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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 2020 – 01 January 2021

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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 Law¹ by the representatives of the ruling coalition, which gained a two-thirds majority in the Parliament.² 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.³ 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),⁴ 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 civil and labour courts and/or by the specialised equality body, the Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) – until 31 December 2020; from 1 January 2021, by the Commissioner for Fundamental Rights (*alapvető jogok biztosa*),⁵ depending upon the merits of the case and the aims of the claimant.⁶

¹ Fundamental Law of Hungary (*Magyarország Alaptörvénye*), 25 April 2011. An unofficial English translation of the current version, as in force on 23 December 2020, published by the Constitutional Court of Hungary, is available at: https://hunconcourt.hu/uploads/sites/3/2021/01/thefundamentallawofhungary_20201223_fin.pdf.

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

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

⁴ 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. An unofficial English translation of the current version, as in force on 1 March 2021, published by the Ministry of Justice, is available at: https://nit.hu/translation/J2003T0125P_20210301_FIN.PDF.

⁵ See about this development in English: <https://www.equalitylaw.eu/downloads/5345-hungary-legislation-adopted-abolishing-the-equal-treatment-authority-and-transferring-its-tasks-to-the-ombudsman-126-kb>.

⁶ 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*).⁷ The Constitutional Court adjudicates issues in relation to conformity with the Fundamental Law and constitutional complaints.⁸

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;⁹ families, children, women, the elderly and persons living with disabilities should be protected by the state);¹⁰
- Act V of 2013 on the Civil Code (the right to non-discrimination is protected as an inherent right);¹¹
- Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities¹² (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 Code¹³ (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 Servants¹⁴ (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);

⁷ 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>.

⁸ 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/>.

⁹ Fundamental Law of Hungary (*Magyarország Alaptörvénye*), 25 April 2011, Article XV(2).

¹⁰ Fundamental Law of Hungary (*Magyarország Alaptörvénye*), 25 April 2011, Article XV(5).

¹¹ Act V of 2013 on the Civil Code (*2013. évi V. törvény a Polgári Törvénykönyvről*), 26 February 2013, Section 2:42-43.

¹² 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.

¹³ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012.

¹⁴ Act CXCIX of 2011 on Civil Servants (*2011. évi CXCIX. törvény a közszerzői tisztviselőkről*), 30 December 2011.

- Act CCV of 2012 on the Status of Military Personnel¹⁵ (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);
- Act XXXIII of 1992 on the Legal Status of Public Servants¹⁶ (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 Code¹⁷ (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 Pensions¹⁸ (transposing and implementing: Council Directive 79/7/EEC of 19 December 1978);
- Act LXXXIII of 1997 on the Benefits of Compulsory Health Insurance¹⁹ (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 Funds²⁰ (transposing and implementing: Council Directive 79/7/EEC of 19 December 1978);
- Act CXVII of 2007 on Occupational Pensions and Institutions²¹ (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 Funds²² (transposing and implementing: Council Directive 2004/113/EC of 13 December 2004);
- Act LXXXVIII of 2014 on the Business of Insurance²³ (transposing and implementing: Council Directive 2004/113/EC of 13 December 2004);
- Act CXXXIX of 2013 on the National Bank of Hungary²⁴ (transposing and implementing: Council Directive 2004/113/EC of 13 December 2004);

¹⁵ Act CCV of 2012 on the Status of Military Personnel (*2012. évi CCV. törvény a honvédek jogállásáról*), 18 December 2012.

¹⁶ Act XXXIII of 1992 on the Legal Status of Public Servants (*1992. évi XXXIII. törvény a közalkalmazottak jogállásáról*), 2 June 1992.

¹⁷ Act C of 2012 on the Criminal Code (*2012. évi C. törvény a Büntető Törvénykönyvről*), 13 July 2012.

¹⁸ Act LXXXI of 1997 on State Pensions (*1997. évi LXXXI. törvény a társadalombiztosítási nyugellátásról*), 25 July 2007.

¹⁹ Act LXXXIII of 1997 on the Benefits of Compulsory Health Insurance (*1997. évi LXXXIII. törvény a kötelező egészségbiztosítás ellátásairól*), 25 July 1997.

²⁰ Act LXXXII of 1997 on Private Pension and Private Pension Funds (*1997. évi LXXXII. törvény a magánnyugdíjról és a magánnyugdíjpénztárakról*), 25 July 1997.

²¹ Act CXVII of 2007 on Occupational Pensions and Institutions (*2007. évi CXVII. törvény a foglalkoztatói nyugdíjról és intézményeiről*), 26 October 2007.

²² Act XCVI of 1993 on Voluntary Mutual Insurance Funds (*1993. évi XCVI. törvény az önkéntes kölcsönös biztosító pénztárakról*), 6 December 1993.

²³ Act LXXXVIII of 2014 on the Business of Insurance (*2014. évi LXXXVIII. törvény a biztosítási tevékenységről*), 22 December 2014.

²⁴ Act CXXXIX of 2013 on the National Bank of Hungary (*2013. évi CXXXIX. törvény a Magyar Nemzeti Bankról*), 26 September 2013.

- Act CXCI of 2011 on the Benefits of Persons with an Altered Ability to Work²⁵ (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 Authorities²⁶ (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 Organisations²⁷ (transposing and implementing: 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 LXVIII of 1997 on the Service Status of Judicial Employees²⁸ (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 Judges²⁹ (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 Career³⁰ (transposing and implementing: Council Directive 96/34/EC of 3 June 1996, Council Directive 2010/18/EU of 8 March 2010);
- Act CXI of 2011 on the Parliamentary Commissioner for Fundamental Rights (implementing: Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010, Council Directive 2004/113/EC of 13 December 2004, Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006).³¹

1.3 Sources of law

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

²⁵ 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.

²⁶ 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.

²⁷ 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.

²⁸ Act LXVIII of 1997 on the Service Status of Judicial Employees (1997. évi LXVIII. törvény az igazságügyi alkalmazottak szolgálati jogviszonyáról), 23 July 1997.

²⁹ Act CLXII of 2011 on the Status and Remuneration of Judges (2011. évi CLXII. törvény a bírák jogállásáról és javadalmazásáról), 2 December 2011.

