped paying the hazard bonus to all its nurses, meaning that the claimants' reference point ceased to exist, and their claim was dismissed. Nonetheless, the Supreme Court concluded that as long as the bonus is paid to a group of employees, all groups who are in a comparable situation may request the same remuneration. According to the decision in a more recent case,<sup>141</sup> a public servant cannot claim a higher wage by referring to equal pay regulations if that wage was established by the violation of the applicable wage law.

#### 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

The measures set out by the European Commission's Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women have not been implemented in Hungary.

#### 4.2.11 Other measures, tools or procedures

No other measures, tools or procedures have been developed to enhance pay transparency and promote equal pay.

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

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

As for the personal scope provided by the Equal treatment Act, it covers: 'employment relationship' (*foglalkoztatási jogviszony*) which includes employment in the private sector; civil servants; public servants; judges; other employees of the judiciary; public prosecutors; professional and contractual service relationship in law enforcement and the military; professional foster parents, temporary employment through an agency,<sup>142</sup> and 'other relationships aimed at work' (*munkavégzésre irányuló egyéb jogviszony*); cover homeworkers (piece-rate workers); contracts for work and to work; the working relationship of members of co-operatives; and partnership activities under civil law involving a personal contribution and aimed at work.<sup>143</sup>

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

As for the material scope, the Equal Treatment Act<sup>144</sup> provides protection against the forms of direct and indirect discrimination listed in the Recast Directive 2006/54 in relation to access to work and working conditions. This protection covers the following major areas: application for work, establishment and termination of the employment relationship,

<sup>140</sup> Supreme Court (*Legfelsőbb Bíróság*) Judgment No. Mfv.II.10.514/2011; adopted as Decision in Principle No. as 2424/2011. in Labour Law.

<sup>141</sup> Supreme Court (*Kúria*) Judgment No. Mfv.I.10.563/2013; adopted as Decision in Principle No. as 19/2014. in Labour Law.

<sup>142</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 3 Point (a).

<sup>143</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 3 Point (b).

<sup>144</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 21, Points (a)-(i).

vocational training, promotions, membership of workers' unions, disciplinary procedures and compensatory responsibility, equal pay, the reconciliation of employment and parental responsibilities.

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

As for the implementation of the exception on occupational activities (Article 14(2) Recast Directive 2006/54), the Equal Treatment Act provides that the principle of equal treatment is not violated if 'the differentiation is proportionate, justified by the characteristics or nature of the job and is based on all relevant and legitimate terms and conditions that may be taken in consideration in the course of employment'.<sup>145</sup>

This text was formulated following the amendment to the article which reduced the scope of the exception from virtually any employment situation to distinctions which take place during the hiring process by adding the phrase 'in the course of hiring'. This modification resulted in a text which very much resembles Article 14(2) of Directive 2006/54/EC which must be considered a major legal development.

In addition, the Equal Treatment Act provides<sup>146</sup> that the principle of equal treatment shall not be considered to have been violated if the discrimination arises directly from a religious or other ideological conviction or national or ethnic origin fundamentally determining the nature of the organisation, and it is proportional and justified by the nature of the employment activity or the conditions of its pursuit.

Nonetheless, the exception provision in the Equal Treatment Act<sup>147</sup> also applies to sex discrimination cases, which allows employers to prove that, 'by objective consideration', there is 'a reasonable explanation' for discrimination, 'directly related to the relevant [employment] relationship'. This exception can cover situations where, for example, sex discrimination is justified by deeply rooted socio-cultural norms (e.g. that bath attendants should be females in a women's public bath). However, sometimes the (alleged) financial interest of the employer is also seen as a 'reasonable explanation' for sex discrimination, thus the phrasing of this provision may be problematic from the aspect of gender equality.

#### 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

The Equal Treatment Act covers 'motherhood (pregnancy)' as a protected ground against any form of discrimination including in the area of employment (access to employment, advertising, hiring, work conditions).<sup>148</sup>

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<sup>145</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 22(1) Point (a).

<sup>146</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 22(1) Point (b).

<sup>147</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 7(2) Point (b).

<sup>148</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 8(l) and Article 21(a)-(e).



#### 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)

The exception on the protection for women in relation to pregnancy and maternity (Article 28(1) Recast Directive 2006/54) has not been implemented explicitly in national law.

#### 4.3.6 Particular difficulties

Hungarian courts are excessively strict when determining the amount of compensation to be paid to victims of sex discrimination. In a case from 2008, when a female bus driver was not employed because of her sex and hence directly discriminated against, only the lost wages up to the day she found employment elsewhere were awarded and no further financial compensation (non-pecuniary damages) was awarded to her, although the Supreme Court referred to ECJ case C-14/83<sup>149</sup> and noted that dissuasive sanctions should be applied to serve the purpose of a general deterrent.

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

With regards to positive action measures on work-life balance issues, the only hard (legally-binding) regulation is imposed on a defined group of employers: budgetary organs and legal entities in state majority ownership employing more than fifty employees are obliged to adopt an 'Equal Opportunity Plan'.<sup>150</sup> However, these plans, as a rule, contain only soft provisions, including positive action measures on work-life balance, that do not grant rights to targeted individuals in practice.

Another relevant measure is that employers are eligible for tax reward if they employ individuals (both women and men) returning from parental leave<sup>151</sup> (obviously, women are disproportionately represented in this group) or women with three or more children.<sup>152</sup> However, according to a report by the IMF from 2016, the impact of the tax cuts on the employment of women coming back to work from maternity has been limited (while the unemployment rate of women in the age group of 25-45 years declined, and their labour market participation increased since the introduction of the measure, 'these improvements were subpar or similar to those of the untargeted group').<sup>153</sup>

### 4.4 Evaluation of implementation

In 2017, an important amendment was applied to the Equal Treatment Act: previously, in employment discrimination cases employers were allowed to justify differential treatment among workers on a broad basis, covering *de facto* any employment scenario, but the amended provision<sup>154</sup> narrows the possible justifications for differential treatment to the hiring process in accordance with Article 14(1) of the Recast Directive. This modification clearly indicates a trend towards a better implementation of the EU *acquis*.

<sup>149</sup> Case C-14/83, *Sabine von Colson and Elisabeth Kamann v Land Nordrhein-Westfalen* 10 April 1984.

<sup>150</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról) Article 63, Paragraph (4).

<sup>151</sup> Hungary, Act LII of 2018 on the social contribution tax (2018. évi LII. törvény a szociális hozzájárulási adóról), 31 July 2018, Article 11.

<sup>152</sup> Hungary, Act LII of 2018 on the social contribution tax (2018. évi LII. törvény a szociális hozzájárulási adóról), 31 July 2018, Article 12.

<sup>153</sup> International Monetary Fund (April 2016), 'Hungary 2016. Article IV Consultation — Press Release, Staff Report; and Statement by the Executive Director for Hungary', *IMF Country Report*, No. 16/107, p. 52, <https://www.imf.org/en/Publications/CR/Issues/2016/12/31/Hungary-2016-Article-IV-Consultation-Press-Release-Staff-Report-and-Statement-by-the-43878>.

<sup>154</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 22(1) Point (a).

#### **4.5 Remaining issues**

There are no further issues regarding national law on equal pay and/or equal treatment at work.

## **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>155</sup>**

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

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

A study published in 2018 concludes that care work is clearly considered to be the primary responsibility of women. As a result, women expect help only from other female family members, and few believe that men and/or the state/municipalities should help. Moreover, while some level of 'tolerance' is shown by employers towards workers with childcare responsibilities (typically women), workers with elderly-care responsibilities (also typically women) may face special difficulties, as this type of work-life balance issue is less recognised by employers, thus suitable working arrangements may not be available for them.<sup>156</sup>

#### **5.1.2 Other issues**

A policy paper published in 2018 by an NGO, suggests that the approach of parental leave policies from Scandinavia (more specifically, from Norway), i.e. that fathers are encouraged by provisions to take parental leave, should be considered in Hungary as well.<sup>157</sup>

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

Work-life balance issues are addressed first of all by the following national acts:

- Labour Code (provisions on the legal protection of, and on special arrangements for pregnant women/parents/care providers in the field of employment);<sup>158</sup>
- Act on the Protection of Families (provisions on the legal protection of parents, with attention to adoptive parents as well, in the field of employment);<sup>159</sup>
- Act on the Support of Families (provisions on childcare allowances);<sup>160</sup>
- Act on the Benefits of Compulsory Health Insurance (provisions on maternity and parental leave);<sup>161</sup>
- Act on Social Governance and Social Benefits (provisions on different care allowances);<sup>162</sup> and

<sup>155</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 <https://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 <https://www.equalitylaw.eu/downloads/3631-reconciliation>.

<sup>156</sup> Gregor, A. and Kovats, E. (2018), 'Women's Affairs 2018 Societal Problems and Solution Strategies in Hungary', May 2018, Friedrich Ebert Stiftung, Budapest, available at: <https://library.fes.de/pdf-files/bueros/budapest/14462.pdf>.

<sup>157</sup> Füstös, M., Sáfrány, R. (2018), *A skandináv családtámogatási modell jó gyakorlatainak feltérképezése: kutatási jelentés* (Mapping the good practices of the Scandinavian model of family support policies: Research results), Ampók Foundation (Ampók Alapítvány), available at: [https://issuu.com/hungreenstone/docs/tanulmany\\_final\\_0404\\_vegleges\\_web](https://issuu.com/hungreenstone/docs/tanulmany_final_0404_vegleges_web).

<sup>158</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012.

<sup>159</sup> Hungary, Act CCXI on the Protection of Families (2011. évi CCXI. törvény a családok védelméről), 31 December 2011.

<sup>160</sup> Hungary, Act LXXXIV of 1998 on the Support of Families (1998. évi LXXXIV. törvény a családok támogatásáról), 24 December 1998.

<sup>161</sup> Hungary, Act LXXXIII of 1997 on the Benefits of Compulsory Health Insurance (1997. évi LXXXIII. Törvény a kötelező egészségbiztosítás ellátásairól), 25 July 1997.

<sup>162</sup> Hungary, Act III of 1993 on Social Governance and Social Benefits (1993. évi III. törvény a szociális igazgatásról és szociális ellátásokról), 27 January 1993.

- Act on Work Safety (provisions on protecting workers' reproductive health and foetal health).<sup>163</sup>

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

There has been no political or social debate, and there are no pending legislative proposals on the issue of work-life balance.

## 5.2 Pregnancy and maternity protection

### 5.2.1 Definition in national law

A pregnant worker is defined implicitly in relation to protection against dismissal during pregnancy in the Labour Code: protection against dismissal only applies if the pregnant employee informs her employer of her condition.<sup>164</sup> (This definition is consistent with the definition provided in Article 2 of Directive 92/85.)

The Hungarian law used to apply the term 'childbed' (*gyermekágy*) for the time period following childbirth, in the context of employment and maternity-related allowances, but currently this term is only used in legislation relating to healthcare, and no explicit definition is provided for a worker who has recently given birth. It may be noted that the maternity allowance that is now called 'infant care fee' (*csecsemőgondozási díj*) was until 2015 termed 'aid covering pregnancy and childbed' (*terhességi-gyermekágyi segély*); this allowance is available until the 168<sup>th</sup> day after the birth of the child (unless the child was born prematurely).<sup>165</sup>

The explicit definition of breastfeeding women, as provided in Article 2c of Directive 92/85, is lacking in Hungarian law.

Articles 4-6 of Directive 92/85 are implemented by the Labour Code:<sup>166</sup> a reduction in working hours is provided for breastfeeding mothers (the provision includes the term 'mother', instead of 'woman', which may exclude those women who are donating or selling their breast milk).<sup>167</sup> The Act on Work Safety definition on vulnerable workers includes both 'breastfeeding mothers' and 'women who are breast milk suppliers' (although this act does not provide specific measures for these women).<sup>168</sup>

### 5.2.2 Obligation to inform employer

According to the Labour Code,<sup>169</sup> protection against dismissal only applies if the pregnant employee informs her employer of her condition. Previously the definition requested the pregnant employee to inform her employer of her condition before any dismissal was delivered to her. On 30 May 2014 the Constitutional Court nullified this 'preliminary' phase because it unnecessarily interfered with the private sphere of pregnant women.<sup>170</sup> The

<sup>163</sup> Hungary, Act XCIII of 1993 on Work Safety (1993. évi XCIII. törvény a munkavédelemről), 3 November 1993.

<sup>164</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 65(5).

<sup>165</sup> Hungary, Act LXXXIII of 1997 on the Benefits of Compulsory Health Insurance (1997. évi LXXXIII. Törvény a kötelező egészségbiztosítás ellátásairól), 25 July 1997, Article 40.

<sup>166</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Articles 51(3) and 60.

<sup>167</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 55(1) Point (e).

<sup>168</sup> Hungary, Act XCIII of 1993 on Work Safety (1993. évi XCIII. törvény a munkavédelemről), 3 November 1993, Article 49(1) Point (c).

<sup>169</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 65(5).

<sup>170</sup> Hungary, Constitutional Court Decision (*AB határozat*) No.17/2014. (V. 30.), 30 May 2014.

modified article<sup>171</sup> of the Labour Code came into force on 18 June 2016 (without the reference to 'prior'). If the notification of pregnancy is given following the delivery of a letter of dismissal, the dismissal may be withdrawn by the employer within 15 days following the notification. In this case the employee is entitled to receive any wage unpaid due to the dismissal and the period of time between the dismissal and its withdrawal will be considered as working time for the purpose of employment and social security.<sup>172</sup>

#### 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

Please see under 5.2.2 for case adjudicated by the Constitutional Court.

The Equal Treatment Authority has directly invoked the definition from the Directive 92/85 regarding a case of a pregnant employee's dismissal during the probationary period. In this case, the Authority established direct discrimination based on pregnancy, imposed a fine of EUR 3 100 (HUF 1 000 000), and prohibited the employer from engaging in similar discrimination in the future.<sup>173</sup>

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

The regulations laid down by both the Labour Code<sup>174</sup> and the Act on Work Safety<sup>175</sup> together implement Articles 4-7 of Directive 92/85. The obligation to conduct risk assessments and to notify employees and their representatives are regulated by the Act on Work Safety:<sup>176</sup> it provides that an employee can only be employed to perform given work when that work does not endanger her reproductive abilities and her foetus.<sup>177</sup> The Act also lists<sup>178</sup> substances considered detrimental to fetuses among 'dangerous substances'.

According to the Labour Code,<sup>179</sup> a pregnant employee shall be offered a job that is suitable for her state of health if, according to a medical opinion, she is unable to work in her original position from the time her pregnancy is established until her child reaches one year of age. If a job which is suitable for her state of health cannot be found, the pregnant worker shall be discharged from her obligation to conduct the work. The worker will be paid the basic wage which is normally paid for the job offered, which may not be less than her basic wage in her employment contract. The basic wage is also payable for the duration of the time during which she has been discharged from her obligation to do the work, except if the job offered is refused without good reason.

The Labour Code<sup>180</sup> indicates that the employer is obliged 'to make an offer to the employee to have his/her wage adjusted' at the end of any birth-related leave; consequently, the offer of a modification must address only the wage of the returning

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<sup>171</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 65(3).

<sup>172</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Articles 65(5) and 83(2)-(4).

<sup>173</sup> Hungary, Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) Decision No. EBH/379/2014.

<sup>174</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012.

<sup>175</sup> Hungary, Act XCIII of 1993 on Work Safety (1993. évi XCIII. törvény a munkavédelemről), 3 November 1993.

<sup>176</sup> Hungary, Act XCIII of 1993 on Work Safety (1993. évi XCIII. törvény a munkavédelemről), 3 November 1993, Article 42.

<sup>177</sup> Hungary, Act XCIII of 1993 on Work Safety (1993. évi XCIII. törvény a munkavédelemről), 3 November 1993, Article 49(1) Point (c).

<sup>178</sup> Hungary, Act XCIII of 1993 on Work Safety (1993. évi XCIII. törvény a munkavédelemről), 3 November 1993, Article 87(12).

<sup>179</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 60.

<sup>180</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 59.

parent and not any other working conditions, which creates a gap in the Hungarian implementation.

Two provisions<sup>181</sup> of the Labour Code were amended,<sup>182</sup> and the new provisions entered into force on 1 January 2018. The amendment added a second sentence to Section 51(3):<sup>183</sup> the first sentence determines that employees may not be employed to perform work that could endanger their health. The second sentence extends this rule to situations where the employee's state of health changes during the employment relationship and obliges the employer to adapt the working conditions or adjust the working time according to the employee's different state of health. The amendment in Section 60(1)<sup>184</sup> is technical in nature and does not change the core of the existing rules; if the working conditions cannot be accordingly changed in the employee's original job and as long as a medical opinion declares that the employee is unfit to perform the duties of her regular job, she will be offered a job that is suitable for her altered state of health from the time that the pregnancy is declared until the child reaches the age of one year. The employee must be completely exempted from the obligation to work if the employer cannot offer her any alternative job compatible with her state of health.

Since 2009, Hungarian labour law has recognised a special category of fixed-term employment – 'simplified employment' (*egyszerűsített foglalkoztatás*) – which is regulated by the Labour Code<sup>185</sup> and the Act on Simplified Employment,<sup>186</sup> covering seasonal work and short-term contracts in the agricultural sector and in the field of tourism (the length of employment may not exceed 120 days per calendar year). In the case of 'simplified employment', employers are not obliged to continue the employment of mothers returning from child-related leave.<sup>187</sup>

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

As for case law on issues addressed in Articles 4 and 5 of Directive 92/85, the Equal Treatment Authority established in 2014 that an employer had unlawfully dismissed an employee after not renewing her contract following her request to be transferred to a physically less demanding job due to her pregnancy. The employer could not be exempted from their liability by arguing that there was no need for more cashiers and that the termination was due to the seasonal fluctuation of the workforce demand because they had placed a job advertisement seeking cashiers during the same period of time. The findings of the Equal Treatment Authority were confirmed by the workforce statistics which did not show any seasonal pattern either. As the dismissal was based on the pregnancy of the employee, it constituted direct sex discrimination and the employer was obliged to pay a fine of EUR 2 000.<sup>188</sup>

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<sup>181</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Articles 51(3) and 60.