³⁰ 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 ügyészségi alkalmazottak jogállásáról és az ügyészi életpályáról), 28 November 2011.

³¹ Act CXI of 2011 on the Parliamentary Commissioner for Fundamental Rights (2011. évi CXI. törvény az alapvető jogok biztosáról), 26 July 2011, Article 8.

The main sources of gender equality law are the law adopting the CEDAW Convention,³² the Fundamental Law of Hungary,³³ the Act on the Civil Code,³⁴ and the Act on the Labour Code.³⁵ However, the Act on Equal Treatment and the Promotion of the Equality of Opportunities (Equal Treatment Act)³⁶ 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 also issued opinions on the interpretation of the equality law that are considered to be indicative for the interpretation of the Equal Treatment Act. It should be noted, however, that the specialised equality body, the Equal Treatment Authority has been abolished, and its tasks and competences were transferred to Hungary's Ombudsman, the Commissioner for Fundamental Rights, as of 1 January 2021.³⁷

³² Law-Decree 10 of 1982 (*1982. évi 10. törvényerejű rendelet*).

³³ Fundamental Law of Hungary (*Magyarország Alaptörvénye*), 25 April 2011.

³⁴ Act V of 2013 on the Civil Code (*2013. évi V. törvény a Polgári Törvénykönyvről*), 26 February 2013.

³⁵ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012.

³⁶ 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.

³⁷ See about this development in English: <https://www.equalitylaw.eu/downloads/5345-hungary-legislation-adopted-abolishing-the-equal-treatment-authority-and-transferring-its-tasks-to-the-ombudsman-126-kb>.

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.³⁸ The Fundamental Law explicitly states that 'women and men shall have equal rights.'³⁹ 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.⁴⁰

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.'⁴¹

2.2 Equal treatment legislation

The framework rules on equal treatment are included in the Equal Treatment Act.⁴² 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: until 31 December 2020, the Equal Treatment Authority; from 31 January 2021, the Commissioner for Fundamental Rights.

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 Érdekvédelem Szövetsége*), produced a lengthy in-depth analysis of the draft act,⁴³ 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

³⁸ Fundamental Law of Hungary (*Magyarország Alaptörvénye*), 25 April 2011, Article XV(1).

³⁹ Fundamental Law of Hungary (*Magyarország Alaptörvénye*), 25 April 2011, Article XV(3).

⁴⁰ Fundamental Law of Hungary (*Magyarország Alaptörvénye*), 25 April 2011, Article XV(2).

⁴¹ Fundamental Law of Hungary (*Magyarország Alaptörvénye*), 25 April 2011, Article XV(5).

⁴² 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.

⁴³ 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 Érdekvédelem Szövetsége [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: (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).⁴⁴

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'.⁴⁵

⁴⁴ 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.

⁴⁵ 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.

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.⁴⁶

3.1.2 Other issues

It may be mentioned that a resolution issued by the Equal Treatment Authority⁴⁷ explains that one of the protected grounds in the Equal Treatment Act, 'the part-time nature [...] of the employment relationship or other relationship related to employment', was originally meant to address the phenomenon of indirect discrimination of women (who were/are overrepresented among part-time workers).

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.⁴⁸

3.1.4 Political and societal debate and pending legislative proposals

On 30 January 2020, the Minister of Justice published an article on a news portal in which she claimed that 'the Hungarian Government does not support the ratification of the Istanbul Convention, because certain provisions of it contravene the Government's migration politics. The Government is not intending to implement the concept of gender or the Convention's gender ideology into domestic law.'⁴⁹ (Note: Hungary has signed the Council of Europe's Istanbul Convention, but not ratified it yet.) In May 2020, during the national lockdown due to COVID-19, MPs of the junior coalition member party (Christian Democrats) submitted a proposal for a political declaration, calling the Government to reject the ratification of the Istanbul Convention by Hungary and to oppose the ratification of it by the European Union.⁵⁰ Due to the dominance of the governmental forces, the Parliament adopted the proposal on 5 May. The (approximately 100 minutes long) plenary debate on the previous day was, however, an enumeration of the different political views.⁵¹

⁴⁶ Sipos, A. (2018), 'Eladónőt 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>.

⁴⁷ Resolution No. 288/2/2010. (IV.9.) TT. of the Advisory Body of the Equal Treatment Authority relating to the definition of 'other status' (*A Tanácsadó Testület 288/2/2010. (IV.9.) TT. sz. állásfoglalása az egyéb helyzet meghatározásával kapcsolatban*) Advisory Board of the Equal Treatment Authority, Opinion No. 288/2/2010. (IV.9.) TT., available at: http://www.aibh.hu/documents/10180/3908613/TTaf_201004.pdf/201920d6-8822-428b-9976-29c7b89dcdbb.

⁴⁸ 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.

⁴⁹ Varga, J. (2020) 'Az Isztambuli Egyezményről' (On the Istanbul Convention), *Mandiner*, 30 January, https://mandiner.hu/cikk/20200130_az_isztambuli_egyezmenyrol.

⁵⁰ The draft proposal is available in Hungarian at: <https://www.parlament.hu/irom41/10393/10393.pdf>.

⁵¹ See the transcript of the debate in Hungarian at: <https://bit.ly/3brwFe9>.

In May 2020, the amendment of the Act on Civil Registration Procedure introduced the concept of 'birth sex' (*születési nem*):⁵² data on birth sex shall be included in birth certificates,⁵³ and this data cannot be changed.⁵⁴ By the adoption of this provision, legal recognition of gender transition became impossible in Hungary. Moreover, ongoing legal gender recognition procedures were also terminated, due to a provision that the new rules should be applied to pending/repeated procedures as well. This amendment was opposed by numerous actors, at national, European and international levels.⁵⁵

In September 2020, the publication of a storybook – 'Fairyländ is for Everyone' (*Meseország mindenkié*)⁵⁶ – and the related awareness-raising educational materials⁵⁷ on diversity, stirred fierce social debates, because some of the stories touched upon issues like same-sex attraction, gender non-conformity and transgenderism.

In December 2020, the Fundamental Law (Hungary's Constitution) was amended, addressing the issue of gender identity as well.⁵⁸ According to the new provisions, 'Hungary shall protect the right of children to a self-identity corresponding to their sex at birth';⁵⁹ 'The mother shall be a woman, the father shall be a man.'⁶⁰ The issue of this amendment also attracted significant attention and criticism at national, European and international levels.

Some previous political developments are also relevant to be mentioned here.

In August 2018, the Hungarian Government announced its plans to abolish the Gender Studies MA programme at the (public) Eötvös Loránd University and to withdraw accreditation of the MA in Gender Studies at the (private) Central European University in Budapest.

The European Parliament's resolution from September 2018⁶¹ claimed that 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'.⁶² 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.⁶³

⁵² Act I of 2010 on Civil Registration Procedure (*2010. évi I. törvény az anyakönyvi eljárásról*), Article 3(x). An unofficial English translation of the current version, as in force on 29 May 2020, published by the Ministry of Justice, is available at: https://njt.hu/translation/2010T0001P_20200529_FIN.pdf.

⁵³ Act I of 2010 on Civil Registration Procedure (*2010. évi I. törvény az anyakönyvi eljárásról*), Article 69/B(1)be).

⁵⁴ Act I of 2010 on Civil Registration Procedure (*2010. évi I. törvény az anyakönyvi eljárásról*), Article 69/B(3).

⁵⁵ See about this development in English: <https://www.equalitylaw.eu/downloads/5168-hungary-amendment-of-the-provisions-on-legal-recognition-of-gender-137-kb>.

⁵⁶ See the webpage of the publisher, Labrisz Lesbian Association (*Labrisz Leszbikus Egyesület*): https://labrisz.hu/index.php?searchengineUrl=irodalmi_rovat%2Flabrisz-konyvek&language=hu&language=en.

⁵⁷ Published by the Network of Human Rights Educators (*Emberi Jogi Nevelők Hálózata*), available: <https://drive.google.com/file/d/1cpwc7Fg7KDGlcuV00D2YvxGvFfdqbNEI/view>.

⁵⁸ See about this development in English: <https://www.equalitylaw.eu/downloads/5314-hungary-the-issue-of-gender-identity-in-the-bill-on-the-ninth-amendment-of-the-fundamental-law-121-kb>.

⁵⁹ Fundamental Law of Hungary (*Magyarország Alaptörvénye*), 25 April 2011, Article XVI (1). An unofficial English translation of the current version, as in force on 23 December 2020, published by the Constitutional Court of Hungary, is available at: https://hunconcourt.hu/uploads/sites/3/2021/01/thefundamentallawofhungary_20201223_fin.pdf.

⁶⁰ Bill No. T/13647, available (in Hungarian) at: <https://www.parlament.hu/irom41/13647/13647.pdf>.

3.2 Sex/gender/transgender

3.2.1 Definition of 'gender' and 'sex'

It should be noted that the Hungarian language does not differentiate between these concepts; the same noun (*nem*) is used to refer to both.⁶⁴ 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*).

In 2020, the concept of 'birth sex' was introduced in the Hungarian legislation, at two points:

- The amended Registry Act⁶⁵ includes the concept of 'birth sex', defined as 'biological sex assigned on the basis of primary sexual characteristics and chromosomes'⁶⁶ (data on birth sex shall be included in birth certificates,⁶⁷ and this data cannot be changed⁶⁸). The reasoning of the amending bill claimed that:⁶⁹

'Sex is not conceptualised in the current legislation, given that the determination of sex is based on biological facts. It can be determined based on primary sex characteristics and chromosomes. Sex included in the civil registry is based on facts determined by a doctor, declared by the registry. The registry certifies the facts and rights which are included in it, until proven otherwise, thus the registry does not create rights. However, the sex declared by the registry could create rights or obligations, and therefore it is necessary to define the concept of birth sex. Given that it is impossible to completely change one's biological sex, it is necessary to ascertain by law that it cannot be changed in the civil registry either.'

- The Fundamental Law (Hungary's Constitution) was amended in December 2020, addressing the issue of gender identity as well.⁷⁰ According to one of the relevant new provisions, 'Hungary shall protect the right of children to a self-identity corresponding to their sex at birth.'⁷¹ The reasoning of the amending bill claims that there are 'new, modern ideological tendencies in the Western world' questioning the nature of sexes, and concludes that 'birth sex is given and cannot be changed'.⁷² Moreover, the Fundamental Law now includes the notion that: 'The mother shall be a woman, the father shall be a man'⁷³ (i.e. that the category of 'mother' is available only for females, and the category of 'father' is available only for males).

⁶⁴ 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>.

⁶⁵ See about this development in English: <https://www.equalitylaw.eu/downloads/5168-hungary-amendment-of-the-provisions-on-legal-recognition-of-gender-137-kb>.

⁶⁶ Act I of 2010 on Civil Registration Procedure (2010. évi I. törvény az anyakönyvi eljárásról), Article 3(x), An unofficial English translation of the current version, as in force on 29 May 2020, published by the Ministry of Justice, is available at: https://njt.hu/translation/J2010T0001P_20200529_FIN.pdf.

⁶⁷ Act I of 2010 on Civil Registration Procedure (2010. évi I. törvény az anyakönyvi eljárásról), Article 69/B(1)be).

⁶⁸ Act I of 2010 on Civil Registration Procedure (2010. évi I. törvény az anyakönyvi eljárásról), Article 69/B(3).

⁶⁹ Bill no. T/9934, available (in Hungarian) at: <https://www.parlament.hu/irom41/09934/09934.pdf>.

⁷⁰ See about this development in English: <https://www.equalitylaw.eu/downloads/5314-hungary-the-issue-of-gender-identity-in-the-bill-on-the-ninth-amendment-of-the-fundamental-law-121-kb>.

⁷¹ Fundamental Law of Hungary (*Magyarország Alaptörvénye*), 25 April 2011, Article XVI(1). An unofficial English translation of the current version, as in force on 23 December 2020, published by the Constitutional Court of Hungary, is available at: https://hunconcourt.hu/uploads/sites/3/2021/01/thefundamentallawofhungary_20201223_fin.pdf.