<sup>182</sup> Hungary, Act CLIX of 2017 on the Amendment of Acts Relating to the Implementation of the Act on General Public Administration Procedures and Certain Other Acts (2017. évi CLIX. törvény az általános közigazgatási rendtartásról szóló törvény hatálybalépésével összefüggő törvények és egyes egyéb törvények módosításáról), 23 November 2017, Article 202.

<sup>183</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 51(3).

<sup>184</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 60(1).

<sup>185</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Articles 201-203.

<sup>186</sup> Hungary, Act LXXV of 2010 on Simplified Employment (2010. évi LXXV. törvény az egyszerűsített foglalkoztatásról), 12 July 2010. This act replaced the previous act on simplified employment: Act CLII of 2009 on Simplified Employment (2009. évi CLII. törvény az egyszerűsített foglalkoztatásról), 14 December 2009.

<sup>187</sup> Hungary, Act LXXV of 2010 on Simplified Employment (2010. évi LXXV. törvény az egyszerűsített foglalkoztatásról), 12 July 2010.

<sup>188</sup> Hungary, Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) Decision No. EBH/189/2014.

### 5.2.6 Prohibition of night work

The Labour Code defines night work as work performed between 22.00 pm and 6.00 am.<sup>189</sup> According to the Labour Code, night work is prohibited for women during pregnancy until their child(ren) reaches three years old, also for single parents (fathers) until their child(ren) reaches three year old – even in cases when the employee would consent to perform night work.<sup>190</sup> This means that, for example, if a waitress would like to return to work in a bar – which is open during the night hours – under the law she cannot return to her employment until her child reaches three years, except in the event that the employer can offer her daytime work.<sup>191</sup>

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

There is no recent case law or publicly available report on the discrimination of women in relation to the prohibition of night work.

In a 2007 case at the Equal Treatment Authority, a mother of three children (a nine-month-old, a six-year-old and a nine-year-old) complained that she was discriminated against because she was refused employment, based on maternity. The employer claimed that among other things, one of the main reasons for the refusal was the legal provision that prohibits night work for mothers of young children. The Equal Treatment Authority established discrimination because the employer could not prove that the refusal was solely based on this legal prohibition and was not based on other arguments related to maternity.<sup>192</sup>

### 5.2.8 Prohibition of dismissal

A dismissal with notice is prohibited during pregnancy, maternity leave, parental leave and IVF treatment for six months.<sup>193</sup> Employees in executive positions are protected during pregnancy and maternity leave, and from 18 June 2016, during IVF treatment for six months, but not during parental leave.<sup>194</sup> A dismissal with immediate effect, which is discussed below, is allowed as an exception in these situations.

Mothers on maternity leave and mothers and single fathers on parental leave enjoy protection against dismissal which lasts until the child reaches three years of age. If the mother or the single father does not take parental leave until the child reaches three years of age, they are no longer covered by protection against dismissal, but still enjoy some legal protection, which in the Hungarian labour law is called 'restriction on dismissal'. The form of such a restriction varies according to the actual reason for the dismissal. If the reason for the dismissal is related to the employee's behaviour, it must be so serious that it could serve as a basis for dismissal with immediate effect. If the reason for the dismissal is related to either the capabilities of the employee or the operation of the employer, the employee can only be dismissed if there is no vacancy at the employer's premises where

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<sup>189</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 89.

<sup>190</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 113(1) Points (a)-(b), (3).

<sup>191</sup> Kártyás, G. (2018), 'Ki és hogyan kötelezhető éjszakai munkára?' (Who can be required, and under which conditions, to perform night shift work?), *Adó Online*, 2 October 2018, available at: <https://ado.hu/munkaugyek/ki-es-hogyan-kotelezhető-éjszakai-munkára/>.

<sup>192</sup> Hungary, Decision of the Equal Treatment Authority (Egyenlő Bánásmód Hatóság) No. EBH/310/2007, available at: <https://www.egyenlobanasmod.hu/hu/jogeset/ebh3102007>.

<sup>193</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 56(3) Points (a)-(c), (e).

<sup>194</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 209(2) Point (b).

(s)he was employed before, which corresponds to the capabilities, practice and qualification used by the employee in his/her current job.<sup>195</sup>

In Hungarian labour law, the regulations on parental leave and the related protection against dismissal reveal that Hungarian legislation is still permeated with stereotypical ideation about the gender roles in family and in society. The legislation suggests that it is the right and obligation of the mother to take care of the child and therefore legislative protection is provided to mothers. The father enjoys equivalent protection only if he is a *single* father who replaces the mother in the caring role, because the mother is not available (has died or left the family). This legislation seems to be in violation of Article 14 1.3 of Directive 2006/54/EC.

According to the Labour Code,<sup>196</sup> a dismissal with immediate effect could be applied during any period of the employment relationship, including during pregnancy, and while being on leave, or having returned from leave until the child reaches the age of three, if the employee a) wilfully or by gross negligence commits a grave violation of any substantive obligations arising from the employment relationship; or b) otherwise engages in conduct that would render the employment relationship impossible.

#### 5.2.9 Redundancy and payment during maternity leave

When an employee is made redundant during her maternity leave, the payment for maternity leave is continued.

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

According to the Labour Code, all employment terminations must be put in writing, and a dismissal with immediate effect must be justified by the employer.<sup>197</sup> No justification is needed for terminating the employment during the probationary period.<sup>198</sup>

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

Every year the Equal Treatment Authority adjudicates cases where a pregnant employee's employment was terminated during the probationary period.<sup>199</sup> In a case from 2014,<sup>200</sup> the Equal Treatment Authority established that the employer could not prove a legitimate reason for terminating a pregnant employee's employment relationship during her probationary period; therefore, this amounted to direct sex discrimination. It was proved that first the employer decided to continue the employment relationship of the claimant until the end of the 6-month probationary period. This decision, however, was overturned two days after the claimant had been placed on sick leave due to her pregnancy and she was duly dismissed with immediate effect. It is long-established case law of the Equal Treatment Authority that the employer must prove the legitimate reason for the dismissal if the employee claims that the dismissal during the probationary period was discriminatory, even though the general rules relating to the probationary period do not require the employer to include any justification in the letter of dismissal. As in this case no legitimate reason could be found to support the dismissal of the claimant, the action of the employer therefore amounted to direct sex discrimination and the Equal Treatment

<sup>195</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 606(6).

<sup>196</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 78.

<sup>197</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 22(5).

<sup>198</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 79(1) Point (a).

<sup>199</sup> See e.g.: Hungary, Decision of the Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) No. EBH/71/2017.

<sup>200</sup> Hungary, Decision of the Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) No. EBH/379/2014.



Authority applied sanctions against the employer (a fine equalling EUR 4 000 and a prohibition on any further infringement of equal opportunities laws; these sanctions being issued under the Act on the General Rules of the Proceedings and Services of Public Administrative Authorities).<sup>201</sup>

In a 2018 decision, the Equal Treatment Authority reinforced this rule and stipulated that the fact that the labour regulations allow the immediate termination of employment during the probationary period does not provide a lower level of scrutiny for proof under the anti-discrimination framework and therefore does not derogate the obligation of the employer to observe the requirement of equal treatment.<sup>202</sup> The Equal Treatment Authority invoked leading principle no. 23/2018 in administrative law of the Supreme Court.<sup>203</sup>

### 5.3 Maternity leave

#### 5.3.1 Length

According to the Labour Code, mothers are entitled to 24 weeks of maternity leave.<sup>204</sup>

#### 5.3.2 Obligatory maternity leave

The obligatory period of maternity leave is two weeks (from the 24 weeks); it is not stipulated whether these weeks should be taken prior to or following birth).<sup>205</sup> In the absence of an agreement to the contrary, maternity leave shall be allocated so as to commence four weeks prior to the expected date of birth.<sup>206</sup>

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

According to the Labour Code, the employment rights of a woman relating to the employment contract are ensured in the event of a mandatory transfer due to the health risk for her: during her pregnancy and until her child reaches the age of one year, she is entitled to the basic wage associated with the new job title, if it is at least equal to her original basic wage. If no adequate work can be found for the employee within the organisation, she is exempted from work and still receives her basic pay.<sup>207</sup>

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

The period of maternity leave is recognised as a period of 'time spent at work' (with the exception of certain rights relating directly to the performance of work).<sup>208</sup> Upon the employee's return from maternity leave, the employer is obliged to offer the employee a modification of her wage, consistent with the increase in the average annual wage for employees in the same position; in the absence of employees who work in the same

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<sup>201</sup> Hungary, Act CXL of 2004 on the General Rules of the Proceedings and Services of Public Administrative Authorities (2004. évi CXL. törvény a közigazgatási hatósági eljárás és szolgáltatás általános szabályairól), 28 December 2004.

<sup>202</sup> Hungary, Decision of the Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) No. EBH/309/2018.

<sup>203</sup> Hungary, Supreme Court (*Kúria*) decision in principle no. 23/2018 in administrative law (judgment no. Kfv.III.37.585/2017 of 5 June 2018).

<sup>204</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 127(1).

<sup>205</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 127(1).

<sup>206</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 127(3).

<sup>207</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 60.

<sup>208</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 127(5).

position, the rate of actual annual wage increases implemented by the employer will apply.<sup>209</sup>

### 5.3.5 Level of pay or allowance

The allowance paid for maternity leave is equal to, or higher than, the payment during sickness leave.

For maternity leave, the infant care fee is paid to insured parents, primarily to mothers, but also to fathers if the mother is absent due to death, sickness or other serious circumstances. The infant care fee is paid by the social security system, the amount of which is equal to 70 % of the average daily wage of the woman in question (with no ceiling on payments).<sup>210</sup>

For comparison, in the case of sick leave, the employer pays 70 % of the employee's payment during the first 15 days of sickness.<sup>211</sup> Afterwards, the social security system pays 60 % or 50 % of the salary depending upon certain circumstances, e.g. whether the person is hospitalised or not.<sup>212</sup> Prior to 2009, the rates were 70 % and 60 % respectively.

### 5.3.6 Additional statutory maternity benefits

Statutory maternity benefits can be supplemented by the employer, but it is quite rare in practice.

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

Different types of benefits are available during maternity leave and the subsequent parental leave, depending upon whether the mother (parent) was insured or not. A mother (parent) is considered to be insured if (s)he has had insurance cover for 365 days over a period of two years prior to the birth of the child.<sup>213</sup>

During maternity leave, 'infant care fee' (*csecsemőgondozási díj*) is paid to insured mothers (and to the father, but only if the mother is absent, i.e. has died, is sick or is absent due to other serious circumstances), the amount of which is equal to 70 % of the average daily pay (with no ceiling on payments).<sup>214</sup>

Following maternity leave, up until the child reaches the age of two (in cases of twins, age of three), a 'childcare fee' (*gyermekgondozási díj*) is paid to the insured parent, which is equal to 70 % of the average daily pay, with a ceiling of 70 % of twice the minimum wage, which is approximately EUR 620 (gross) per month.<sup>215</sup>

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<sup>209</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 59.

<sup>210</sup> Hungary, Act LXXXIII of 1997 on the Benefits of Compulsory Health Insurance (1997. évi LXXXIII. Törvény a kötelező egészségbiztosítás ellátásairól), 25 July 1997, Articles 40-42.

<sup>211</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 146(5).

<sup>212</sup> Hungary, Act LXXXIII of 1997 on the Benefits of Compulsory Health Insurance (1997. évi LXXXIII. Törvény a kötelező egészségbiztosítás ellátásairól), 25 July 1997, Articles 48.

<sup>213</sup> Hungary, Act LXXXIII of 1997 on the Benefits of Compulsory Health Insurance (1997. évi LXXXIII. Törvény a kötelező egészségbiztosítás ellátásairól), 25 July 1997, Articles 40.

<sup>214</sup> Hungary, Act LXXXIII of 1997 on the Benefits of Compulsory Health Insurance (1997. évi LXXXIII. Törvény a kötelező egészségbiztosítás ellátásairól), 25 July 1997, Articles 40.

<sup>215</sup> Hungary, Act LXXXIII of 1997 on the Benefits of Compulsory Health Insurance (1997. évi LXXXIII. Törvény a kötelező egészségbiztosítás ellátásairól), 25 July 1997, Articles 42/A-D.

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

The new Hungarian Labour Code (unlike the previous Labour Code)<sup>216</sup> does not expressly guarantee the right of a woman to return to the original job or an equivalent job by the end of maternity leave. A cumulative interpretation of the following regulations, however, leads to the conclusion that such a right is provided:

- Taking maternity leave does not terminate the employment relationship, therefore the employment contract remains in force during the leave;<sup>217</sup>
- The employee has to inform the employer at least 30 days in advance of the intention to return to work;<sup>218</sup>
- It is a mandatory element of the employment contract to specify the job of the employee;<sup>219</sup>
- The employment contract may only be modified with the mutual consent of the parties;<sup>220</sup>
- A dismissal is prohibited during maternity leave;<sup>221</sup> and
- Upon the employee's return from maternity leave, the employer is obliged to offer the employee a modification of her wage, consistent with the increase in the average annual wage for employees in the same position; in the absence of employees who work in the same position, the rate of the actual annual wage increases as implemented by the employer will apply.<sup>222</sup>

According to a cumulative interpretation of these sections, the employee has the right to return to work with the same employer, and in the absence of a mutually agreed modification of the employment contract, the employee has the right to return to her original job. Nonetheless, the lack of an *expressis verbis* obligation to employ the employee in the original job obviously widens the employer's room for manoeuvre which might lead to situations where the parent is unable to return to the original job.

Usually the employer offers a termination by mutual consent and pays equal to or slightly above the amount that would be due in the case of a dismissal with notice. If the employer dismisses the parent unlawfully, the employee may claim his/her reinstatement in her original job.<sup>223</sup>

### 5.3.9 Legal right to share maternity leave

National law does not provide share arrangements regarding maternity leave.

### 5.3.10 Case law

There have been several cases with regards to discrimination of women based on pregnancy or maternity.

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<sup>216</sup> Hungary, Act XXII of 1992 on the Labour Code (1992. évi XXII. törvény a Munka Törvénykönyvéről), 30 March 1992.

<sup>217</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Articles 127-128, 130.

<sup>218</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 133(2).

<sup>219</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 45(1).

<sup>220</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 58.

<sup>221</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 65(3) Point (b)-(c).

<sup>222</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 59.

<sup>223</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 83(1) Points (a)-(b).

For example, in a 2017 case before the Equal Treatment Authority, the complainant claimed that she was discriminated against based on maternity when, after returning from maternity leave, she asked her employer to let her work remotely 20 hours per week to care for her three small children, which was in compliance with her previously agreed employment contract. The employer, however, arbitrarily amended her contract and ordered her to work in the office for 40 hours a week. The Equal Treatment Authority established direct discrimination and found that the employer did not provide any reasonable justification for not providing the option of working remotely for the complainant.<sup>224</sup>

In another case from 2017, the Equal Treatment Authority established discrimination when a woman was not provided with cafeteria benefits during maternity leave, although maternity leave is considered as 'time spent with work'.<sup>225</sup>

## **5.4 Adoption leave**

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

According to the Labour Code, adoptive mothers are entitled to maternity leave (24 weeks).<sup>226</sup>

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

As provided by the Family Protection Act, employees are protected against dismissal during the period of the adoption procedure.<sup>227</sup>

### **5.4.3 Case law**

Case law is not available in relation to adoption leave.

## **5.5 Parental leave**

### **5.5.1 Implementation of Directive 2010/18**

Directive 2010/18 on parental leave is transposed to national law by the provision of the Labour Code.<sup>228</sup>

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

The national legislation on parental leave, provided by the Labour Code, is applicable to both the public and the private sector.<sup>229</sup> For civil servants, the relevant provisions are provided by the Act on Civil Servants;<sup>230</sup> these provisions are substantively identical to the respective provisions in the Labour Code.

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<sup>224</sup> Hungary, Decision of the Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) No. EBH/57/2017.

<sup>225</sup> Hungary, Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) (2018), Report on the activity of the Equal Treatment Authority in 2017 and on the experiences gathered in the context of applying Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities, pp. 26-29, available at: [https://www.egyenlobanasmod.hu/sites/default/files/tajekoztatok/EBH%20eves%20jelentes%202017%20EN\\_final.pdf](https://www.egyenlobanasmod.hu/sites/default/files/tajekoztatok/EBH%20eves%20jelentes%202017%20EN_final.pdf).

<sup>226</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 27(2).

<sup>227</sup> Hungary, Act CCXI on the Protection of Families (2011. évi CCXI. törvény a családok védelméről), 31 December 2011, Article 18 Point (c).

<sup>228</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012., Article 2.

<sup>229</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012., Article 2.

<sup>230</sup> Hungary, Act CXCIX of 2011 on Civil Servants (2011. évi CXCIX. törvény a közszolgálati tisztviselőkről), 30 December 2011., Articles 1-4.

### 5.5.3 Scope of the transposing legislation

Provisions on parental leave cover full-time and part-time employees, fixed-term contract workers and also persons with a contract of employment with a temporary agency.

Parental leave provisions do not apply to employees working within the framework of 'simplified employment' (seasonal work and short-term contracts in the agricultural sector and in the field of tourism), since they are not considered to be 'insured' persons by the healthcare regulations (with the exception of work-related accidents),<sup>231</sup> thus they are not entitled to insurance-based childcare benefits.

### 5.5.4 Length of parental leave

The total duration of parental leave (both in the public and the private sectors) is 3 years;<sup>232</sup> in cases of chronically ill or severely disabled children, 10 years.<sup>233</sup>

### 5.5.5 Age limits

Workers are entitled to parental leave until the child reaches the age of 3;<sup>234</sup> in cases of chronically ill or severely disabled children, until the age of 10.<sup>235</sup>

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

The right to parental leave is not individual for each of the parents; it is a joint right.