⁷² Fundamental Law of Hungary (*Magyarország Alaptörvénye*), 25 April 2011, Article L(1).

⁷³ Bill No. T/13647, available (in Hungarian) at: <https://www.parlament.hu/irom41/13647/13647.pdf>.

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.⁷⁴

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.⁷⁵

In 2020, the Equal Treatment Authority dealt with three direct sex discrimination cases, that were based on motherhood/pregnancy, all three cases in the field of employment. In all three cases the Authority found direct discrimination based on pregnancy/maternity and imposed a fine on the employer:

In one of the 2020 cases (see also in 4.2.6, 5.2.5) a bank assistant did not get a salary increase – compared to her colleague in the same position who did – due to her pregnancy, as her employer claimed that those employees who are going on maternity leave or going to retire soon would not be given additional tasks and therefore their salaries would not be increased as the employer did not count on their work in the (near) future. The Equal Treatment Authority ordered the employer to cease the discriminatory practice and to pay a fine of HUF 300 000 (c. EUR 830). The employer sought judicial review at the Metropolitan Court (*Fővárosi Törvényszék*) of Budapest but eventually withdrew.⁷⁶

In one of the other cases from 2020 (see also in 5.2.11) a public servant's employment was terminated during the probation period because she had to take sick leave as she was hospitalised twice due to her high-risk pregnancy during the probation period. Her employer claimed that due to the limited time she was able to work during the probation period the employer could not assess her ability to perform the work and in any case, due to the high-risk pregnancy the employer could not count on her work in the future, therefore the employer terminated her employment. The Equal Treatment Authority ordered the employer to cease the discriminatory practice, to pay a fine of HUF 250 000 (c. EUR 680), and to publish the decision for 30 days.⁷⁷

Similarly, a female employee's employment was terminated during her probation period when she reported to her direct supervisor her high-risk pregnancy and the need to go on sick leave (see also in 11.6.2). While she was on sick leave, the termination notice was delivered to her and according to the post stamp it was posted on the day following the reporting and her position was already advertised on the same day when she reported her pregnancy to her supervisor. In the procedure before the Equal Treatment Authority, her employer (the director of the company) claimed that he had no information about the

⁷⁴ 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(n).

⁷⁵ 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.

⁷⁶ Equal Treatment Authority (Egyenlő Bánásmód Hatóság) Decision No. EBH/160/2020.

⁷⁷ Equal Treatment Authority (Egyenlő Bánásmód Hatóság) Decision No. EBH/166/2020.

employee's pregnancy and her employment was terminated during the probation period because there was no longer any need for her work, due to a technological innovation. However, the employer could not substantiate any of his claims. The Equal Treatment Authority established direct discrimination based on pregnancy and ordered the employer to cease the discriminatory practice, to pay a fine of HUF 1 500 000 (c. EUR 4 160), and to publish the decision for 30 days.⁷⁸ The Equal Treatment Authority reviewed the income of the company and imposed a higher amount of fine to deter the company from such discriminatory practice in the future.

According to the Equal Treatment Act,⁷⁹ 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 allowed⁸⁰ in cases involving direct discrimination based on race, colour, nationality or ethnicity;⁸¹ 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 limits further 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,⁸² which was modified in 2017 and entered into force on 1 January 2018, as described below. Most importantly, the amendment⁸³ 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 1977,⁸⁴ 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

⁷⁸ Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) Decision No. EBH/HJF/209/27/2020.

⁷⁹ 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).

⁸⁰ 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).

⁸¹ 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).

⁸² 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)(a).

⁸³ 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).

⁸⁴ 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.

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, colour, nationality, belonging to a national minority.⁸⁵ Following the 2017 amendment, this provision now reads:

'It does not constitute an unlawful violation of equal treatment if
a) 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.'⁸⁶

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.

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.⁸⁷

3.3.2 Prohibition of pregnancy and maternity discrimination

Discrimination on the grounds of pregnancy and maternity, and also on the grounds of paternity, is explicitly prohibited by the Equal Treatment Act.⁸⁸

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 in some cases before the Supreme Court or the Equal Treatment Authority 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.⁸⁹

⁸⁵ 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).

⁸⁶ 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)(a).

⁸⁷ 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-munkaltatoj>.

⁸⁸ 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).

⁸⁹ See e.g. Supreme Court (*Kúria*) Decision in Principle No. 24/2018 in Labour Law, Mfv.I.10.371/2017, available at: <https://kuria-birosag.hu/hu/sajto/tajekoztato-egyenlo-banasmod-megsertese-jogkovetkezmenyei-targyaban-kuria-mi-tanacsja-atal>.

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).⁹⁰ 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,⁹¹ 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)⁹² 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,⁹³ 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.

The most recent case, from 2020 (see also in 3.4.2, 3.4.3. and 3.5.2), that was considered by the Equal Treatment Authority as a manifestation of indirect discrimination, was the case of a female employee who was denied the annual bonus because she worked only

⁹⁰ Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) Decision No. EBH/103/2017.

⁹¹ 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.

⁹² 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.

⁹³ 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).

until September of the given year, then had to take sick leave due to high-risk pregnancy. The employee claimed that she was discriminated against based on her pregnancy and her health status when she was not given any bonus, not even on a pro rata basis. The employer claimed that those who were in 'passive labour force status' (*passzív állomány*) were not eligible for the annual bonus because it was meant to be an acknowledgment of the employees' annual work and to be a source of motivation (for the next year). However, the statistical evidence provided by the employer showed that in reality the only ones not to get a bonus were those whose contract was terminated or who did not perform any work during the year.⁹⁴ The Authority found that the exclusion of the pregnant employee from the annual bonus, despite the fact that she performed work during eight months of the year, was disproportionate and amounted to discrimination against the employee based on her pregnancy and health status. Unexpectedly, the Authority established indirect discrimination (and not direct discrimination) in this case, i.e. accepted the employer's argument that this measure was meant to be neutral. The Authority ordered the employer to cease the discriminatory practice, and to publish the decision for 30 days. The employer submitted a request for judicial review, but it was dismissed by the Metropolitan Court (*Fővárosi Törvényszék*) of Budapest.

3.4.2 Statistical evidence

The use of statistical evidence is not required either by law or by custom in indirect discrimination cases.

However, the parties in indirect discrimination cases may opt to present statistical evidence to the Equal Treatment Authority or the courts.

In the above-mentioned recent case (see also in 3.4.1, 3.4.3 and 3.5.2) from 2020, a female employee was denied the annual bonus because she worked only until September, then had to take sick leave due to high-risk pregnancy. The employee claimed that she was discriminated against based on her pregnancy and her health status when she was not given any bonus. The employer claimed that those who were in 'passive labour force status' were not eligible for the annual bonus because it was meant to be an acknowledgment of the employees' annual work and to be a source of motivation (for the next year). However, the statistical evidence provided by the employer showed that in reality the only ones not to get a bonus were those whose contract was terminated or who did not perform any work during the year.⁹⁵ Please note that, still, this case was considered as indirect discrimination by the Equal Treatment Authority.

The landmark case adjudicated by the Equal Treatment Authority, in 2017, may also be mentioned: this was an important stepping-stone in the Hungarian anti-discrimination case law, because it offered 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,

⁹⁴ Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) Decision No. EBH/32/2020.

⁹⁵ Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) Decision No. EBH/32/2020.

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 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.⁹⁶

3.4.3 Application of the objective justification test

The objective justification test provided by the Equal Treatment Act⁹⁷ has been applied very liberally by the courts in Hungary. However, since there is very limited case law on indirect sex discrimination, no assessment can be provided of the strictness of the test regarding claims of indirect sex discrimination. The only relevant case is the Equal Treatment Authority decision on the policy of granting a 13th month payment, which was found to be indirectly discriminatory towards mothers of young children. In this case, the defendants did not provide any objective justification or rely on any specific exemption. Therefore, the Equality Body did not apply the objective justification test.⁹⁸

In the most recent case (see also in 3.4.1, 3.4.2 and 3.5.2), in 2020, the Equal Treatment Authority applied the objective justification test in the case of a female employee who was denied the annual bonus because she worked only until September of the given year, then had to take sick leave due to high-risk pregnancy. The employee claimed that she was discriminated against based on her pregnancy and her health status when she was not given any bonus. The employer claimed that those who were in 'passive labour force status' were not eligible for the annual bonus because it was meant to be an acknowledgment of the employees' annual work and to be a source of motivation (for the next year), i.e. the employer claimed that this was a neutral measure, and it had nothing to do with the employee's pregnancy. However, the statistical evidence provided by the employer showed that in reality the only ones not to get a bonus were those whose contract was terminated or who did not perform any work during the year.⁹⁹ Taking account of this, the Equal Treatment Authority assessed whether the difference in treatment can be objectively justified: whether the discrimination is proportional, justified by the characteristic or nature of the work and is based on all relevant and legitimate terms and conditions.¹⁰⁰ The Authority established that the exclusion of the pregnant employee from the annual bonus, despite the fact that she performed work during eight months of the year, was disproportionate and amounted to discrimination (based on pregnancy and health status). At the same time, surprisingly, the Authority considered the case as indirect discrimination, which means that in a way (implicitly) they accepted the employer's argumentation about the neutrality of the measure.

⁹⁶ 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>.

⁹⁷ 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).

⁹⁸ 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>. See the details at Section 3.4.2 of this report.

⁹⁹ Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) Decision No. EBH/32/2020.

¹⁰⁰ 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)(a).

3.4.4 Specific difficulties

According to the case law, the exemption provided by the Equal Treatment Act¹⁰¹ allows defendants to justify almost any kind of indirect discrimination.

3.5 Multiple discrimination and intersectional discrimination¹⁰²

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.¹⁰³ 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 interconnectivity 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);¹⁰⁴ 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);¹⁰⁵ 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).¹⁰⁶

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.¹⁰⁷

¹⁰¹ 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)(b).

¹⁰² 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>.

¹⁰³ 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.

¹⁰⁴ 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>. See also: Balogh, L., Gellér, J. (ed.) (2020): Reproductive Rights of Romani Women in Hungary: Cause of Action, European Roma Rights Centre, Brussels, http://www.errc.org/uploads/upload_en/file/5228_file1_reproductive-rights-of-romani-women-in-hungary.pdf.

¹⁰⁵ Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) Decision No. EBH/467/2016.

¹⁰⁶ 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>. See the details at Section 3.4.2 of this report.

¹⁰⁷ 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>.

In a case from 2020 (see also in 3.4.1, 3.4.2 and 3.4.3) a female employee was denied the annual bonus because she worked only until September of the given year, then she had to take sick leave due to her high-risk pregnancy. The Equal Treatment Authority established discrimination based on multiple (two) grounds: pregnancy and health status.¹⁰⁸

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 in the city of Miskolc (she 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.¹⁰⁹

One year later, in 2017, the European Roma Rights Centre (ERRC – a human rights NGO) filed an *actio popularis* claim against the same public hospital in Miskolc, because of a policy of the maternity clinic which affected socio-economically disadvantaged Roma women disproportionately.¹¹⁰ It should be noted that Miskolc is in the middle of the economically disadvantaged north-eastern region of Hungary, where the concentration of marginalised Roma population is higher than the average in the country. The ERRC was informed by local pro-Roma activists that the public maternity clinic in Miskolc hospital charges the companions of women who arrive to give birth in the hospital, with a relatively high fee (c. EUR 10-15) for 'visitor attire' (a disposable hygienic suit, to be worn in the delivery room), which is not affordable for families living in poverty. Thus, in many cases, mothers (among them young girls under the age of 18 years) are forced to endure the hours of labour and childbirth without a supporting companion. This means also that they are hindered from exercising their right provided by the Act on Healthcare, i.e. that women are entitled to be accompanied during childbirth by a person of their choice (an adult family member, a relative, a friend or a doula, etc.).¹¹¹ The first instance court (Regional Court of Miskolc), found direct discrimination based on pregnancy/maternity and on social/economic status (these are protected grounds in the Hungarian anti-discrimination legislation),¹¹² and indirect discrimination based on (Roma) ethnicity. Sex as a base of discrimination was not explicitly included in the argumentation, as pregnancy as a base covered this aspect of the situation. According to the reasoning of the judgment, the hospital's practice amounts to direct discrimination based on maternity/pregnancy, because of the principle developed by the ECtHR in *Thlimmenos v Greece*, i.e. that the right not to be discriminated against may be violated when groups of persons whose situations are significantly different are not treated differently. In this case, the situation of the group of women giving birth was compared with the group of other patients. Moreover, the practice of the hospital amounted to direct discrimination based on social/economic status, as the fee of the mandatory 'visitors' attire' may not be affordable

[reconsider-conditions-13th-month-payment-for-female-workers-pdf-149-kb](#). See the details at Section 3.4.2 of this report.