### 5.5.7 Transferability of the right to parental leave

When the child reaches the age of one year, the parents may opt to transfer their joint right to parental leave to one of the grandparents.<sup>236</sup>

### 5.5.8 Form of parental leave

Parental leave can only take the form of full-time leave. However, from 2016, parents may work full-time (or part-time) while receiving childcare allowance.<sup>237</sup>

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

In the case of the childcare allowance (*gyermekgondozást segítő ellátás*), there is no eligibility criteria regarding service time or insurance.<sup>238</sup>

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<sup>231</sup> Hungary, Act LXXV of 2010 on Simplified Employment (*2010. évi LXXV. törvény az egyszerűsített foglalkoztatásról*), 12 July 2010, Article 10(1) Point (a).

<sup>232</sup> Hungary, Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 128.

<sup>233</sup> Hungary, Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 133.

<sup>234</sup> Hungary, Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 128.

<sup>235</sup> Hungary, Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 133.

<sup>236</sup> Hungary, Act LXXXIII of 1997 on the Benefits of Compulsory Health Insurance (*1997. évi LXXXIII. Törvény a kötelező egészségbiztosítás ellátásairól*), 25 July 1997, Articles 42/A-D.

<sup>237</sup> Hungary, Act LXXXIII of 1997 on the Benefits of Compulsory Health Insurance (*1997. évi LXXXIII. Törvény a kötelező egészségbiztosítás ellátásairól*), 25 July 1997, Articles 40-42.

<sup>238</sup> Hungary, Act LXXXIV of 1998 on the Support of Families (*1998. évi LXXXIV. törvény a családok támogatásáról*), 24 December 1998, Articles 20-22.

In order to be eligible for the childcare fee (*gyermekgondozási díj*), at least 365 service days must be collected during the preceding two years (prior to the birth of the child).<sup>239</sup> In the case of successive fixed-term contracts with the same employer (as defined in Council Directive 1999/70/EC on fixed-term work), the sum of these contracts is taken into account for the purpose of calculating the qualifying period, unless it is simplified employment.

Under certain circumstances, studying in higher education is also recognised as service regarding the eligibility for childcare fee.<sup>240</sup>

#### 5.5.10 Notice period

Notice period is provided by the national legislation: the employee must convey the request for parental leave in writing, at least fifteen days in advance. The parental leave ends at the time when the employee has indicated, or at the earliest on the 30th day from the date of delivering the legal act for the termination of the leave.<sup>241</sup>

These regulations are applicable to all firms, regardless of their size. The 15-day and 30-day periods of notice are considered to be long enough so as to enable the employer to adjust its workforce requirements to the request of the employee.<sup>242</sup>

In a case in 2011,<sup>243</sup> the Supreme Court concluded that it is the employee who is entitled to choose the day when he/she will return to work.

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

The employer is not allowed under any circumstances to postpone the granting of parental leave; it must be granted for the employee whenever (s)he requests.

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

There are no specific arrangements for small firms regarding parental leave.

#### 5.5.13 Special rules and exceptional conditions for parents of children with a disability or long-term illness (Clause 3(3) of Directive 2018/10)

Parents of chronically ill or severely disabled children are entitled to parental leave until the child reaches the age of 10.<sup>244</sup>

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

As a general rule, adoptive parents and native parents have the same rights regarding parental leave. However, the special needs of adoptive parents are addressed by a measure in the Family Protection Act: under certain circumstances, parental leave for six months is available even in cases when the child has already reached the age of three years (or in case of twins: when the children reached the minimum age of compulsory

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<sup>239</sup> Hungary, Act LXXXIII of 1997 on the Benefits of Compulsory Health Insurance (1997. évi LXXXIII. Törvény a kötelező egészségbiztosítás ellátásairól), 25 July 1997, Articles 42/A.

<sup>240</sup> Hungary, Act LXXXIII of 1997 on the Benefits of Compulsory Health Insurance (1997. évi LXXXIII. Törvény a kötelező egészségbiztosítás ellátásairól), 25 July 1997, Articles 42/E.

<sup>241</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 133.

<sup>242</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 133.

<sup>243</sup> Hungary, Supreme Court (*Legfelsőbb Bíróság*) Judgment No. Mfv.11134/2010/4, 2 November 2011.

<sup>244</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 130.

education), but the child is (or in case of twins: the children are) below the age of 10 years.<sup>245</sup>

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

The Equal Treatment Act prohibits direct and indirect discrimination, harassment, and unlawful segregation on the basis of maternity or paternity;<sup>246</sup> consequently, the law provides legal protection for employees against unlawful actions due to the taking of parental leave.

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

The new Hungarian Labour Code (unlike the previous Labour Code)<sup>247</sup> does not expressly guarantee the right of a parent to return to the original job or an equivalent job by the end of parental leave. A cumulative interpretation of the following regulations, however, leads to the conclusion that such a right is provided:

- taking parental leave does not terminate the employment relationship, therefore the employment contract remains in force during the leave;<sup>248</sup>
- the employee has to inform the employer at least 30 days in advance of the intention to return to work;<sup>249</sup>
- it is a mandatory element of the employment contract to specify the job of the employee;<sup>250</sup>
- the employment contract may only be modified with the mutual consent of the parties;<sup>251</sup>
- a dismissal is prohibited during parental leave;<sup>252</sup> and
- upon the employee's return from parental leave, the employer is obliged to offer the employee a modification of his/her wage, consistent with the increase in the average annual wage for employees in the same position; in the absence of employees who work in the same position, the rate of the actual annual wage increases as implemented by the employer will apply.<sup>253</sup>

According to a cumulative interpretation of these sections, the employee has the right to return to work with the same employer, and in the absence of a mutually agreed modification of the employment contract, the employee has the right to return to his/her original job. Nonetheless, the lack of an *expressis verbis* obligation to employ the employee in the original job obviously widens the employer's room for manoeuvre which might lead to situations where the parent is unable to return to the original job.

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<sup>245</sup> Hungary, Act LXXXIV of 1998 on the Support of Families (1998. évi LXXXIV. törvény a családok támogatásáról), 24 December 1998, Articles 20/B.

<sup>246</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 8(1) Point (i); Article, 9.

<sup>247</sup> Hungary, Act XXII of 1992 on the Labour Code (1992. évi XXII. törvény a Munka Törvénykönyvéről), 30 March 1992.

<sup>248</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Articles 127-128, 130.

<sup>249</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 133(2).

<sup>250</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 45(1).

<sup>251</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 58.

<sup>252</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 65(3) Point (b)-(c).

<sup>253</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 59.

Usually the employer offers a termination by mutual consent and pays equal to or slightly above the amount that would be due in the case of a dismissal with notice. If the employer dismisses the parent unlawfully, the employee may claim his/her reinstatement in his/her original job.<sup>254</sup>

#### 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 national legislation does not provide explicitly that the rights acquired by the worker (or in the process of being acquired on the date on which parental leave starts) are maintained until the end of parental leave, thus this principle may not be enforceable in practice.

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

The employment contract remains in force for the period of the parental leave, but the execution of most of the rights and obligations are suspended.

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

During the period of the parental leave, there is a continuity of the entitlements to social security cover.

#### 5.5.20 Remuneration

Parental leave may be remunerated by the employer (employers are not legally obliged, but they are allowed to do so).

#### 5.5.21 Social security allowance

Allowance is provided during parental leave in every sector.

The childcare fee (*gyermekgondozási díj*) is paid to insured parents (both mothers and fathers are eligible), from the end of the maternity leave until the child reaches the age of two. The allowance is equal to 70 % of average daily earnings, with a ceiling of 70 % of twice the amount of minimum daily wage, which is approximately EUR 620 (gross) per month.<sup>255</sup>

Moreover, there is a 'maternity allowance' (*anyasági támogatás*), which is a once-only in-cash benefit, paid to every mother who has attended prenatal care at least once. The allowance amounts to 225 % of the minimum amount of old-age pension, which is approximately EUR 200.<sup>256</sup>

#### 5.5.22 More favourable provisions (Clause 8 of Directive 2010/18)

The national legislation applies more favourable provisions (Clause 8 Directive 2010/18) regarding the length of maternity leave (24 weeks), regarding the length of parental leave (up to 3 years or 10 years, if the child is chronically ill or severely disabled) and regarding the corresponding protection against dismissal.

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<sup>254</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 83(1) Points (a)-(b).

<sup>255</sup> Hungary, Act LXXXIII of 1997 on the Benefits of Compulsory Health Insurance (1997. évi LXXXIII. Törvény a kötelező egészségbiztosítás ellátásairól), 25 July 1997, Article 42/A-42/E.

<sup>256</sup> Hungary, Act LXXXIV of 1998 on the Support of Families (1998. évi LXXXIV. törvény a családok támogatásáról), 24 December 1998, Articles 29-33.



### 5.5.23 Case law

Eligible parents often cannot enforce their rights before the courts of first and second instance, but have to turn to the Supreme Court to find legal redress. In a case from 2006, the female employee wanted to return to her original job after taking maternity and parental leave for taking care of three children. The employer made an offer to terminate the employment relationship with mutual consent (as dismissal was prohibited by the Labour Code during parental leave), but they could not agree on the monthly wage to be paid following the legally stipulated increase. The employee resigned with immediate effect and sued the employer for compensation. The employee finally only won her case before the Supreme Court; the courts of first and second instance had concluded that the employer did not breach the law so severely that it would entitle the employee to resign with immediate effect. The Supreme Court established, however, that as the employer had not adequately increased the wage of the employee, had not provided employment for the returning parent, and it had breached its core and fundamental obligations, this entitled the employee to resign with immediate effect.<sup>257</sup>

In a 2012 Supreme Court case<sup>258</sup> the employer did not provide reinstatement for the employee in her original or similar job and instead she was given a job at a much lower level. The employee worked in this position for one day and the following day she explained in a letter that this job was not equivalent to the job that she had left at the beginning of her maternity leave, so therefore she was not willing to continue working there in the future. The employer considered this behaviour to be a serious omission and dismissed the employee with immediate effect. The employee sued the employer and lost her case before the courts of first and second instance. The *Supreme Court* concluded that as the employer had unilaterally modified the employment contract, the employee's omission could not be considered to be sufficiently serious so as to lawfully justify the dismissal with immediate effect.

## 5.6 Paternity leave

### 5.6.1 Existence of paternity leave in national law

Fathers are entitled to five days of paternity leave (seven days in the case of twins), until the end of the second month from the date of birth of the child; the days of the leave are allocated as requested by the father.<sup>259</sup> Paternal leave is covered from the state budget.<sup>260</sup>

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

The Labour Code does not provide for protection against dismissal during paternity leave; however, paternity is listed among the protected grounds in the Equal Treatment Act,<sup>261</sup> which may provide a certain level of protection against unfavourable treatment of workers who take paternity leave.

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<sup>257</sup> Hungary, Supreme Court (*Legfelsőbb Bíróság*) Judgment No. Mfv. I. 10.130/2006, adopted as Decision in Principle No. 1439/2006 in Labour Law.

<sup>258</sup> Hungary, Supreme Court (*Kúria*) Judgment No. Mfv. 10.036/2012/3, 17 April 2013.

<sup>259</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 118(4).

<sup>260</sup> Hungary, Government Decree No. 350 of 2014 (XII.29.) on the Reimbursement of Additional Annual Leave for Fathers upon the Birth of their Child (350/2014. (XII. 29.) Korm. rendelet a gyermek születése esetén az apát megillető pótszabadság igénybevételéről és a pótszabadsággal összefüggő költségek megtérítéséről), 29 December 2014, Article 1(2).

<sup>261</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 8 Point (I).

### 5.6.3 Case law

There is no case law regarding paternity leave; presumably since the duration of it is very short (five or seven days), the leave does not result in any employment disputes.

## 5.7 Time off/care leave

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

Unpaid leave of between 30 days and two years is available to care for relatives subject to medical certification that this is necessary.<sup>262</sup> The term relative covers spouses, direct descendants and ascendants, adopted, step and foster children, adoptive parents, step-parents, foster parents, siblings, and domestic partners, spouses of the direct descendants and ascendants, a spouse's direct descendants and ascendants and siblings, and the spouses of siblings. The employee is legally entitled to full-time unpaid leave, but the employer must be informed 15 days in advance and in writing. The leave ends on the day determined by the medical certification, or earlier if the employee so wishes, but at least 30-days' notice must be given to the employer. Entitlement for the leave does not vary according to the size of the firm. Part-time leave could be taken on the basis of an agreement with the employer.

An application may be made for a care allowance (*ápolási díj*)<sup>263</sup> for the duration of the unpaid leave from the social security system. Four hours of daily work is allowed while receiving this care allowance. The amount of the care allowance varies between EUR 95 and EUR 170 per month depending upon the condition of the person being cared for.

### 5.7.2 Case law

Case law is not available in relation to care leave.

## 5.8 Leave in relation to surrogacy

In case of surrogacy, parental leave (or other leave is not available), as surrogacy is not regulated by Hungarian law.

## 5.9 Flexible working time arrangements

### 5.9.1 Right to reduce or extend working time

The employer is obliged to amend the employment contract from full time to part time (equal to half of the normal working hours) at the employee's request: when the parent returns to work from maternity/parental leave before the child reaches the age of three years (or in the case of three or more children, up to the age of five of the youngest) and (s)he requests the modification of the employment contract to a part-time job.<sup>264</sup> The Labour Code refers to an 'employee' without specifying whether it is the parent of the child or some other relatives. There are no specific eligibility criteria or any limitations on its purpose; the size of the firm is of no relevance. The employee may request a modification until the child reaches the age of three years, which is equal to the period of time when the parental leave ends (unless the child is permanently ill). The part-time work and the childcare allowance (*gyermekgondozást segítő ellátás*) or childcare fee (*gyermekgondozási díj*) (both paid by the social security system) may be combined. This combined income is

<sup>262</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 131.

<sup>263</sup> Hungary, Act III of 1993 on Social Governance and Social Benefits (1993. évi III. törvény a szociális igazgatásról és szociális ellátásokról), 27 January 1993, Articles 40-44.

<sup>264</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 61(3).

below the amount that could be earned in a full-time job and usually does not cover the shortfall in salary.

The right to reduced working time does not apply to workers in simplified employment relationships.<sup>265</sup>

#### 5.9.2 Right to adjust working time patterns

According to Hungarian labour legislation, workers do not have a right to adjust working time patterns on request. The employer decides on the duration of the working-time account and its scheduling.<sup>266</sup> When scheduling working time, the employer is legally obliged to take into account the requirements of workplace safety and the nature of the work,<sup>267</sup> but not the employees' personal needs.

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

Working from home or working remotely is based on the decision on the employer, which in practice is based on the mutual agreement of the parties. In this case, the rules on maximising the working time do not apply and no overtime payments are due after working long hours.<sup>268</sup>

Working from home or working remotely is allowed for part-time workers whose contractually agreed daily working time amounts to no longer than six hours. The employer may request them to work at times deemed necessary to best accommodate the specific demands of their jobs, as long as at least three days' warning is provided in advance.<sup>269</sup>

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

Other legal rights to flexible working arrangements are not provided.

#### 5.9.5 Case law

In 2017, the Equal Treatment Authority concluded that a termination of the possibility for an employee to work from home following the birth of her third child constituted direct sex discrimination.<sup>270</sup>

The complainant claimed that she was discriminated against based on her motherhood when, with regards to her three children (including a 9-month-old), after returning from maternity leave she requested to work from home 20 hours per week. This request complied with her previously agreed employment contract. The employer rejected the request, arbitrarily amended her contract, and ordered her to work in the office 40 hours per week. The Equal Treatment Authority established direct discrimination and found that the employer did not provide any reasonable justification for not providing the option for the complainant to work from home when she returned to work from maternity leave.<sup>271</sup>

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<sup>265</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 203(1) Point (e).

<sup>266</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Articles 93(1) and 96(1) of the Labour Code.

<sup>267</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 97(1).

<sup>268</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 96(2)-(3).

<sup>269</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 193(1).

<sup>270</sup> Hungary, Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) Decision No. EBH/57/2017.

<sup>271</sup> Hungary, Decision of the Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) No. EBH/57/2017

## 5.10 Evaluation of implementation

With regards to the duration of maternity and parental leave, national legislation significantly exceeds EU law. As for the most explicit shortfall, the lack of prohibition of dismissal for (non-single) fathers is notable.

## 5.11 Remaining issues

There are some additional features in the national law relating to work-life balance:

- according to the Labour Code, workers are entitled to be away from work on grounds of *force majeure* for urgent family reason;<sup>272</sup>
- short-term leave is also granted for the period of receiving IVF treatment in a healthcare institution for the duration of mandatory pregnancy-related medical examination;<sup>273</sup>
- working time reduction is available for breastfeeding mothers: one hour twice a day until the end of the sixth month, then one hour a day until the end of the ninth month (in the case of twins, two hours twice a day until the end of the sixth month, then two hours a day until the ninth month);<sup>274</sup>
- in the event of the death of a relative, employees are entitled to two days' paid leave;<sup>275</sup>
- both parents of children under sixteen years are entitled to additional days of paid leave: annually two days in the case of one child, four days in the case of two children, and seven days in the case of three or more children<sup>276</sup> (parents of disabled children are entitled to two more days annually);<sup>277</sup> and
- parents are entitled to sick-leave to take care of their children (under the age of 12): an unlimited number of days in cases of children aged less than 12 months, up to 84 calendar days in cases of children aged 1-3 years, 42 calendar days in cases of children aged 3-6 years (84 days for single parents), and 14 calendar days in cases of children aged 6-12 years (28 days for single parents).<sup>278</sup>

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<sup>272</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 55(1) Point (j).

<sup>273</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 55(1) Point (b).

<sup>274</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 55(1) Point (e).

<sup>275</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 55(1) Point (f).

<sup>276</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 118(1).

<sup>277</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 118(2).