¹⁰⁸ Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) Decision No. EBH/32/2020.

¹⁰⁹ Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) Decision No. EBH/349/2016.

¹¹⁰ See the description of the case in English: <https://www.equalitylaw.eu/downloads/4898-hungary-discriminatory-practice-at-the-maternity-clinic-of-a-public-hospital-in-miskolc-the-visitors-attire-case-pdf-125-kb>. See also: Balogh, L., Gellér, J. (ed.) (2020): Reproductive Rights of Romani Women in Hungary: Cause of Action, European Roma Rights Centre, Brussels, http://www.errc.org/uploads/upload_en/file/5228_file1_reproductive-rights-of-romani-women-in-hungary.pdf.

¹¹¹ Act CLIV of 1997 on Healthcare (*1997. évi CLIV. törvény az egészségügyről*), 23 December 1997, Article 11(5).

¹¹² 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.

for families living in poverty. And because Roma families are overrepresented among the poor families in the region, the practice is to be considered as indirect discrimination based on ethnicity. The first instance court ordered the hospital to cease the unlawful and discriminatory practice (of charging a fee for the mandatory hygienic attire) and to pay a public fine of HUF 5 million (c. EUR 13 900).¹¹³ This judgment by the Court of Appeal of Debrecen upheld the first instance court's line of argument about direct discrimination based on pregnancy/maternity and on social/economic status and indirect discrimination based on Roma ethnicity, but decreased the fine to HUF 2 million (c. EUR 6 800).¹¹⁴ The defendant asked for judicial review with the Supreme Court (*Kúria*) of Hungary. In its final judgment delivered on 20 May 2020, the Supreme Court upheld the Court of Appeal's decision.¹¹⁵

3.6 Positive action

3.6.1 Definition and explicit prohibition

The Fundamental Law (Constitution) of Hungary provides that:

- 'Hungary promotes the realisation of equal opportunity by special measures';¹¹⁶ and
- 'Hungary protects children, women, the elderly and the disabled through special measures'.¹¹⁷
- 'An Act may lay down the conditions for entitlement to state pension also with regard to the requirement for stronger protection for women'.¹¹⁸

The key pieces of primary legislation are:

- Act on Equal Treatment and the Promotion of the Equality of Opportunities: 'a measure aimed at the elimination of an expressly identified social group's objectively substantiated inequality of opportunities is not considered a breach of the principle of equal treatment',¹¹⁹ given that it is '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';¹²⁰ and does 'not violate any basic rights, shall not provide unconditional advantage, and shall not exclude the consideration of individual circumstances'.¹²¹
- A special provision in the Equal Treatment Act regarding healthcare:

'the principle of equal treatment shall be enforced in respect of healthcare, particularly in respect of the provision of health services, including participation in preventive programmes and medical check-ups, preventive medical care, use of premises for residence, the satisfaction of dietary and other needs'

but:

¹¹³ 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.

¹¹⁴ Court of Appeal of Debrecen, Judgment no. Pf.I.20.749/2018/8, available at: http://www.errc.org/uploads/upload_en/file/5106_file1_anonymised-version-of-the-judgment-in-hungarian-2018.pdf.

¹¹⁵ Supreme Court of Hungary (*Kúria*), Judgment no. Pfv.IV.20.677/2019/8, available at: http://www.errc.org/uploads/upload_en/file/5261_file1_ku%CC%81ria-i%CC%81te%CC%81et-edited.pdf.

¹¹⁶ Fundamental Law of Hungary (*Magyarország Alaptörvénye*), Article XV(4).

¹¹⁷ Fundamental Law of Hungary (*Magyarország Alaptörvénye*), Article XV(5).

¹¹⁸ Fundamental Law of Hungary (*Magyarország Alaptörvénye*), Article XIX(4).

¹¹⁹ 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(1).

¹²⁰ 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(1)(a).

¹²¹ 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(2).

'pursuant to or authorised by the law and based on health, disability or a characteristic defined in Article 8 [including sex, maternity/paternity, pregnancy], a government decree may grant additional benefits to specified groups of society within the framework of the social and healthcare system.'¹²²

- Act IV of 1991 on the Promotion of Employment and on Assistance Provided for the Unemployed:

'While the requirement of equal treatment shall be respected in connection with the promotion of employment and the support of job seekers, this shall not exclude the possibility of offering additional rights to those who are in a disadvantaged position on the labour market'.¹²³

The latter includes those who are living alone with at least one dependant,¹²⁴ or are working in a sector or job characterised by a significant gender imbalance, and they belong to the underrepresented gender.¹²⁵

This definition complies with Article 157(4) of the TFEU. The conditions of positive actions as formulated in the Equal Treatment Act are in line with the relevant EU standards, as the case law of the CJEU and the Directives detailed the criteria for the lawful introduction of positive measures.¹²⁶

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.

Legal provisions either use the term 'special measure' (*külön intézkedés*) or 'preferential treatment' (*előnyben részesítés*). Both of these terms emphasise the aspect that these kinds of measures are to be considered as a form of differentiation.

However, in public debates and also in everyday conversations, it is almost always the term 'reverse discrimination' (literally: 'positive discrimination': *pozitív diszkrimináció*) which is used. According to experts, the negative connotation (association to discrimination) of this widely used term contributes to the controversies around positive action in Hungary.¹²⁷

¹²² 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 25.

¹²³ 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), Article 2(1).

¹²⁴ 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), Article 57/B(4)(d).

¹²⁵ 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), Article 57/B(4)(e).

¹²⁶ See: Halmos, Sz. (2019), 'The Impact of EU Law on Hungarian Anti-discrimination Law in Employment' *ELTE Law Journal*, no. 2, pp. 81-99, available at: https://eltelawjournal.hu/wp-content/uploads/2019/12/04_Halmos.pdf.

¹²⁷ See e.g. Kollonay, Cs. (2006), 'Fórum: Előnyben részesítés' (Forum: Preferential treatment) *Fundamentum*, vol. X, no. 4, pp. 71-78.

3.6.3 Specific difficulties

A controversial justification for positive actions (in the Hungarian terminology: 'preferential treatment') is the intention to support women in performing their traditional family roles (as mothers and care providers): a high profile example of this is the early retirement option for women after 40 years of service (the option is based on special eligibility criteria, i.e. all time periods covered by any kind of child-related social security benefits are recognised as service).¹²⁸ This measure is not only controversial because it recognises care work in the family as service only in the case of women (thus does not encourage men to take a larger share), but also because it encourages women, implicitly, to perform even more care work, provided for free (grandparental care, care for senior family members). According to an analysis from 2018, the 'Women 40' scheme is a 'flawed pension product' for three main reasons: it provides a lower pension for women (compared to the pension they could have if they did not make use of the early retirement option); it is discriminatory towards men (who have been involved fathers); and the scheme is not synchronised with the (ongoing) increase of the general retirement age.¹²⁹

Quota-like positive action measures are controversial in Hungary not just because of the anti-EU political sentiments (given the role of the EU as a promoter of certain types of quotas), but also for historical reasons,¹³⁰ 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 yet that aim to improve the gender balance on company boards, although the Action Plan on the Empowerment of Women in the Family and in Society (2021-2030), launched by the Government in October 2020, includes a vague measure on supporting women's leadership in business and economics.¹³¹

According to Eurostat data referring to 2020, the share of female board members in the largest publicly listed companies is 9.9 % in Hungary (the EU average is 29.5 %), while the share of senior executives in the largest publicly listed companies is 18.2 % (the EU average is 19.3 %).¹³²

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

Hungary has not adopted explicit 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 still low in Hungary. For example, the proportion of female MPs was

¹²⁸ Article 1 of Act CLXX of 2010 modified Article 18(2) of Act LXXXI of 1997 on social security pensions (1997. évi LXXXI. törvény a társadalombiztosítási nyugellátásról).

¹²⁹ Gerencsér, L. (2018) 'Nyugdíjvita: A „Nők 40” hibás nyugdíjtermék' (Debate on Pensions: The "Women40" is a flawed pension product), *Új Egyenlőség*, 9 December, available at: <http://ujegyenloseg.hu/nyugdijvita-a-nok-40-hibas-nyugdijtermek/>.

¹³⁰ See: '8 March 2020: International Women's Day: Only 1 manager out of 3 in the EU is a woman...even less in senior management positions', *Eurostat News Release*, 40/2020 - 6 March 2020, <https://ec.europa.eu/eurostat/documents/2995521/10474926/3-06032020-AP-EN.pdf/763901be-81b7-ecd6-534e-8a2b83e82934>.

¹³¹ Governmental Resolution 1685/2020 on the adoption of the Action Plan, prepared for the European Union, 'The Empowerment of Women in the Family and in Society' (2021-2030), and on the detailed plan of its implementation in 2021-2022 (1685/2020. (X. 22.) Korm. határozat az Európai Unió számára készített, „A nők szerepének erősítése a családban és a társadalomban” (2021-2030) akcióterv elfogadásáról, valamint a végrehajtásának a 2021-2022. évekre szóló Intézkedési Tervéről), 22 October 2020.

¹³² See: Positions held by women in senior management positions. Source: EIGE, online data code: SDG_05_60, https://ec.europa.eu/eurostat/databrowser/view/sdg_05_60/default/table?lang=en.

11 % (22 women out of 199) after the elections in 2018,¹³³ and in 2014, 9.5 % (19 women out of 199).¹³⁴

Since October 2020, the Government has consisted of 3 women (Minister Without Portfolio for the Development of Public Assets, Minister of Justice, Minister Without Portfolio for Families – the last is a newly created position) and 12 men.¹³⁵ The previous 'Third Orbán-Government', set up in 2014, was an all-male government.¹³⁶

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.¹³⁷ 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.¹³⁸

In 2020, the Equal Treatment Authority did not deal with any complaint relating to sexual harassment or harassment based on sex/gender.

During the previous few years, the number of harassment cases heard by the Equal Treatment Authority on the grounds of sex or maternity ranged between one and five.

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.¹³⁹

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.¹⁴⁰ 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, although the grounds of maternity/pregnancy (protected under the Equal Treatment Act) was also relevant, in the opinion of this report's author.

¹³³ As of: 8 May 2018.

¹³⁴ As of: 6 May 2014.

¹³⁵ See: Members of the Government, available (in Hungarian) at: <https://kormany.hu/a-kormany-tagjai>.

¹³⁶ 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>.

¹³⁷ 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).

¹³⁸ 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.

¹³⁹ Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) Decision No. EBH/244/2017.

¹⁴⁰ 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>.

3.7.2 Scope of the prohibition of harassment

The scope of the prohibition 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 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, vocational 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).¹⁴¹

The relational scope¹⁴² (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).¹⁴³

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.¹⁴⁴ 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.'¹⁴⁵

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 armed forces and law enforcement bodies; (e) public foundations, public corporations, trade unions and employers' associations; (f) public utility companies; (g) institutions of

¹⁴¹ 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.

¹⁴² 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.

¹⁴³ 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.

¹⁴⁴ 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.

¹⁴⁵ Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) Decision No. EBH/69/2006.

public education, vocational 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).¹⁴⁶

The relational scope¹⁴⁷ (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).¹⁴⁸

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.¹⁴⁹

3.7.6 Specific difficulties

The definition of sexual harassment has been developed through the (limited)¹⁵⁰ 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.¹⁵¹ 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.¹⁵²

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.¹⁵³

3.8.2 Specific difficulties

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

¹⁴⁶ 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.