<sup>278</sup> Hungary, Act LXXXIII of 1997 on the Benefits of Compulsory Health Insurance (1997. évi LXXXIII. Törvény a kötelező egészségbiztosítás ellátásairól), 25 July 1997, Articles 44.

## **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**

No surveys or reports from the last five years are available that provide insight into the difficulties workers face in practice in relation to occupational social security schemes.

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

No specific issue may be mentioned in relation to gender equality and the occupational social security schemes.

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

There have been no political or social debates, and there are no pending legislative proposals on the topic of occupational social security schemes.

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

Direct and indirect discrimination are defined in the Equal Treatment Act,<sup>279</sup> and the prohibition of direct and indirect discrimination is applicable to occupational social security schemes<sup>280</sup> (detailed regulations on social security are also included in the Equal Treatment Act).<sup>281</sup>

### **6.3 Personal scope**

The personal scope, as defined by the Equal Treatment Act<sup>282</sup> and the Act on Occupational Pensions and its Institution (adopted in 2007),<sup>283</sup> is the same as provided by Article 6 of Directive 2006/54.

Due to an amendment that came into force in 2016, the Act on Occupational Pensions<sup>284</sup> now expressly lists all forms of employment relationships that fall under the scope of the act, provided by:

- Act on the Labour Code;<sup>285</sup>
- Act on Civil Servants;<sup>286</sup>

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<sup>279</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Articles 8-9.

<sup>280</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 5.

<sup>281</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 24-25.

<sup>282</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003.

<sup>283</sup> Hungary, Act CXVII of 2007 on Employers' Pensions and its Institutions (2007. évi CXVII. törvény a foglalkoztatói nyugdíjról és intézményeiről), 26 October 2007.

<sup>284</sup> Hungary, Act CXVII of 2007 on Employers' Pensions and its Institutions (2007. évi CXVII. törvény a foglalkoztatói nyugdíjról és intézményeiről), 26 October 2007, Article 2(23).

<sup>285</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012.

<sup>286</sup> Hungary, Act CXCIX of 2011 on Civil Servants (2011. évi CXCIX. törvény a közszolgálati tisztviselőkről), 30 December 2011.

- Act on Public Servants;<sup>287</sup>
- Act on the Status of Military Personnel;<sup>288</sup>
- Act on the Service Relationship of Professional Members of Law Enforcement Organisations;<sup>289</sup>
- Act on the Service Status of Judicial Employees;<sup>290</sup>
- Act on the Status and Remuneration of Judges;<sup>291</sup>
- Act on the Status of the Chief Public Prosecutor, Prosecutors and Other Prosecutorial Employees and the Prosecutorial Career;<sup>292</sup> and
- Act on State Officials (which includes the clergy).<sup>293</sup>

## 6.4 Material scope

The material scope, as defined by the Equal Treatment Act<sup>294</sup> and the Act on Occupational Pensions and its Institution,<sup>295</sup> is similar to the scope provided by Article 7 of Directive 2006/54, although worded differently. The rules on equal treatment should be followed in the course of claiming and providing benefits financed from the social security system, social benefits, and financial and in-kind child protection or personal care. With respect to healthcare, the rules on equal treatment are applied with respect to participation in preventive programmes and medical check-ups, preventive medical care, the use of residence premises, and the satisfaction of dietary and other needs.<sup>296</sup>

The relational scope of the Equal Treatment Act must also be applied: the principle of equal treatment must be observed in all public services, including public and higher education, social care, child welfare, healthcare services, and public utilities (etc.). Private services are also covered by the Equal Treatment Act if they concern offers and calls for offers (tenders) presented to the public (preliminarily undefined persons), and if they concern services that are provided and goods that are sold at premises that are open to the public.<sup>297</sup>

## 6.5 Exclusions

The exclusions from the material scope, as specified in Article 8 of Directive 2006/54, are not applied in national law.

<sup>287</sup> Hungary, Act XXXIII of 1992 on the Legal Status of Public Servants (1992. évi XXXIII. törvény a közalkalmazottak jogállásáról), 2 June 1992.

<sup>288</sup> Hungary, Act CCV of 2012 on the Status of Military Personnel (2012. évi CCV. törvény a honvédek jogállásáról), 18 December 2012.

<sup>289</sup> Hungary, Act XLII of 2015 on the Service Relationship of Professional Members of Law Enforcement Organisations (2015. évi XLII. törvény a rendvédelmi feladatokat ellátó szervek hivatásos állományának szolgálati jogviszonyáról), 24 April 2015.

<sup>290</sup> Hungary, Act LXVIII of 1997 on the Service Status of Judicial Employees (1997. évi LXVIII. Törvény az igazságügyi alkalmazottak szolgálati jogviszonyáról), 23 July 1997.

<sup>291</sup> Hungary, Act CLXII of 2011 on the Status and Remuneration of Judges (2011. évi CLXII. törvény a bírák jogállásáról és javadalmazásáról), 2 December 2011.

<sup>292</sup> Hungary, Act CLXIV of 2011 on the Status of the Chief Public Prosecutor, Prosecutors and Other Prosecutorial Employees and the Prosecutorial Career (2011. évi CLXIV. törvény a legfőbb ügyész, az ügyészek és más ügyészégi alkalmazottak jogállásáról és az ügyészi életpályáról), 28 November 2011.

<sup>293</sup> Hungary, Act LII of 2016 on State Officials (2016. évi LII. törvény az állami tisztviselőkről), 14 May 2016.

<sup>294</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003.

<sup>295</sup> Hungary, Act CXVII of 2007 on Employers' Pensions and its Institutions (2007. évi CXVII. törvény a foglalkoztatói nyugdíjról és intézményeiről), 26 October 2007.

<sup>296</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Articles 24-25.

<sup>297</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Articles 4-5.

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

There are no laws or case law falling under the examples of sex discrimination as mentioned in Article 9 of Directive 2006/54.

## **6.7 Actuarial factors**

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

## **6.8 Difficulties**

The terms and conditions of occupational pension schemes are to be decided by the employer within the framework of the investment companies' manual. The more selective the terms and conditions of the scheme as set up by the employer, the more likely it is that gender-related indirect discrimination might occur, because men are significantly overrepresented in managerial and key positions in Hungary. It will take years before case law will develop in this regard.

## **6.9 Evaluation of implementation**

The related EU norms are largely implemented in Hungarian legislation. As for the definition of the material scope, the wording of the Hungarian provision differs from Article 7 of Directive 2006/54, but the width of the scope does not. However, exclusions from the material scope (as provided by Article 8 of Directive 2006/54) are not applied in national law, while the implementation of Article 8(2) – which allows employers to grant pension supplements with a gender equality perspective – could be seen as a progressive step. It should be noted that the provision on widening the scope of the Act on Occupational Pensions, which was enacted in 2016,<sup>298</sup> signals that the state intends to utilise occupational pension schemes to reward its key personnel in different service relationships that are attached more closely to the state.

## **6.10 Remaining issues**

According to an analysis from 2017, while all three pension pillars exist in Hungary, the Hungarian pension system 'continues to rely far too heavily on the first pillar [state pension], the sustainability of which is surrounded by risks'<sup>299</sup> because the first pillar (the 'pay-as-you-go' state pension system) is characterised by 'excessive dependence from demographic and economic circumstances even on the part of retirees'.<sup>300</sup>

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<sup>298</sup> Hungary, Act CXVII of 2007 on Occupational Pensions and its Institution (2007. évi CXVII. törvény a foglalkoztatói nyugdíjról és intézményeiről), 26 October 2007.

<sup>299</sup> Pandurics, A., Szalai, P. (2017), The Role of the Second and Third Pension Pillar in the Hungarian Pension System', *Public Finance Quarterly*, no. 2, p. 212, available at: [https://asz.hu/storage/files/files/public-finance-quarterly-articles/2017/pandurics\\_2017\\_2\\_a.pdf](https://asz.hu/storage/files/files/public-finance-quarterly-articles/2017/pandurics_2017_2_a.pdf).

<sup>300</sup> Pandurics, A., Szalai, P. (2017), The Role of the Second and Third Pension Pillar in the Hungarian Pension System', *Public Finance Quarterly*, no. 2, p. 219, available at: [https://asz.hu/storage/files/files/public-finance-quarterly-articles/2017/pandurics\\_2017\\_2\\_a.pdf](https://asz.hu/storage/files/files/public-finance-quarterly-articles/2017/pandurics_2017_2_a.pdf).

## **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)**

No surveys or reports are available from the last five years that provide insight into the difficulties workers face in practice in relation to statutory social security schemes.

#### **7.1.2 Other relevant issues**

No other issues may be mentioned regarding the gender equality aspects of statutory schemes of social security.

#### **7.1.3 Overview of national acts**

The key national acts governing the statutory social security schemes are the following:

- Act on State Pensions;<sup>301</sup>
- Act on Social Governance and Social Benefits.<sup>302</sup>

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

There have been no political or social debates, and there are no pending legislative proposals on the topic of social security and gender equality.

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

The Equal Treatment Act provides that the requirement of equal treatment should be applied with respect to social security, particularly in the course of claiming and ensuring benefits financed from the social security schemes, and in the course of claiming social benefits and financial and in-kind child protection benefits or care benefits.<sup>303</sup>

### **7.3 Personal scope**

The general rules on the personal scope of the Equal Treatment Act are applicable to the field of statutory fields of social security schemes,<sup>304</sup> and the scope is as wide as specified by Article 2 of Directive 79/7 although the wording of the provisions is different. The Equal Treatment Act obliges state authorities (including state social security schemes) and private pension schemes to follow the rules of equal treatment in all their activities and legal relationships.<sup>305</sup>

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<sup>301</sup> Hungary, Act LXXXI of 1997 on State Pensions (1997. évi LXXXI. törvény a társadalombiztosítási nyugellátásról), 25 July 1997.

<sup>302</sup> Hungary, Act III of 1993 on Social Governance and Social Benefits (1993. évi III. törvény a szociális igazgatásról és szociális ellátásokról), 27 January 1993.

<sup>303</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 24.

<sup>304</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 6.

<sup>305</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 4 Points (c) and (j).



## 7.4 Material scope

The general rules on the material scope of the Equal Treatment Act are applicable to the all statutory social security schemes,<sup>306</sup> and the scope is as wide as specified by Article 3 paragraphs 1 and 2 of Directive 79/7.

## 7.5 Exclusions

As for exclusions specified in Article 7 of Directive 79/7, the amendment<sup>307</sup> of the Act on State Pensions (in force from 2011) is relevant<sup>308</sup> – this established an early retirement option only available for women who have gained 40 years of eligibility.<sup>309</sup> The calculation of eligibility is different from the general rules on eligibility, because in the eligibility for early retirement, all periods for which any kind of child-related social security payment was paid is considered. This statutory regulation directly discriminates against men on the basis of sex because it excludes men from being eligible for early retirement. Furthermore, this regulation is also detrimental to women, because it strengthens the stereotype that it is the role of women to take care of children, and that the labour market values the work carried out by men more than that of women. Also, this rule contributes to the poverty of older women, and to the widening of the wage (pension) gap between men and women by allowing women to retire with a lower level of income.

The regulation was challenged by a trade union leader as a private individual who initiated a referendum in order to allow men to retire under the same conditions as women. The referendum was refused by the National Election Committee<sup>310</sup> on the basis of two justifications: 1. the question was not sufficiently clear; and 2. the question was in relation to the central budget, while no question could be asked in a referendum that is related to the central budget, according to the Article on Initiating Referendums, on the the European Citizens' Initiative, and on the Referendum Procedure.<sup>311</sup> The Supreme Court altered the decision of the National Election Committee and allowed the question to be asked in a referendum, because the question was clear and the matter of the referendum was related to the national budget only indirectly.

Trade unions and the opposition parties who joined the initiative, quickly gathered together more than 100 000 supporters out of the required 200 000. However, the collection of signatures was halted at this point, because a procedure was initiated (challenging the legality of the planned referendum) before the Constitutional Court, based on several petitions lodged by individuals and associations.<sup>312</sup> The case was dealt with in an unprecedentedly rapid, combined procedure, and eventually the referendum was refused by a deeply divided Constitutional Court: out of 13 judges, 3 submitted concurring opinions, and a further 4 judges submitted dissenting opinions to the decision.<sup>313</sup> However, a majority of the Constitutional Court agreed that the referendum cannot be allowed

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<sup>306</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 6.

<sup>307</sup> Hungary, Act CLXX of 2010 on the Amendment of Certain Acts Relating to Pension Insurance on Other Related Acts (2010. évi CLXX. törvény egyes nyugdíjbiztosítási tárgyú és más kapcsolódó törvények módosításáról), 20 December 2010, Article 1.

<sup>308</sup> Hungary, Act LXXXI of 1997 on State Pensions (1997. évi LXXXI. törvény a társadalombiztosítási nyugellátásról), 25 July 2007, Article 18(2).

<sup>309</sup> Hungary, Act LXXXI of 1997 on State Pensions (1997. évi LXXXI. törvény a társadalombiztosítási nyugellátásról), 25 July 1997, Article 18(2) Point (b).

<sup>310</sup> Hungary, National Election Committee (*Nemzeti Választási Bizottság*), Decision No.83/2015, 30 April 2015.

<sup>311</sup> Hungary, Act CCXXXVIII of 2013 on Initiating Referendums, on the European Citizens' Initiative, and on the Referendum Procedure (2013. évi CCXXXVIII. törvény a népszavazás kezdeményezéséről, az európai polgári kezdeményezéséről, valamint a népszavazási eljárásról), 23 December 2013, Article 11.

<sup>312</sup> Hungary, Constitutional Court Case No. IV/02774/2015 (submitted 27 August 2015), IV/02779/2015 (submitted 28 August 2015), IV/02822/2015 (3 September 2015).

<sup>313</sup> Hungary, Constitutional Court Decision (*AB határozat*) No. 28/2015. (IX. 24.), 22 September 2015.

because it violates the provision of the Fundamental Law<sup>314</sup> that prohibits the holding of any referendum on issues related to the central budget and its regulating laws.

Point 34 of the reasoning briefly reflects upon the merits of the issue: what are the fundamental legal grounds for regulating differently the rights for early retirement of women and men? The Constitutional Court emphasised that according to the Fundamental Law,<sup>315</sup> fundamental rights must be enjoyed by all without differentiating on the basis of sex,<sup>316</sup> and that men and women are equal before the law.<sup>317</sup> Specific rules, however, allow Parliament to adopt laws that protect families, children, women, the elderly and persons living with disabilities.<sup>318</sup> The last sentence of Article XIX(4)<sup>319</sup> of the Fundamental Law specifically allows Parliament to enact regulations on statutory pensions that provide 'stronger protection' for women. The Constitutional Court argued that the suggested referendum could not be allowed because it aims to eliminate the specific protection that women enjoy with regard to early retirement, and thereby attempts to make the two subsections of the Fundamental Law empty and meaningless, even though their aim is to provide further and stronger protection for women. The reasoning does not investigate the issue from the angle of equal treatment; it merely relies upon the need to provide stronger protection for women as is articulated by the Fundamental Law. No reference was made to any European or international sources of law on equal treatment or equal pay.

The Constitutional Court 'protected' the Fundamental Law regardless of the fact that its controversial content is deeply rooted in gender stereotypes (women, as a weaker party, have to be protected; women are in charge of raising children; the role of men is to work, etc.).

## **7.6 Actuarial factors**

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

## **7.7 Difficulties**

There are no specific difficulties in relation to implementing Directive 79/7.

## **7.8 Evaluation of implementation**

Formally, the EU norms are transposed on a rather satisfactory level.

## **7.9 Remaining issues**

No additional issues may be mentioned in relation to implementing Directive 79/7.

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<sup>314</sup> Hungary, Fundamental Law of Hungary (*Magyarország Alaptörvénye*), 25 April 2011, Article 8(3).

<sup>315</sup> Hungary, Fundamental Law of Hungary (*Magyarország Alaptörvénye*), 25 April 2011, Article XV.

<sup>316</sup> Hungary, Fundamental Law of Hungary (*Magyarország Alaptörvénye*), 25 April 2011, Article XV(1).

<sup>317</sup> Hungary, Fundamental Law of Hungary (*Magyarország Alaptörvénye*), 25 April 2011, Article XV(2).

<sup>318</sup> Hungary, Fundamental Law of Hungary (*Magyarország Alaptörvénye*), 25 April 2011, Article XV(5).

<sup>319</sup> Hungary, Fundamental Law of Hungary (*Magyarország Alaptörvénye*), 25 April 2011, Article XIX(4).

## **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**

No surveys or reports are available from the last five years that provide insight into the specific difficulties of self-employed workers.

#### **8.1.2 Other issues**

No other issues may be mentioned regarding the gender equality aspects of self-employment.

#### **8.1.3 Overview of national acts**

The Hungarian legislation addresses the issue of self-employment in a rather fragmented and ambiguous way:

- the Act on the Promotion of Employment and on Assistance Provided for the Unemployed defines the self-employed person as someone 'who provides employment for him/herself outside of a dependent employment relationship, including starting up a new business, or joining an existing business';<sup>320</sup>
- in the Act on Occupational Pensions, the notion of self-employed person covers both private and corporate entrepreneurs;<sup>321</sup> and
- the Labour Code does not include any explicit reference to self-employment.

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

There have been no political or social debates, and there are no pending legislative proposals on the topic of self-employment.

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

Two Acts contain references to the transposition of Directive 2010/41/EU: the often-modified Act on the Benefits of Compulsory Health Insurance<sup>322</sup> and the Act CCXII of 2012 on the Amendment of Certain Acts on Healthcare.<sup>323</sup> However, no specific legislation has been enacted to transpose Directive 2010/41/EU.

### **8.3 Personal scope**

#### **8.3.1 Scope**

The concept of a 'self-employed' person is elaborated in Hungarian law in a rather formal and ambiguous way:

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<sup>320</sup> Hungary, Act IV of 1991 on the Promotion of Employment and on Assistance Provided for the Unemployed (1991. évi IV. törvény a foglalkoztatás elősegítéséről és a munkanélküliek ellátásáról), 23 February 1991.

<sup>321</sup> Hungary, Act CXVII of 2007 on Occupational Pensions and its Institutions (2007. évi CXVII. törvény a foglalkoztatói nyugdíjról és intézményeiről), 26 October 2007.

<sup>322</sup> Hungary, Act LXXXIII of 1997 on the Benefits of Compulsory Health Insurance (1997. évi LXXXIII. Törvény a kötelező egészségbiztosítás ellátásairól), 25 July 1997.

<sup>323</sup> Hungary, Act CCXII of 2012 on the Amendment of Certain Acts on Healthcare (2012. évi CCXII. törvény az egyes egészségügyi tárgyú törvények módosításáról), 17 December 2012.

- Article 17 of Act IV of 1991 on the Promotion of Employment and on Assistance Provided for the Unemployed<sup>324</sup> defines the self-employed as one 'who provides employment for him/herself outside of a dependent employment relationship, including starting up a new business, or joining an existing business';
- in the case of the Act on Occupational Pensions,<sup>325</sup> the notion of self-employed covers both private and corporate entrepreneurs; and
- the Act on Private Entrepreneurs and Sole Proprietorship<sup>326</sup> defines the private entrepreneur (*egyéni vállalkozó*) as a natural person who carries out an economic activity on a regular basis for the purpose of acquiring assets and profits, and through undertaking economic risks. Corporate entrepreneurs are the owners of businesses (legal entities).

### 8.3.2 Definitions

There is no well-developed definition of a self-employed person in the national legislation.

### 8.3.3 Categorisation and coverage

Both in legal provisions and in statistical systems, the definition of self-employed relies on formal criteria (being an owner of a business, being registered as a private entrepreneur in the taxation system, etc.) and disregards the fundamental difference between 'the owner of the business' and 'the self-employed'.

### 8.3.4 Recognition of life partners

The life partner relationship is legally recognised by the Civil Code,<sup>327</sup> and from 2009, there is a special arrangement for same sex couples: registered partnership (*bejegyzett élettársi kapcsolat*).<sup>328</sup> The rights of life partners in the specific context of self-employment are, however, not regulated.

## 8.4 Material scope

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

As for the implementation of Article 4 of Directive 2010/41/EU, the Equal Treatment Act provides that the self-employed person has a right to equal treatment with respect to access to work, especially in public job advertisements, hiring, and regarding the conditions of employment; in establishing and terminating the employment relationship or other relationship for work; in relation to any training before or during the work; and in determining and providing working conditions.<sup>329</sup>

<sup>324</sup> Hungary, Act IV of 1991 on the Promotion of Employment and on Assistance Provided for the Unemployed (1991. évi IV. törvény a foglalkoztatás elősegítéséről és a munkanélküliek ellátásáról), 23 February 1991.

<sup>325</sup> Hungary, Act CXVII of 2007 on Occupational Pensions and its Institutions (2007. évi CXVII. törvény a foglalkoztatói nyugdíjról és intézményeiről), 26 October 2007.

<sup>326</sup> Hungary, Act CXV of 2009 on Private Entrepreneurs and Sole Proprietorships (2009. évi CXV. törvény az egyéni vállalkozóról és az egyéni cégről), 26 November 2009.

<sup>327</sup> Hungary, Act V of 2013 on the Civil Code (2013. évi V. törvény a Polgári Törvénykönyvről), 26 February 2013, Article 6:514 (1).

<sup>328</sup> Hungary, Act XXIX of 2009 on registered partnership, and on the amendment of legal acts relating thereto and needed for the facilitation of the justification of the partnership (2009. évi XXIX. törvény a bejegyzett élettársi kapcsolatáról, az ezzel összefüggő, valamint az élettársi viszony igazolásának megkönnyítéséhez szükséges egyes törvények módosításáról), 8 May 2009.

<sup>329</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 21.

#### 8.4.2 Material scope

The material scope of the national legislation is in accordance with Article 4 of Directive 2014/41, however, the provision is worded differently. The Equal Treatment Act defines self-employment through the legal relationships in which the self-employed are usually engaged: 'other relationships of work' (*munkavégzésre irányuló egyéb jogviszony*).<sup>330</sup> However, the unusual use of this term contradicts terminology used in labour law, according to which the term 'other relationships of work' usually covers relationships where the work is performed between independent parties, through an assignment contract (*megbízási szerződés*), a contract for professional services (*vállalkozási szerződés*), and membership of private companies (*gazdasági társaság*).

#### 8.5 Positive action

Hungary has not taken any positive action measures in the field of self-employment.

#### 8.6 Social protection

The Hungarian social security system covers those who perform work, receive income and/or pay contributions – including self-employed persons – on a mandatory basis. The scope of the legislation covers sickness, invalidity, old age, industrial accidents and occupational diseases and unemployment, and ensures equal treatment with regard to access to, contributions to and benefits from insurance covering these risks. Voluntary systems are also available for both healthcare services and pensions.

Article 24 of the Equal Treatment Act<sup>331</sup> prescribes that the requirement of equal treatment is applied with respect to social security, particularly in the course of claiming and ensuring benefits financed from the social security schemes, and social benefits, financial and in-kind child protection or personal care. According to the personal scope of this Article, this rule covers the self-employed but not their spouses and life partners. However, the spouse and/or life partner is free to establish a social security contract and to pay contributions in his or her personal capacity. In this case the spouse's or life partner's equal treatment is safeguarded by the provision of the Equal Treatment Act<sup>332</sup> which obliges the authorities to follow the rules on equal treatment in all their legal relationships, and also by the provision on social security.<sup>333</sup>

Equal treatment is formally safeguarded by the Equal Treatment Act, though no tailor-made legal machinery has been established in order to address the specific issues of social protection and the unequal treatment of self-employed women.

#### 8.7 Maternity benefits

The general rules apply to self-employed mothers for the duration of maternity leave (24 weeks). The infant care fee (*csecsemőgondozási díj*) is paid by the social security

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<sup>330</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 3(1) Point (b), Article 5 Point (d) and Article 21 Point (f).

<sup>331</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 24.

<sup>332</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 4.

<sup>333</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 24.

system, the amount of which is equal to 70 % of the average daily wage of the mother (with no ceiling on payments).<sup>334</sup>

Childcare allowance (*gyermekgondozást segítő ellátás*) is also available, paid until the child reaches the age of 3 (in cases of twins: until the children reach the minimum age of compulsory education; in cases of chronically ill or disabled children: until the child reaches the age of 10). The allowances amount to the minimum old age pension, approximately EUR 90 EUR per month.<sup>335</sup>

The available benefits, infant care fee and childcare allowance meet the legal criteria of sufficiency established by Article 8(a) and (c) of Directive 2010/41/EU respectively. However, while equal treatment is formally guaranteed, no attention is paid to the disproportionately disadvantaged position of self-employed women in reality.

## **8.8 Occupational social security**

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

The Act on Occupational Pensions provides that self-employed persons, including both private and corporate entrepreneurs, are eligible to join to an occupational pension institution.<sup>336</sup>

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

The national law in Hungary has not made use of the exceptions for self-employed persons regarding matters of occupational social security (as mentioned in Article 11 of Recast Directive 2006/54).

## **8.9 Prohibition of discrimination**

Prohibition of discrimination against self-employed persons is provided by the Equal Treatment Act, which covers self-employment under the term of 'other relationships of work' (*munkavégzésre irányuló egyéb jogviszony*).<sup>337</sup>

## **8.10 Evaluation of implementation**

Hungarian law has formally transposed Directive 2010/41/EU with some gaps, especially with regard to the legal protection of spouses and life partners. However, it does not provide real life protection to self-employed persons due to the lack of tailor-made regulations addressing the special regulatory needs of this group.

### **8.11 Remaining issues**

No additional issues may be mentioned regarding the issue of self-employment.

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<sup>334</sup> Hungary, Act LXXXIII of 1997 on the Benefits of Compulsory Health Insurance (1997. évi LXXXIII. Törvény a kötelező egészségbiztosítás ellátásairól), 25 July 1997, Articles 40-42.

<sup>335</sup> Hungary, Act LXXXIV of 1998 on the Support of Families (1998. évi LXXXIV. törvény a családok támogatásáról), 24 December 1998, Articles 20-22.

<sup>336</sup> Hungary, Act CXVII of 2007 on Occupational Pensions and its Institutions (2007. évi CXVII. törvény a foglalkoztatói nyugdíjról és intézményeiről), 26 October 2007. Article 8(4).

<sup>337</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 3(1) Point (b).

## **9 Goods and services (Directive 2004/113)<sup>338</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**

No surveys or reports are available from the last five years about the difficulties linked to access to and supply of goods and services from the gender equality aspect.

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

Hungarian legislation does not specifically address the issue of gender equality in the online environment or digital market, but the general provisions (on equal treatment between men and women in the access to and provision of goods and services) are intended to be adequate for these spheres as well. However, there is no case law in this field.

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

There have been no political or social debates, and there are no pending legislative proposals on goods and services and the issues of gender equality.

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

Prohibition of direct and indirect discrimination on grounds of sex in access to and the supply of goods and services is provided by the Equal Treatment Act.<sup>339</sup>

### **9.3 Material scope**

The material scope, as provided by the Equal Treatment Act, is similarly wide, but worded differently compared to the specification in Article 3 of Directive 2004/113: the principle of equal treatment must be observed in all public services, including public and higher education, social care, child welfare, healthcare services, public utilities, (etc.). Private services are also covered by the provision if they concern offers and calls for offers (tenders) presented to the public (preliminarily undefined persons), and if they concern services that are provided and goods that are sold at premises open to the public.<sup>340</sup>

### **9.4 Exceptions**

The national law has not explicitly applied the exceptions from the material scope regarding the content of the media, advertising, and education, as provided by Article 3(3) of Directive 2004/113.

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<sup>338</sup> See e.g. Caracciolo di Torella, E. and McLellan, B. (2018), *Gender equality and the collaborative economy*, European network of legal experts in gender equality and non-discrimination, available at <https://www.equalitylaw.eu/downloads/4573-gender-equality-and-the-collaborative-economy-pdf-721-kb>.

<sup>339</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Articles 8-9.

<sup>340</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Articles 4-5.

## 9.5 Justification of differences in treatment

According to the general provisions on exceptions of the Equal Treatment Act,<sup>341</sup> differences in treatment in the provision of the goods and services may be justified, as provided by Article 4(5) of Directive 2004/113.

As for case law, the first reverse discrimination case in Hungary is relevant. This case revolved around the issue that men had to pay a fee for services that were provided free of charge for women. A male activist from a progressive student organisation filed a complaint against a bar that offered free entrance for women until midnight, while male patrons would have paid approximately EUR 0.96 (HUF 300) as an entrance fee. He argued that he was discriminated against because of his sex. In its defence, the bar used the following arguments: (1) it wanted to balance the wage discrimination that women suffer in the labour market; (2) it is a societal expectation that men pay for women in bars, clubs and restaurants, so the free entrance for women was a gesture to both sexes; and (3) the free entrance for women was a business necessity for the bar. It argued that without providing free entrance for women, women would not attend the club in sufficient numbers and that would contribute to the reduction of male patrons. So as to remain profitable, it had to provide free entrance for women for some of the events, while other events were free for both sexes, and on other occasions both sexes had to pay an entrance fee.

The Equal Treatment Authority established that the claimant suffered direct discrimination because of his sex. The Equal Treatment Authority dismissed all defences raised by the bar. The first defence, based on the preferential treatment of women reflecting the wage pay gap was refused because the bar's pricing policy did not fulfil the legal criteria of preferential treatment (positive action) laid down in the Equal Treatment Act.<sup>342</sup> The second and third arguments of the bar were dismissed by the authority because the legal criteria of lawful exemptions from the non-discrimination principle were not fulfilled as laid down in the Equal Treatment Act.<sup>343</sup> The Equal Treatment Authority stressed that the bar is free to decide whether it requires entrance fees from its patrons, though the rules must be the same for both sexes. Occasionally, the bar could provide free entrance to one sex or the other but it must be clearly linked to certain holidays (no example was given in this regard in the decision).

In a media interview, the claimant explained that he believed that the treatment of women by most of the bars and clubs in Budapest is alarming. The women, who enter the bar seemingly free of charge, but in fact at the expense of men, seem to be treated as a 'reward', provided by the bar for solvent men. The claimant's interpretation of the case in the interview points to the Janus-faced nature of his legal and ethical position. Legally he argued that he, as a man, was discriminated against, but in fact he wanted to raise awareness of the increasingly degrading treatment of women in Hungary. In this particular context, women seem to be a 'special service' of the bar for the men, ultimately placing women in a position of being a 'sexual object'.<sup>344</sup> The decision of the Equal Treatment Authority in 2013<sup>345</sup> became final by the decision of the Constitutional Court in 2016.<sup>346</sup>

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<sup>341</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 7(2).

<sup>342</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 11.

<sup>343</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 7(2).

<sup>344</sup> Magyarokúti, B. (2013), 'Vége a nők ingyenbulijának' (No more free partying for women), *Index*, 21 November 2013, available: <https://index.hu/belfold/2013/11/21/diszkriminativ-a-nok-ingyenbulija/>.

<sup>345</sup> Hungary, Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) Decision No. EBH/545/13/2013.

<sup>346</sup> Hungary, Constitutional Court Decision (*AB határozat*) No.3001/2016. (I. 15.), 15 January 2016.



In a similar case,<sup>347</sup> a man turned to the Equal Treatment Authority claiming that he was discriminated against by a bar, based on his sex, as men have to pay EUR 7.75 to enter (approximately HUF 2 500), while women only need to pay EUR 3,10 (approximately HUF 1 000), whilst also receiving a EUR 1,55 (approximately HUF 500) voucher for drinks. The Equal Treatment Authority established direct discrimination based on his sex and ordered the bar to both cease the practice and pay a fine.<sup>348</sup>

## 9.6 Actuarial factors

Article 5(1) of Directive 2004/113 was transposed to national law by a provision of the Equal Treatment Act.<sup>349</sup> However, the general legal framework of the legislation remained unchanged with regard to the definitions of different forms of discrimination and the procedure of the Equal Treatment Authority. The relevant Article 30/A of the Equal Treatment Act allows for a deviation from the unisex rule, which contravenes the CJEU's *Test Achats* decision in two respects:

- the group of life, accident and sickness insurances, as a general exemption, do not fall under the unisex rule; and
- further derogations are allowed from the unisex rule if they are regulated by the separate Act on the Business of Insurance.<sup>350</sup>

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

As for the interpretation of the exception contained in Article 5(2) Directive 2004/113, the Act on the Business of Insurance specifies<sup>351</sup> cases in which sex-related data and information might be stored, managed and used. These cases are in line with the Guidelines on the application of Directive 2004/113.<sup>352</sup> Moreover, it specifies<sup>353</sup> cases in which a differentiation among the members of the two sexes does not constitute unlawful discrimination: in relation to indirect discrimination, as it is reflected upon in points 16 and 17 in the COM Guidelines; in the case of positive action, as long as it does not constitute unlawful discrimination against other persons or groups of persons who are in a comparable situation. If the application of this point remains within the boundaries of the case law of the CJEU, as was also reflected upon by Article 16 of the Directive, it does not constitute unlawful discrimination. The provisions<sup>354</sup> in the Act comply with Article 4(5) of the Directive 2004/113 and point 15 in the Guidelines on the application of Council Directive 2004/113/EC to insurance.<sup>355</sup>

The regulation in the Act on the Business of Insurance correctly follows the timing provided by the EU *acquis*:

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<sup>347</sup> Hungary, Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) Decision No. EBH/22/2016.

<sup>348</sup> Hungary, Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) Decision No. EBH/357/2018.

<sup>349</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 30/A.

<sup>350</sup> Hungary, Act LXXXVIII of 2014 on the Business of Insurance (2014. évi LXXXVIII. törvény a biztosítási tevékenységről), 22 December 2014.

<sup>351</sup> Hungary, Act LXXXVIII of 2014 on the Business of Insurance (2014. évi LXXXVIII. törvény a biztosítási tevékenységről), 22 December 2014, Article 134(1).

<sup>352</sup> European Commission (2012), Guidelines on the application of Council Directive 2004/113/EC to insurance, in the light of the judgment of the Court of Justice of the European Union in Case C-236/09 (*Test-Achats*) Text with EEA relevance. (2012/C 11/01), 13 January 2012.

<sup>353</sup> Hungary, Act LXXXVIII of 2014 on the Business of Insurance (2014. évi LXXXVIII. törvény a biztosítási tevékenységről), 22 December 2014, Article 134(2).

<sup>354</sup> Hungary, Act LXXXVIII of 2014 on the Business of Insurance (2014. évi LXXXVIII. törvény a biztosítási tevékenységről), 22 December 2014, Article 134(2) Point (c).

<sup>355</sup> European Commission (2012), Guidelines on the application of Council Directive 2004/113/EC to insurance, in the light of the judgment of the Court of Justice of the European Union in Case C-236/09 (*Test-Achats*) Text with EEA relevance. (2012/C 11/01), 13 January 2012.

- the unisex rule does not apply to contracts concluded before 21 December 2007.<sup>356</sup> However, there is no rule on what qualifies as an 'old' and 'new' contract in this regard;
- there are specific rules for new (or modified) contracts concluded between 21 December 2007 and 21 December 2012,<sup>357</sup> stating that the provision<sup>358</sup> – which lists the only allowed differentiation (derogations from the unisex rule) – is not to be applied to the specific cases listed in points a-c. For other cases the restrictive rules are to be applied;<sup>359</sup> and
- the Act specifies<sup>360</sup> that only derogations allowed under the unisex rule<sup>361</sup> are to be applied if the last legal statement was delivered to the other party following 21 December 2012 (which establishes a 'new contract').

Article 5(1) of Directive 2004/113 was transposed to national law by a provision of the Equal Treatment Act<sup>362</sup> (while the general legal framework of the legislation remained unchanged with regard to the definitions of different forms of discrimination and the procedure of the Equal Treatment Authority), which allows for a deviation from the unisex rule in two respects: 1) life, accident and sickness insurances, as a general exemption, do not fall under the unisex rule; and 2) further derogations are allowed from the unisex rule if regulated by the separate Act on the Business of Insurance.<sup>363</sup> According to the author's understanding, such a wide and general exemption cannot be made by national legislation, because it empties the aim of the *Test-Achats* ruling, namely promoting gender equality in the field of insurance services.

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

The only (*quasi*) positive action measure taken by Hungary in relation to access to and the supply of goods and services is controversial. According to recent amendments of the Governmental Decree on Student Loans (in force from 1 January 2018),<sup>364</sup> women are entitled to an alleviation of 50 % of their student loans after giving birth to (or adopting) a second child, and an alleviation of 100 % after giving birth to (or adopting) a third child. However, only those women who gave birth to (or adopted) at least one of their children after 31 December 2017 are eligible.

An individual affected by this measure lodged a complaint against the Decree to the Constitutional Court, claiming that the conditions of the student loan alleviation are discriminatory because the mothers whose children were born (or adopted) earlier are excluded from the alleviation. The Constitutional Court rejected the complaint, claiming that the restriction falls within the scope of exemption regarding the principle of equal treatment. According to the Court, the restriction is not arbitrary and based on a sensible reason, which carries due constitutional weight to justify the differential treatment; i.e., the measure serves the aim to encourage further childbearing, thus increasing the birth

<sup>356</sup> Hungary, Act LXXXVIII of 2014 on the Business of Insurance (2014. évi LXXXVIII. törvény a biztosítási tevékenységről), 22 December 2014, Article 447.

<sup>357</sup> Hungary, Act LXXXVIII of 2014 on the Business of Insurance (2014. évi LXXXVIII. törvény a biztosítási tevékenységről), 22 December 2014, Article 447.

<sup>358</sup> Hungary, Act LXXXVIII of 2014 on the Business of Insurance (2014. évi LXXXVIII. törvény a biztosítási tevékenységről), 22 December 2014, Article 134.

<sup>359</sup> Hungary, Act LXXXVIII of 2014 on the Business of Insurance (2014. évi LXXXVIII. törvény a biztosítási tevékenységről), 22 December 2014, Article 96/B.

<sup>360</sup> Hungary, Act LXXXVIII of 2014 on the Business of Insurance (2014. évi LXXXVIII. törvény a biztosítási tevékenységről), 22 December 2014, Article 447.

<sup>361</sup> Hungary, Act LXXXVIII of 2014 on the Business of Insurance (2014. évi LXXXVIII. törvény a biztosítási tevékenységről), 22 December 2014, Article 134.

<sup>362</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 30/A.

<sup>363</sup> Hungary, Act LXXXVIII of 2014 on the Business of Insurance (2014. évi LXXXVIII. törvény a biztosítási tevékenységről), 22 December 2014.

<sup>364</sup> Hungary, Governmental Decree 1/2012 (I. 20.) on the System of Student Loans (1/2012. (I. 20.) Korm. rendelet a hallgatói hitelrendszerről), 20 January 2012.

rates in Hungary and promoting a favourable demographic turn. Moreover, the Constitutional Court explicitly stated that the measure is not aimed to support the upbringing of children already born.<sup>365</sup>

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

Moving around with a pram seems to be a challenge for parents, especially in the countryside. There have been numerous cases before the Equal Treatment Authority in which individuals have complained about being discriminated against because of trying to use services with small children sitting in a pram. In one case, a mother initiated a procedure against a public transportation bus company which regularly caused hardship for her when she travelled with her child and pram.<sup>366</sup> In another case, the pharmacist requested the parents to leave the pram outside the pharmacy and referred to non-existent hygienic regulations when asked about the reason to do so.<sup>367</sup> In both cases, the Equal Treatment Authority concluded that the parents suffered direct discrimination based on maternity/parenthood (as these characteristics are explicitly listed as protected grounds in the Equal Treatment Act).<sup>368</sup>

### 9.10 Evaluation of implementation

Although the transposition of Directive 2004/113 and the Ruling does not appear to be logical and thorough in every respect, a violation of the *acquis* could only be concluded with regard to the provision of the Equal Treatment Act<sup>369</sup> in which the group life, accident and sickness insurances are generally exempt from the unisex rule.

### 9.11 Remaining issues

No additional issues are relevant in relation to gender equality regarding goods and services.

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<sup>365</sup> Hungary, Constitutional Court Decision (*AB határozat*) No.3363/2018. (XI. 28.), 20 November 2018.

<sup>366</sup> Hungary, Decision of the Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) No. EBH/161/2014.

<sup>367</sup> Hungary, Decision of the Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) No. EBH/873/2009.

<sup>368</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 8 Point (I).

<sup>369</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 30/A.

## 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

Intimate partner violence against women is a major human rights, health and social problem in Hungary. However, public policy has never regarded it as an important issue. Comparable national data are lacking, as in Hungary very little relevant data collection and research has been undertaken in the past 20 years. A paper from 2018 has reviewed available research and presents the main findings: data proves the lack of relevant information and knowledge about intimate partner violence even amongst professionals working at law enforcement agencies, and stereotypical thinking about intimate partner violence (victim-blaming or an idealised image of the family) is also accepted in a wide circle of professionals and public opinion.<sup>370</sup>

In 2014, a women's rights NGO, Patent Association (*Patent Egyesület*) released a report on a court monitoring project regarding cases involving partnership violence. According to their experiences, a more victim-centred approach (i.e. providing the victim with adequate information, treating the victim with respect and care, not discrediting the victim, seeking to minimise retraumatisation during the procedure) should be applied by the authorities and courts.<sup>371</sup>

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

The key element of national legislation regarding violence against women and domestic violence is the Criminal Code,<sup>372</sup> and especially the provisions on:

- sexual coercion (*szexuális kényszerítés*);<sup>373</sup>
- sexual violence (*szexuális erőszak*);<sup>374</sup>
- sexual abuse (against children) (*szexuális visszaélés*);<sup>375</sup>
- incest (*vérfertőzés*);<sup>376</sup>
- partnership violence (*kapcsolati erőszak*);<sup>377</sup> and
- stalking (*zaklatás*).<sup>378</sup>

<sup>370</sup> Tóth, O. (2018), 'A nők elleni párkapcsolati erőszak Magyarországon: Az elmúlt 20 év kutatási eredményeinek összefoglalása' (Intimate partner violence against women in Hungary: A summary of researches done in the past 20 years), *Socio.hu*, No. 4, pp. 1-28, available at: [https://socio.hu/uploads/files/2018\\_4/30\\_toth.pdf](https://socio.hu/uploads/files/2018_4/30_toth.pdf).

<sup>371</sup> Stummer V., Stummer A. (2014), *Bíróságok monitorozása a párkapcsolati erőszakkal érintett esetek kezelésében: a Patent Egyesület egy éves programjának ismertetése* (Court monitoring regarding cases involving partnership violence: Presentation of the one-year-long programme of Patent Association), Budapest, Patent Association, available at: <https://nokjoga.hu/sites/default/files/filefield/birosagok-monitorozasa-a-parkapcsolati-eroszakkal-erintett-esetek-kezeleseben-2014.pdf>.

<sup>372</sup> Hungary, Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), 13 July 2012.

<sup>373</sup> Hungary, Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), 13 July 2012, Article 196.

<sup>374</sup> Hungary, Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), 13 July 2012, Article 197.

<sup>375</sup> Hungary, Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), 13 July 2012, Article 198.

<sup>376</sup> Hungary, Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), 13 July 2012, Article 199.

<sup>377</sup> Hungary, Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), 13 July 2012, Article 202/A.

<sup>378</sup> Hungary, Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), 13 July 2012, Article 222.

There is also a separate Act on Restraining Applicable for Violence Between Relatives (i.e. on the application of restraining orders).<sup>379</sup>

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

National legislation does not explicitly tackle online harassment; however, the phenomenon can be addressed through the pre-existing criminal law provisions.<sup>380</sup> Especially useful here is the provision on stalking (engaging in a conduct intended to intimidate another person, to disturb the privacy of or to upset, or cause emotional distress to another person arbitrarily, engaging in the pestering of another person on a regular basis),<sup>381</sup> or, in some cases, the provisions on: partnership violence,<sup>382</sup> coercion (*kényszerítés*),<sup>383</sup> extortion (*zsarolás*),<sup>384</sup> misuse of personal data (*személyes adattal való visszaélés*),<sup>385</sup> defamation (*rágalmazás*),<sup>386</sup> libel (*becsületsértés*),<sup>387</sup> publication of false audio or visual material that is injurious to another person's reputation (*becsület csorbítására alkalmas hamis hang- vagy képfelvétel nyilvánosságra hozatala*),<sup>388</sup> aiding suicide (*öngyilkosságban való közreműködés*),<sup>389</sup> degrading treatment of a vulnerable person (*kiszolgáltatott személy megalázása*),<sup>390</sup> failure to provide care (*gondozási kötelezettség megszegése*),<sup>391</sup> and incitement against a community (*közösség elleni uszítás*).<sup>392</sup>

### 10.1.4 Political and societal debates

Regarding the issues of violence against women and domestic violence, the ratification of the Istanbul Convention is at the centre of political debates.

## 10.2 Ratification of the Istanbul Convention

The Istanbul Convention was signed by Hungary on 14 March 2014, but has not yet been ratified.<sup>393</sup>

<sup>379</sup> Hungary, Act LXXII of 2009 on Restraining applicable for Violence Between Relatives (2009. évi LXXII. törvény a hozzátartozók közötti erőszak miatt alkalmazható távoltartásról), 6 July 2009.

<sup>380</sup> Parti, K. (2016), 'A megfélemlítés (bullying) szabályozása Magyarországon és külföldön' (Legislation regarding intimidation/bullying in Hungary and abroad), *In Medias Res*, Vol. 13, No. 1, pp. 114–146, available at: <http://media-tudomany.hu/wp-content/uploads/sites/13/2017/11/media-tudomany-a-megfélemlites-bullying-szabalyozasa-magyarorszagon-es-kulfoldon-cikk-115.pdf>.

<sup>381</sup> Hungary, Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), 13 July 2012, Article 222.

<sup>382</sup> Hungary, Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), 13 July 2012, Article 202/A.

<sup>383</sup> Hungary, Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), 13 July 2012, Article 195.

<sup>384</sup> Hungary, Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), 13 July 2012, Article 367.

<sup>385</sup> Hungary, Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), 13 July 2012, Article 219.

<sup>386</sup> Hungary, Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), 13 July 2012, Article 226.

<sup>387</sup> Hungary, Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), 13 July 2012, Article 227.

<sup>388</sup> Hungary, Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), 13 July 2012, Article 226/B.

<sup>389</sup> Hungary, Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), 13 July 2012, Article 162.

<sup>390</sup> Hungary, Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), 13 July 2012, Article 225.

<sup>391</sup> Hungary, Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), 13 July 2012, Article 167.

<sup>392</sup> Hungary, Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), 13 July 2012, Article 332.

<sup>393</sup> See: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures>.

Between 2014 and 2015, heated debates were held within and outside Parliament about the ratification of the Convention, and the actions and measures to be taken in order to prevent and remedy domestic violence and how to support victims. Independent MPs<sup>394</sup> and MPs from the liberal-green party (Politics Can Be Different; *Lehet Más a Politika* - LMP), especially MP Bernadett Szél, and those of the Hungarian Socialist Party, argue for the ratification of the Convention and emphasise that Hungary is far behind the Western EU Member States with regard to both infrastructure and law in the field of domestic violence. MPs and other representatives of the ruling conservative party (FIDESZ-KNDP) tend to understate the relevance of the issue and are reluctant to accept the need for a fundamental change in the relevant law. The need for action is denied and this is rooted in stereotypical gender roles, although the costs of the eventual measures might also play a role in governmental hesitation. There have been no preparatory plans for the ratification of the Convention.

In June 2015, Zoltán Balog, the Minister for Human Capacities, submitted to Parliament a Proposal for a Parliamentary Resolution on the establishment of national strategic objectives in order to promote effective actions against domestic violence.<sup>395</sup> This proposal has been highly criticised by the Hungarian Women's Lobby (*Magyar Női Érdekvégyesítő Szövetség*, an NGO umbrella organisation) and other women's organisations because it lags behind compared to the provisions outlined in the Istanbul Convention.<sup>396</sup> However, it was adopted by the Parliament.<sup>397</sup>

The ruling parties put great emphasis on the exceptional occurrence of violence against men and on the need for the equal treatment of men and women in the legal system. The importance of conflict resolution methods like mediation are emphasised in order to prevent and solve cases of domestic violence. To a certain extent, the popular approach that the issue of domestic violence is a 'feminist' topic is also reflected upon in the ruling parties' statements.

In March 2016, women's organisations launched a petition for the ratification of the Convention.<sup>398</sup> Combating domestic violence and violence against women is not on the Government's agenda; the only motivation is to increase fertility. Viktor Orbán stated: 'I would like to reach a comprehensive agreement with Hungarian women, because the success or failure of our demographics depends on them'.<sup>399</sup>

In October 2016, the Criminal Law Department of the Kuria passed a resolution in order to co-ordinate the sentencing of the criminal courts on sexual violence against persons

<sup>394</sup> Hungary, Motion for Parliament Resolution No. H/2390 on the Ratification of the Istanbul Convention (*H/2390. számú határozati javaslat az Isztambuli Egyezmény elfogadásáról*), 15 December 2014.

<sup>395</sup> Hungary, Motion for Parliament Resolution No. H/5048 on Defining the National Strategic Aims that Promote Effective Measures Against Partnership Violence (*H/5048. számú országgyűlési határozati javaslat a kapcsolati erőszak elleni hatékony fellépést elősegítő nemzeti stratégiai célok meghatározásáról*), June 2015.

<sup>396</sup> Hungarian Women's Lobby (*Magyar Női Érdekvégyesítő Szövetség*), NANE Women's Rights Organisation (*NANE Egyesület*), Patent Association (*Patent Egyesület*) (2015), '*Határozat helyett határozott fellépést!*' (We claim for decided measures instead of decisions on motions!), Press release, 11 June 2015. <http://nokjoga.hu/sites/default/files/filefield/2015-06-11-noi-erdek-nane-patent-mona-sajtokozlemen-y-ogyh-javaslatra.pdf>.

<sup>397</sup> Hungary, Parliament Resolution No. 30/2015. (VII. 7.) on Defining the National Strategic Aims that Promote Effective Measures Against Partnership Violence (*30/2015. (VII. 7.) OGY határozat a kapcsolati erőszak elleni hatékony fellépést elősegítő nemzeti stratégiai célok meghatározásáról*), 30 June 2015.

<sup>398</sup> See the petition: 'We claim for effective measures to combat violence against women and domestic violence' (*Hatékony fellépést a nők elleni és családon belüli erőszak ellen*), 31 March 2016, [https://www.peticiok.com/hatekony\\_fellepest\\_a\\_nk\\_elleni\\_es\\_csaladon\\_beluli\\_erszak\\_ellen](https://www.peticiok.com/hatekony_fellepest_a_nk_elleni_es_csaladon_beluli_erszak_ellen).

<sup>399</sup> Adam, Ch. (2018) 'Viktor Orbán's deal for women and a plan to increase the birth rate in Hungary', *Hungarian Free Press*, 23 April 2018, available at: <http://hungarianfreepress.com/2018/04/23/viktor-orbans-deal-for-women-and-a-plan-to-increase-the-birth-rate-in-hungary/>.

under the age of twelve.<sup>400</sup> The crime will be punished by 5-15 years of imprisonment if the sexual violence is committed against a juvenile who is related to, educated by, under the supervision, care, medical treatment, or otherwise under the power or influence of the perpetrator, even if no force was used. The reasoning of the resolution was partly based on Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children.<sup>401</sup>

In May 2017, two statements from right-wing political leaders made it clear that the ruling right-wing FIDESZ-KDNP alliance (*Fiatal Demokraták Szövetsége – Kereszténydemokrata Néppárt*: Alliance of Young Democrats – Christian Democratic People's Party) has no intention of ratifying the Council of Europe Convention on preventing and combating violence against women and domestic violence. On 21 May 2017, the leader of the youth wing of KDNP stated that numerous laws protected women in Hungary, therefore there was no need for the ratification of the Convention. He also stated that ratification would be a 'very precarious' measure politically. The 'precarious' nature was explained by Szilárd Nemeth, the vice president of the FIDESZ, who stated in an interview: 'The Istanbul Convention is not about the equality of women, nor is it about the rights of women, rather it is "very sneaky" gender politics.' (It should be noted that he erroneously claimed in this interview that the Istanbul Convention was not even signed by Hungary).<sup>402</sup>

This statement above is a clear departure from (and contradicts the declaration of) the vice president of the Parliamentary Justice Committee, who said in February 2017 that Hungarian legislation is working on establishing the legislative background for the ratification of the Istanbul Convention.<sup>403</sup> However, that Hungary must be populated by Hungarians and not immigrants seems to be a core element of FIDESZ's politics. Populating Hungary with Hungarians rests on the shoulders of women: they are expected to give birth to so many children that this will counterbalance the decline of the population due to the deaths of older generations and the continuous emigration from the country. This approach does not embrace the diverse functions that women could play in society, but degrades women to being simple 'child-bearers'. As evidenced by the repeated political comments of FIDESZ, the current Hungarian political establishment opposes any policy measure encouraging women away from being a wife and a mother. Ironically and surprisingly, the political elite do not feel called upon to provide strong legal protection against physical abuse to women who play such an essential role. Until recently, FIDESZ, at least in rhetoric, did not openly refuse the ratification of the Convention. Labelling the Istanbul Convention as a measure of 'sneaky gender politics' reveals, however, that the political leadership has no intention of ratifying the Istanbul Convention.

In November 2018, some female MPs from opposition parties demonstrated for the ratification of the Istanbul Convention.<sup>404</sup>

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<sup>400</sup> Hungary, Supreme Court (*Kúria*) Resolution No. 2/2016 in Criminal Law (2/2016. számú BJE határozat), 18 October 2016; see also: Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), 13 July 2012, Article 197.

<sup>401</sup> Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA.

<sup>402</sup> Jámor, A. (2017), 'Németh Szilárd szerint minden rendben van a nők elleni erőszak ügyében' (According to Szilárd Nemeth, everything is fine regarding the issue of violence against women), *Mérce*, 14 November 2017, available at: <https://merce.hu/2017/11/14/nemeth-szilard-szerint-semmi-szukseg-a-nok-eroszak-elleni-kiallasra/>.

<sup>403</sup> P., Sz. (2017), 'Démonizálja a nőket védő egyezményt Németh' (Németh demonises the Convention aimed at protecting women), *Hír TV*, 21 May 2017, available at: <http://hirtv.hu/ahirtvhirei/demonizalja-a-noket-vedo-egyezmenyt-nemeth-szilard-1395549>.

<sup>404</sup> Botos, T. (2018), '"Orbán azt mondta, szerződne a nőkkel. Itt a lehetőség: ratifikálja a kormány az Isztambul Egyezményt!"' ("Orbán said he would like to reach an agreement with the women. Here is a way for it: the Government should ratify the Istanbul Convention!"), *444.hu*, 23 November 2018, <https://444.hu/2018/11/23/orban-azt-mondta-szerzodne-a-nokkal-itt-a-lehetoseg-ratifikalja-a-kormany-az-isztambul-egyezmenyt>.



## **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**

No survey or report is available from the last five years specifically on the issue of difficulties related to obtaining legal redress in gender-based discrimination cases.

However, the Equal Treatment Authority and the Hungarian Academy of Sciences (HAS), Centre for Social Sciences, Institute for Sociology undertook a joint research project, which was published in 2017. Its findings include that only 44 % of the respondents were aware of the very existence of the anti-discrimination legal framework in Hungary. This reflects a decline compared to respective survey data from 2013, when 60 % of the respondents knew of some legislation against discrimination in Hungary.<sup>405</sup>

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

There are no further additional issues regarding the pursuit of a discrimination claim in the field of gender equality.

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

There have been no political or social debates, and there are no pending legislative proposals regarding the horizontal provisions of gender equality directives.

### **11.2 Victimisation**

The Equal Treatment Act addresses the issue of victimisation by the provision on retaliation,<sup>406</sup> which is defined as conduct that causes an infringement, is aimed at an infringement, or threatens with an infringement, against the person making a complaint or initiating procedures because of a violation of the principle of equal treatment, or against a person assisting in such a procedure, in relation to these acts.

### **11.3 Access to courts**

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

Access to the courts is safeguarded by legislation, although the case law of the lower level courts demonstrates considerable gaps in the legal practice in four areas: the wide interpretation given to the very broadly worded exemption from the scope of the Equal Treatment Act;<sup>407</sup> being reluctant to apply dissuasive compensation; minimising the weight of violations against women; and not correctly applying the rules on the burden of proof.

Awareness about the anti-discrimination legislation and available legal avenues and remedies is low. This is demonstrated by the findings of the joint research undertaken by

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<sup>405</sup> Neményi M., Ságvári, B., Tardos, K. (2017), *Az egyenlő bánásmóddal kapcsolatos jogtudatosság: kutatási eredmények* (Rights awareness regarding equal treatment: research results), Budapest, Equal Treatment Authority (Egyenlő Bánásmód Hatóság), Hungarian Academy of Sciences Centre for Social Sciences Institute for Sociology (MTA Társadalomtudományi Kutatóközpont Szociológiai Intézet), p. 23, available at: [http://real.mtak.hu/73102/1/nemenyi\\_sagvari\\_tardos\\_ebh\\_2017\\_.pdf](http://real.mtak.hu/73102/1/nemenyi_sagvari_tardos_ebh_2017_.pdf).

<sup>406</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 10(3).

<sup>407</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003.



the Equal Treatment Authority and the HAS Centre for Social Sciences, Institute for Sociology, mentioned above in 11.1.1.<sup>408</sup>

The Supreme Court in the theoretical guidelines on employment cases pointed out the difference between the burden of proof in cases on the misuse of the law (direct burden of proof) and equal treatment cases (shared and reversed burden of proof). Regardless of the constant discussion on the unusual burden of proof, it is still rather frequent that the lower level courts request claimants to prove the occurrence of discrimination.<sup>409</sup> In a case from 2014,<sup>410</sup> it was claimed that the employee, upon returning from maternity/parental leave, was discriminated against upon her dismissal and with regard to equal pay. The court of first instance dismissed the case because the employee could not prove that she was discriminated against during the dismissal and that when the employer increased her salary following her return from parental leave, it was not equal to the salary of a male employee in the same job title; which was partly upheld by the court of second instance. The Supreme Court overturned the decision of the court of second instance, because the court did not correctly apply the rules on the burden of proof in discrimination cases. The Court pointed out that the employer must prove that it adhered to the rules on equal treatment and on equal pay for equal work. The Court also stated that in cases in which the employer fails to provide proper evidence, the claimant's claim must be upheld.

Interest groups may represent the claimant<sup>411</sup> and may also initiate proceedings before the Equal Treatment Authority or the courts in the interest of a large group with a protected characteristic in the case of an infringement or the imminent danger thereof (*actio popularis*).<sup>412</sup>

### 11.3.2 Availability of legal aid

Alleged victims of gender discrimination may be entitled, depending upon their financial status, to state-funded legal aid to cover the lawyer's fee at a civil court. However, the means-test threshold is very low,<sup>413</sup> and if the claimant loses the case (s)he may be obliged to pay back the lawyers's fee.<sup>414</sup>

## 11.4 Horizontal effect of the applicable law

### 11.4.1 Horizontal effect of relevant gender equality law

The issue of horizontal effect of the anti-discrimination EU *acquis*, including gender equality law, has been discussed in Hungary. In 2010, the Advisory Board of the Equal Treatment Authority issued an opinion on the effect of the EU *acquis* in anti-discrimination cases. Following the interpretation of the *Mangold* case, the Equal Treatment Authority held that private parties may rely on EU directives in cases in which domestic law failed to

<sup>408</sup> Neményi M., Ságvári, B., Tardos, K. (2017), *Az egyenlő bánásmóddal kapcsolatos jogtudatosság: kutatási eredmények* (Rights awareness regarding equal treatment: research results), Budapest, Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*), Hungarian Academy of Sciences Centre for Social Sciences Institute for Sociology (MTA Társadalomtudományi Kutatóközpont Szociológiai Intézet), p. 23, available at: [http://real.mtak.hu/73102/1/nemenyi\\_sagvari\\_tardos\\_ebh\\_2017.pdf](http://real.mtak.hu/73102/1/nemenyi_sagvari_tardos_ebh_2017.pdf).

<sup>409</sup> Supreme Court (*Kúria*), Decision in Principle No. 22/2014. in Labour Law.

<sup>410</sup> Supreme Court (*Kúria*), Judgement No. Mfv.I.10.630/2014.

<sup>411</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 18.

<sup>412</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 20.

<sup>413</sup> Hungary, Government Decree no. 421/2017. (XII. 19.) on the Detailed Rules of Procedures regarding the Authorisation, Disbursement and Reimbursement of Allowances within the Framework of Legal Aid (421/2017. (XII. 19.) Korm. rendelet a jogi segítségnyújtás keretében nyújtott szolgáltatások engedélyezése, folyósítása és visszatérítése iránti eljárások részletes szabályairól).

<sup>414</sup> Hungary, Act LXXX of 2003 on Legal Aid (2003. évi LXXX. törvény a jogi segítségnyújtásról), 6 November 2003, Article 11/B(2).

fully implement it, or if it is not possible to interpret domestic law in conformity with the EU Directive applicable to their case when the deadline for implementation has expired.<sup>415</sup>

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

In Hungary it is too early to see the impact of the *Bauer* case.

### 11.5 Burden of proof

The rule of the shared burden of proof applies. The complainant has to demonstrate that it is probable that s/he suffered a disadvantage, and that s/he actually, or as assumed by the respondent, possessed any of the protected characteristics listed in the Equal Treatment Act<sup>416</sup> at the time of the accused violation of equal treatment. In case of *actio popularis*, if the disadvantage has not yet occurred, the direct prospect of its occurrence must be demonstrated. The burden of proof then shifts to the respondent, who has to prove that the circumstances rendered probable by the complainant are not true; the principle of equal treatment was not violated because there is no causality connection between the protected characteristic and the disadvantage; or that the respondent was not obliged to follow the principle of equal treatment because the case falls under one of the several exemptions stipulated in the Equal Treatment Act. This procedure is in compliance with EU law.

The first reverse discrimination case in Hungary provides a good example of the regulation of the shared burden of proof and how it is applied in the legal practice of the Equal Treatment Authority. The case (see details above at 9.5) revolved around the issue that men had to pay a fee for services which were provided free of charge for women.<sup>417</sup> The claimant (a man who was charged an entrance fee by a bar that offered free entry for women) was only supposed to demonstrate that he possessed a protected characteristic and that he suffered a disadvantage, i.e. that the difference in treatment was based on his (male) sex. The burden of proof then shifted and since the defendant (the bar) could not successfully prove that the difference in treatment was either based on an objective justification or that it could be considered as a positive action measure, the Equal Treatment Authority established direct discrimination based on sex.

Recently, in 2018, the Hungarian Supreme Court (*Kúria*) ruled in a case on the right to equal pay for equal work that the shift of the burden of proof in discrimination cases requires the respondent to prove the absence of causality between the protected characteristic and the suffered disadvantage.<sup>418</sup> The case concerned a male employee (a human resources officer) who filed a discrimination claim with the administrative and labour court against his employer, claiming that he was discriminated against based on his sex when he was hired to replace a female employee during her maternity leave, and received a lower salary than she did. The respondent (the employer) asked the court to dismiss the claim, arguing that the difference in treatment was justified and there was no causal link between the suffered disadvantage and his sex. The respondent argued that the difference in treatment was based on the condition that he did not have the same level of qualification for the position as his female comparator did. In this case the Supreme

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<sup>415</sup> See: Hungary, Opinion of the Advisory Board of the Equal Treatment Authority (*Egyenlő Bánásmód Hatóság Tanácsadó Testülete*) No. 288//4/2010. (VI.21) TT. , available at: <https://www.egyenlobanasmod.hu/hu/jogszabaly/tanacsado-testulet-28842010-vi-21-tt-sz-allasfoglalasa-az-europai-unios-jog>.

<sup>416</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 8.

<sup>417</sup> Hungary, Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) Decision No. EBH/545/13/2013.

<sup>418</sup> National court decision (judgment no. Mfv.I.10.371/2017) of the Curia of 18 June 2018, 1 adopted as decision in principle no. 24/2018 in labour law, See: <https://www.equalitylaw.eu/downloads/4849-hungary-curia-s-decision-in-a-case-regarding-the-principle-of-equal-pay-for-equal-work-causality-between-sex-and-the-suffered-disadvantage-pdf-87-kb>.

Court ruled that the right to equal pay for equal work shall be considered under the anti-discrimination framework. It is for the employee to substantiate that he 'possesses the protected characteristic' (in this case, that he is male) and that the employer treated him less favourably based on this protected characteristic by paying him a lower wage compared to another employee in a comparable situation. Thereafter, based on the principle of the shift of the burden of proof, it is for the employer to justify that there was no causality link between the difference in treatment and the protected characteristic. The number of years served, and thus more experience, may result in better performance and may therefore serve as a legal justification for a difference in wage.

## 11.6 Remedies and sanctions

### 11.6.1 Types of remedies and sanctions

In Hungary, the following procedures exist for enforcing the principle of equal treatment, including judicial, administrative, and non-judicial procedures.

Victims of discrimination may sue in civil courts based on the provisions of the Civil Code,<sup>419</sup> claiming that inherent rights are protected by the Civil Code, and that the right to non-discrimination is an inherent right. The possible remedies applicable by the court are listed under the Civil Code:

- Article 2:51: '(1) A person whose inherent rights have been violated may – within the statute of limitation – demand the following on the basis of the violation and depending on the circumstances of the case: (a) a court declaration of the occurrence of the infringement, (b) to have the infringement discontinued and the perpetrator banned from further infringement; (c) that the perpetrator provides adequate redress, and, makes this fact public at his/her own expense; (d) the termination of the injurious situation and the restoration of the previous state, and the elimination of the object that came into existence as a result of the violation, or to have such an object deprived of its injurious nature; (e) that the perpetrator or its successor hand over the financial asset acquired through the violation';
- Article 2:52: '(1) A person whose inherent rights have been violated, may claim a payment of restitution (grievance fee) for the non-pecuniary damage he/she suffered from. (2) The provisions pertaining to damages shall be applied to compensation – with special regard to the determination of the liable person and exculpation – with the difference that for the entitlement to restitution the claimant shall not be required to prove any further damage beyond the occurrence of the inherent right violation. (3) The court shall determine the amount of restitution in one sum, taking into account the gravity of the infringement, whether it was committed on one or more occasions, the degree of responsibility, the impact of the infringement upon the aggrieved party and his environment'; and
- Article 2:53 prescribes that a person who suffers pecuniary damages as a result of the violation of his/her inherent rights, may claim damages from the violator in accordance with the general provisions governing damages. These provisions provide victims of discrimination with a flexible instrument, as they apply to all types of discrimination no matter which field or ground is at issue.

In Hungary, 'labour and administrative' courts apply the Labour Code.<sup>420</sup> The most important remedies in labour law are the following: the court may declare an agreement null and void under the relevant provision of the Labour Code;<sup>421</sup> and if the discrimination

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<sup>419</sup> Hungary, Act V of 2013 on the Civil Code (2013. évi V. törvény a Polgári Törvénykönyvről), 26 February 2013, Articles 2:42-43.

<sup>420</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012.

<sup>421</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 27.

is manifested in the unlawful termination of the employment, the employer shall compensate the employee for the damages suffered.<sup>422</sup> Full compensation is restricted, according to which (under the heading of lost income) a maximum of 12-months' salary may be claimed by the employee.<sup>423</sup> If the termination of the employment constitutes the violation of the requirement of equal treatment, the employee may request the court to order his/her reinstatement (in other cases of the unlawful termination of employment, this option is not available with some exceptions, such as when the dismissed employee was a trade union representative).<sup>424</sup> In other cases of discrimination (i.e. when it is not a dismissal that serves as the subject matter of the case), the employer is liable to pay full damages to the employee.<sup>425</sup>

As an administrative procedure,<sup>426</sup> if the Authority has established that the provisions ensuring the principle of equal treatment have been violated, it may a) order that the situation constituting a violation of law be terminated; b) prohibit the future continuation of the conduct constituting a violation of law; c) order that its decision establishing the violation of law be published; d) impose a fine; or e) apply a legal consequence determined in a special act. These sanctions can be applied jointly. The legal consequences shall be determined taking into consideration all circumstances of the case, with particular regard to those who have been affected by the violation of law, the consequences of the violation of law, the duration of the situation constituting a violation of law, the repeated demonstration of conduct constituting a violation of law and the financial standing of the person or entity committing such a violation. The sum of the fine imposed by the Authority can range from approximately EUR 167 (HUF 50 000) to a maximum of approximately EUR 20 000 (HUF 6 million). The decision of the Authority may not be appealed within a public administrative procedure, but its judicial review is possible according to the general rules applicable to public administrative decisions. The lawsuit falls within the scope of authority and exclusive competence of the Metropolitan Administrative and Labour Court. The Metropolitan Administrative and Labour Court shall proceed through a panel comprised of three professional judges (instead of normal proceedings, when only one judge presides over a case), if the claimant or the Authority so requests.

The Equal Treatment Authority is an administrative body, the role of which is to safeguard the enforcement of equal treatment laws. The Authority can only establish an infringement of the law, prohibit the violator from discrimination in the future, issue fines and order the publication of its decision on its own website and that of the violator.<sup>427</sup> However, the Equal Treatment Authority is not authorised to impose sanctions that could repair the harm suffered by the petitioner (e.g. the payment of compensation or reinstatement in a job).

In terms of access to goods and services, victims of discrimination may turn to local consumer protection offices of the Ministry of Innovation and Development in cases when the requirement of equal treatment are breached in the course of access to goods and services. As of 1 January 2017, the National Consumer Protection Authority's duties were transferred to local governmental offices (*járási hivatalok*) and to the regional governmental offices (*kormányhivatal*) on appeal. According to the Act on Consumer

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<sup>422</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 82.

<sup>423</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 83.

<sup>424</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 167.

<sup>425</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 167.

<sup>426</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 17/A.

<sup>427</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 17/A.

Protection,<sup>428</sup> if the authority establishes the breach of the provisions guaranteeing consumers' rights (including the requirement of non-discrimination), it may apply a number of sanctions, including a fine, the maximum amount of which is determined by the annual revenue of the service provider concerned.

#### 11.6.2 Effectiveness, proportionality and dissuasiveness

The sanctions that can be applied by the Equal Treatment Authority cannot be considered to be effective, proportionate or dissuasive. For the application of such sanctions, the applicant has to submit the case to a court of law (instead of or after the procedure at the Equal Treatment Authority). Hungarian anti-discrimination legislation makes it rather difficult and time-consuming for women to seek effective, proportionate and dissuasive penalties under the Equal Treatment Act.

Two serious sanctions can be imposed by the Equal Treatment Authority, which might have some deterrent effect: (1) imposing a fine, the amount of which ranges from EUR 165 (HUF 50 000) to EUR 20 000 (HUF 6 Million);<sup>429</sup> and (2) publishing the decision on the websites of the defendant and the Equal Treatment Authority.

The Equal Treatment Authority is known in Hungarian as a 'soft' authority, partly because of its lack of authority to impose serious sanctions, and partly because of its adjudication practices. However, in the past few years the Equal Treatment Authority's case law has demonstrated a tendency towards choosing more serious sanctions from among its repertoire.

The lowest point in Equal Treatment Authority's effectiveness was in 2010-2012, when the number of cases in which a fine was imposed decreased from 20 to 2, although the total number of cases and the cases in which unequal treatment was established did not decrease correspondingly.

In 2013, information on the number of cases in which a fine was imposed was not published, only the total amount of fines (EUR 10 000; HUF 3 Million), which did not even reach the maximum threshold that can be imposed in one single case.<sup>430</sup> In 2014 a violation of equal treatment was established in 23 cases, out of which 30 % led to a fine.<sup>431</sup>

Even though sanctioning practice hardened slightly in 2015, the fine was only EUR 310 (HUF 100 000) in two employment discrimination cases in which applications for employment by a camerawoman<sup>432</sup> and a driver were refused because of their sex.<sup>433</sup>

In 2016, in some of the gender equality cases the fines applied by the Equal Treatment Authority had increased significantly (from the usually applied EUR 322-485 in 2015 to EUR 1 630-3 260 in 2016), which may have a stronger deterrent effect in the future.

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<sup>428</sup> Hungary, Act CLV of 1997 on Consumer Protection (1997. évi CLV. törvény a fogyasztóvédelemről), 23 December 1997.

<sup>429</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 17/A.(5).

<sup>430</sup> Hungary, Equal Treatment Authority (Egyenlő Bánásmód Hatóság) (2014), Report on the activity of the Equal Treatment Authority in 2013 and on the experiences gathered in the context of applying Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities, p. 10., available at: [https://www.egyenlobanasmod.hu/sites/default/files/tajekoztatok/EBH\\_2013\\_EN.pdf](https://www.egyenlobanasmod.hu/sites/default/files/tajekoztatok/EBH_2013_EN.pdf).

<sup>431</sup> Hungary, Equal Treatment Authority (Egyenlő Bánásmód Hatóság) (2015), Report on the activity of the Equal Treatment Authority in 2014 and on the experiences gathered in the context of applying Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities, p. 8., available at: [https://www.egyenlobanasmod.hu/sites/default/files/tajekoztatok/EBH\\_2014\\_english.pdf](https://www.egyenlobanasmod.hu/sites/default/files/tajekoztatok/EBH_2014_english.pdf).

<sup>432</sup> Hungary, Decision of the Equal Treatment Authority (Egyenlő Bánásmód Hatóság) No. 218/2015.

<sup>433</sup> Hungary, Decision of the Equal Treatment Authority (Egyenlő Bánásmód Hatóság) No. 280/2015.

Higher fines were mainly imposed in cases where pregnant women were dismissed during their probation period. It seems to be an unbreakable practice of many employers to dismiss pregnant women once pregnancy is reported to the employer during the probation period. Employers often attempt to take advantage of the fact that the Labour Code does not oblige them to give a reason for a dismissal during a trial period. However, recent case law of the national courts and Equal Treatment Authority point out that the reason for a dismissal may never be discriminatory in nature despite the fact that there is no obligation to justify a dismissal during a trial period. It is also noteworthy that in a case from 2016,<sup>434</sup> the Equal Treatment Authority referred to two European Court Cases, *Carole Louise Webb*<sup>435</sup> and *Tele Danmark*,<sup>436</sup> in order to support its interpretation of the Labour Code in favour of pregnant women. This emphasises the fact that dismissal based on discriminatory motives is prohibited under all circumstances, also in cases where there is no obligation to give a reason for the dismissal.

In 2017, the number of fines somewhat increased again, reaching a total of EUR 26 500 in 15 cases, out of 30 cases in which a violation of equal treatment was found. In 13 cases the authority published its decision on its own website as well as that of the perpetrator.<sup>437</sup>

In 2018, the Equal Treatment Authority issued 36 decisions establishing the violation of equal treatment, and fines totalling approximately EUR 18 800 were imposed.<sup>438</sup> In four cases, the violation of equal treatment based on motherhood was established in the field of employment,<sup>439</sup> and in another three cases discrimination based on sex was established, two of them in the field of employment and in one case in the field of access to services. The highest fine imposed amounted to approximately EUR 1 500 (HUF 500 000), which concerned the dismissal of a pregnant employee during her probation period.<sup>440</sup> In one sex discrimination case, the complaint was dismissed. However, it is to be noted that two of the complaints on sex discrimination were submitted by men claiming discriminatory treatment in accessing services and employment. In both cases the Equal Treatment Authority established discrimination based on their sex.<sup>441</sup>

The amendment to the rules on non-material damages for pain and suffering might lead to more effective, proportionate and dissuasive sanctions in the future. The new Civil Code (adopted in 2013)<sup>442</sup> introduced the new rule on compensation, the so-called restitution payment or 'grievance fee' (*sérelemdíj*) for violation of personality rights (non-material damages, compensation for pain and suffering), including infringement of equality treatment. The amount of the non-material damages is decided by the courts on the basis of the totality of the facts, such as the gravity and the repetitive nature of the infringement, the degree of culpability, the effect of the infringement on the victim and on the environment, but the claimant is not requested to prove the exact amount of damages suffered. The amount must be enough to compensate the non-material damage suffered

<sup>434</sup> Hungary, Decision of the Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) No. EBH/182/2016.

<sup>435</sup> CJEU Case C-32/93, *Carole Louise Webb v EMO Air Cargo (UK) Ltd*, judgment of 14 July 1994.

<sup>436</sup> CJEU Case 109/00, *Tele Danmark A/S v Handels- og Kontorfunktionærernes Forbund i Danmark (HK)*, judgment of 4 October 2001.

<sup>437</sup> Hungary, Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) (2018), Report on the activity of the Equal Treatment Authority in 2017 and on the experiences gathered in the context of applying Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities, p. 11., available at: [https://www.egyenlobanasmod.hu/sites/default/files/tajekoztatok/EBH%20eves%20jelentes%202017%20EN\\_final.pdf](https://www.egyenlobanasmod.hu/sites/default/files/tajekoztatok/EBH%20eves%20jelentes%202017%20EN_final.pdf).

<sup>438</sup> Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) (2015), Report on the activity of the Equal Treatment Authority in 2018, available at: <https://www.egyenlobanasmod.hu/hu/hirek/az-egyenlobanasmod-hatosag-tevekenysege-2018-ban>.

<sup>439</sup> In one of the cases the decision is not final as it was referred for judicial review and it is pending on appeal. See: EBH/180/2018

<sup>440</sup> Hungary, Decisions of the Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) No. EBH/309/2018.

<sup>441</sup> See: Hungary, Decisions of the Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) No. EBH/291/2018 and EBH/357/2018.

<sup>442</sup> Hungary, Act V of 2013 on the Civil Code (*2013. évi V. törvény a Polgári Törvénykönyvről*), 26 February 2013, Article 2:52.



and to prevent similar occurrences in the future, according to the opinion of the Advisory Committee on the application of the new Civil Code.<sup>443</sup>

### 11.7 Equality body

The Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*)<sup>444</sup> is the central administrative body mandated to implement the requirements of all equal treatment legislation, including gender equality law.

The Equal Treatment Authority administers cases of equal treatment regarding all the protected grounds by the Equal Treatment Act. The list of grounds is non-exhaustive: it includes 19 characteristics, with a 20<sup>th</sup> proclaiming 'any other situation, attribution or condition of a person or group'.<sup>445</sup>

The Equal Treatment Authority's scope of activity is the following:

- conducting complaint-based and *ex officio* investigations and deciding on violations of equal treatment, and, if necessary, applying sanctions on the basis of the investigation;
- initiating lawsuits;
- reviewing and commenting on legislative drafts on equal treatment;
- making proposals concerning governmental decisions and legislation pertaining to equal treatment;
- regularly informing the public and the Government about the situation concerning the issue of equal treatment;
- in the course of performing its duties, co-operating with the social and representative organisations and the relevant state bodies;
- continually providing information to those concerned and offering assistance in acting against a violation of equal treatment;
- assisting in the preparation of governmental reports to international organisations, especially to the Council of Europe concerning the principle of equal treatment; and
- assisting in the preparation of the reports for the Commission of the European Union concerning the harmonisation of directives on equal treatment.

### 11.8 Social partners

The social partners in Hungary have the right to file a collective claim (*actio popularis*)<sup>446</sup> and also to participate in different policy-making bodies.

Collective agreements are not used as a means to implement EU gender equality law; implementation is intended to be carried out through legislation. Although collective agreements are legally binding,<sup>447</sup> they would not serve as a proper means for the transposition of the *acquis* because they are concluded almost exclusively at the company level. Furthermore, since the new Labour Code<sup>448</sup> has widened the possibility of derogating from the legislation in collective agreements, the contents of collective agreements have

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<sup>443</sup> Hungary, Advisory Body on the New Civil Code (*Új Ptk. Tanácsadó Testület*), Opinion related to Article 2:52, available at: [https://kuria-birosag.hu/hu/ptk?tid%5B%5D=344&body\\_value=](https://kuria-birosag.hu/hu/ptk?tid%5B%5D=344&body_value=).

<sup>444</sup> Website: [www.egyenlobanasmod.hu](http://www.egyenlobanasmod.hu).

<sup>445</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 8.

<sup>446</sup> Hungary, Act V of 2013 on the Civil Code (2013. évi V. törvény a Polgári Törvénykönyvről), 26 February 2013, Article 6:105(1) Point (d).

<sup>447</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 277.

<sup>448</sup> Hungary, Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012.

been altered in order to favour regulations that reduce the rights of employees. Collective agreements might contain rules that violate equal treatment legislation, e.g.:

- In a case from 2016, published by the Equal Treatment Authority, a collective agreement contained a rule based on which the employer did not provide a voucher (a form of benefit) for the employee while she was on maternity leave; the Equal Treatment Authority and the Labour Court established that this violated the regulations on equal pay and the employer was obliged by the court to pay the wage difference to the employee. No further sanctions were applied.<sup>449</sup>
- In a case adjudicated in 2017 by the Equal Treatment Authority, the collective agreement contained regulation which constituted indirect wage discrimination.<sup>450</sup>

Initiatives by social partners in addressing gender inequality problems are rare and rather ineffective.

## 11.9 Other relevant bodies

Victims of discrimination, including victims of gender/sex-based discrimination, may turn to the Parliamentary Commissioner for Fundamental Rights, who is the 'Ombudsman' of Hungary. The Ombudsman has two deputies responsible for the right of future generations and minorities respectively.

According to the Fundamental Law,<sup>451</sup> the Ombudsman (who is appointed by two-thirds parliamentary majority vote for six years) investigates violations of fundamental rights and initiates general or individual measures to remedy such violations.

The status and proceedings of the Ombudsman is regulated by Act on the Parliamentary Commissioner for Fundamental Rights.<sup>452</sup> Any victim of acts or omissions of public authorities or public service providers can complain to the Ombudsman's office, provided that all administrative remedies are exhausted or do not exist. The Ombudsman can also proceed ex officio investigations. The Ombudsman can investigate any authority, including the armed forces, national security services, and law enforcement organisations. He/she may request information, look into files, visit premises and can hear any employee of the examined authority. When finding a violation, the Ombudsman issues recommendations, to which the supervisory body of the authority found to be in breach of fundamental rights shall respond within 30 days. Further, the Ombudsman may (i) petition the Constitutional Court; (ii) initiate criminal or disciplinary proceedings; and (iii) propose that a legal provision be amended, repealed or issued. The Ombudsman's main publicity weapon is the annual report submitted to Parliament. Further, he/she can request parliamentary investigations and debates.

### 11.10 Evaluation of implementation

Access to the courts is safeguarded by legislation and there is an institutional framework established to remedy the violation of equal treatment; however, several obstacles prevent access to justice for victims of discrimination.

The low level of legal awareness of the victims and the jurisprudence of the lower level courts lead to considerable gaps in the legal practice in four areas: the wide interpretation given to the legislatively very broadly worded exemption from the scope of the Equal

<sup>449</sup> Hungary, Decision of the Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) No. EBH/19/2016.

<sup>450</sup> Hungary, Decision of the Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) No. 130/2017.

<sup>451</sup> Hungary, Fundamental Law of Hungary (*Magyarország Alaptörvénye*), 25 April 2011, Article 30.

<sup>452</sup> Hungary, Act CXI of 2011 on the Parliamentary Commissioner for Fundamental Rights (2011. évi CXI. törvény az alapvető jogok biztosáról), 26 July 2011.



Treatment Act;<sup>453</sup> being reluctant to apply dissuasive compensation; minimising the weight of violations against women; and not correctly applying the rules on the burden of proof.

#### **11.11 Remaining issues**

No additional issues are relevant regarding the issue of compliance and enforcement aspects of the gender equality directives.

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<sup>453</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003.

## 12 Overall assessment

With some gaps, Hungarian law formally transposed the majority of EU *acquis communautaire*. In 2014-2017 the formal adequacy of Hungarian law was improved with regard to some details of the legislation (such as the equal treatment rights of executive employees and workers with a simplified employment contract), while some structural problems remain. Creating a definition of breastfeeding and providing better legal protection for parents working in simplified employment relationships would be an important step forward in the future. The major structural shortcoming of the Hungarian legislation (dating back to the original adoption of the Equal Treatment Act) is that in many regards the transposition is only formal, and the law has never been scrutinised or modified in order to support the substantive and genuine equality of women (for example, in the case of self-employed women and spouses of the self-employed). The rough regulation on equal wages has not had a significant effect on the considerable gender wage gap, which is one of the widest in the EU, especially among well-educated persons.

The major theoretical shortcoming of the Hungarian legislation is that the excessively wide scope of the Equal Treatment Act is counterbalanced by the similarly excessively wide terms for exemptions.<sup>454</sup> Consequently, protection is weak because the accused could exculpate him/herself in many cases. The amendment to the Equal Treatment Act<sup>455</sup> reduced the scope of possible justifications for sex-based differential treatment in employment relationships, which was a considerable development in 2017. More specifically targeted legislation, which weighs the interests of the parties more cautiously and reflectively for specific situations of infringements of equal treatment rights, would provide women, mothers and fathers with much more reliable and solid legal protection than this boundary-free, highly general legislation, which in theory covers (with little exaggeration) any kind of differentiation committed by any legal entity and any person, but is rarely enforced in practice due to its vague and unspecific content and the extremely wide terms of the exemptions.

The enforcement of the equal treatment legislation is extremely weak in Hungary. The sanctions that can be applied by the Equal Treatment Authority cannot be considered to be effective, proportionate and dissuasive, as it cannot order civil compensation or reinstatement in the original job. Furthermore, in the last few years the Equal Treatment Authority has been fairly reluctant to apply the strongest sanctions that it has at its disposal (such as fines and the publication of its decisions), although there has been some improvement in this regard since 2015. The sophistication and depth of the Equal Treatment Authority's adjudication practices have also recently improved.

The case law of the courts reveals that there are considerable gaps in legal practice in four areas: the wide interpretation given to the very broadly worded legislative exemption from the scope of the Equal Treatment Act;<sup>456</sup> the reluctance towards the application of dissuasive compensation (this might change in the future due to the new rules on non-material damages for pain and suffering); minimising the weight of violations against women; and the courts of first and second instance frequently not correctly applying the rules on the burden of proof.

The idea that the equal sharing of family responsibilities is the key to combating gender discrimination is still not widely accepted either by the general public or by the legislator.

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<sup>454</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 7(2) Point (b).

<sup>455</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 22(1).

<sup>456</sup> Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003.

The societal norms that women are responsible for family matters (which are repeatedly strengthened by the ruling political forces through legislation and political statements) are contrary to the ideas on the balanced participation of women and men in family and working life. The regulations regarding generous maternity and parental leave, combined with public opinion that it is in the best interest of the child to stay at home with the mother until the age of three, mutually reinforce each other in Hungary, which hinders women's equal participation in many aspects of life. Labour legislation in regard of certain aspects of parental leave and related rights, treats mothers, fathers and *single* fathers differently, which constitutes direct discrimination on the basis of sex and family status, and might be in violation of Article 14 1.3 of Directive 2006/54/EC.

Despite all the criticism, the ruling political elite has continued with its neo-conservative discourse (and corresponding policies) which emphasise women's caring roles in the family by repeatedly glorifying childbirth as the ultimate means of self-realisation for women instead of embracing women's full participation in all areas of life.

Until 2017, at least in rhetoric, the FIDESZ leadership did not openly refuse the ratification of the Istanbul Convention. Labelling the Convention a measure of 'sneaky gender politics' reveals, however, that the political leadership possibly has currently no intention to ratify the Istanbul Convention.

The alarmingly low or non-existent participation of women in the leading political institutions of the country (in Parliament and the Government, respectively) considerably hinders the probability of a change towards a more equal society with regard to gender.

A study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the FEMM Committee, identified in which fields and by which means the backlash in gender equality and women's and girls' rights in six countries (Austria, Hungary, Italy, Poland, Romania, and Slovakia) was undertaken over the last several years. According to the findings of the study, since 2011 the Hungarian government has committed itself to introducing family mainstreaming instead of gender mainstreaming. The policies have a clear demographic target: encouraging fertility.<sup>457</sup> Moreover, many of these policies have a clear tendency: providing 'welfare for the wealthy'.<sup>458</sup>

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<sup>457</sup> Juhász, B., Pap, Enikő (2018), *Backlash in Gender Equality and Women's and Girls' Rights* (Study), June 2018, p. 35,

[http://www.europarl.europa.eu/RegData/etudes/STUD/2018/604955/IPOL\\_STU\(2018\)604955\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2018/604955/IPOL_STU(2018)604955_EN.pdf).

<sup>458</sup> Szikra, D. (2018), *Welfare for the Wealthy: The Social Policy of the Orbán-regime, 2010-2017*, Friedrich Ebert Stiftung Budapest, available at: <http://library.fes.de/pdf-files/bueros/budapest/14209.pdf>.

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