¹⁴⁷ 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.

¹⁴⁸ 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.

¹⁴⁹ 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 7(1), 10(1).

¹⁵⁰ 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>.

¹⁵¹ Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) Decision No. EBH/365/2011.

¹⁵² Published as Decision No. BH 347/2011.

¹⁵³ 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).

3.9 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;¹⁵⁴
- 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.¹⁵⁵

Discrimination by association is not *per se* prohibited in national law but in 2010, the Advisory Board of the Equal Treatment Authority issued an opinion on the definition of 'other status, attribute or characteristic' and explained that discrimination by association would fall under this category.¹⁵⁶

The Hungarian Equal Treatment Act defines direct discrimination based on a 'real' or 'assumed' characteristic.¹⁵⁷ (A real-life scenario for the latter may be when a female employee is subjected to discrimination because her employer assumes, for some reason, that she is pregnant. A case like this is to be considered as discrimination based on pregnancy, and the fact that the woman was actually not pregnant is irrelevant.)

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,¹⁵⁸ 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 Act¹⁵⁹ 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

¹⁵⁴ 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).

¹⁵⁵ 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).

¹⁵⁶ Resolution no. 288/2/2010. (IV.9.) TT. of the Advisory Body of the Equal Treatment Authority relating to the definition of 'other status' (A Tanácsadó Testület 288/2/2010. (IV.9.) TT. sz. állásfoglalása az egyéb helyzet meghatározásával kapcsolatban) at: http://www.ajbh.hu/documents/10180/3908613/TTaf_201004.pdf/201920d6-8822-428b-9976-29c7b89dcdbb.

¹⁵⁷ 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.

¹⁵⁸ 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).

¹⁵⁹ 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.

larger disadvantage compared with other persons or groups in a similar situation, then this is considered to be indirect discrimination.¹⁶⁰ 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 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

Supposedly, and according to anecdotal evidence, gender-based discrimination has been prevalent during the pandemic in the field of employment; nevertheless, available case law from 2020 may not give a reliable picture of the situation. Courts (and also the Equal Treatment Authority) were closed temporarily in the spring of 2020 due to the national lockdown relating to the first wave of COVID-19, and although some hearings were held online, the processes have been slowed down, apparently (parties may ask for the delay of hearings, with respect to the virus situation, and courts are willing to accept these requests). Moreover, some victims may have been discouraged by the practical difficulties (and the health risks) of starting a litigation procedure in the middle of the pandemic, or because they felt too vulnerable to confront their employers among the economic hardships relating to COVID-19.

¹⁶⁰ 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.

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 data from the Hungarian Central Statistical Office referring to the first 6 months of 2019, the average gross salary of men working full time was 15.6 % higher than that of women: HUF 429 000 for men (c. EUR 1 150) and HUF 362 100 for women (c. EUR 950).¹⁶¹ According to data from Eurostat referring to 2019, the gender pay gap in Hungary was 18.2 % (while the gender pay gap at the EU level was 14.1 %).¹⁶²

A study, published in 2020 (referring to the period between 2008 and 2016) investigated the phenomenon of gender pay gap in Hungary in a circumspect way, by performing a 'Blinder-Oaxaca style' decomposition analysis on Hungarian matched employer-employee data, i.e. by breaking down the gap into an explained part (due to observed characteristics of workers) and an unexplained part, sometimes identified with the effect of discrimination. The study identifies the phenomenon of 'under-pricing' of women's work, compared to men. This phenomenon is most prevalent at foreign-owned manufacturing firms in smaller towns in the Transdanubian region and affects most intensely women working in less-skilled jobs. The salaries of these women are, in any case, higher in these firms than they would get from alternative employers locally. The phenomenon of 'under-pricing' also affects women with a longer attachment to the firm, because less mobility of women means that longer tenure does not build a transferable human capital enhancement for women.¹⁶³

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 130th 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.¹⁶⁴

4.1.2 Surveys on the difficulties of realising equal treatment at work

The Amnesty International study about gender-based discrimination in Hungarian Workplaces (from 2020) concludes that the state 'has not put in place any effective dissuasive measures to deter employers from gender-based discrimination or introduce potential incentives to encourage them to keep pregnant workers employed until, during and after their maternity leave'.¹⁶⁵

A paper, published in 2020, presents the outcomes of qualitative study among academic researchers: the participants did not necessarily consider gender inequality, including the phenomenon of glass-ceiling, as a result of discrimination, and while they seemed to be,

¹⁶¹ Hungarian Central Statistical Office (*Központi Statisztikai Hivatal*): 'Munkaerőpiaci folyamatok, 2020. I. félév' (Labour Market Tendencies, First half of 2020), <https://www.ksh.hu/docs/hun/xftp/idoszaki/mpf/mpf202/index.html>.

¹⁶² Eurostat: Gender pay gap statistics, https://ec.europa.eu/eurostat/statistics-explained/index.php/Gender_pay_gap_statistics.

¹⁶³ Takács, O., Vincze, J. (2020): 'The gender-dependent structure of wages in Hungary: results using machine learning techniques', CERS-IE WP, 2020/44 [November 2020], <https://kti.krtk.hu/wp-content/uploads/2020/11/CERSIEWP202044.pdf>.

¹⁶⁴ 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.

¹⁶⁵ Amnesty International (2020): No Working Around It: Gender-based Discrimination in Hungarian Workplaces, p. 51, <https://www.amnesty.org/download/Documents/EUR2723782020ENGLISH.PDF>.

in general, supportive regarding the idea of gender equality, they were rather clueless about the practical steps to be taken to promote equality between men and women.¹⁶⁶

In Hungary, discrimination is apparently not considered as one of the major elements contributing to the hardships of women: according to the results of a survey (published in 2018), only 9 % of the problems mentioned by the participants to the open-ended question 'What are the primary problems that women living in a situation similar to yours are faced with the most?' were related to discrimination (maximum of 5 answers/person, cumulative number of answers referring to some specific problem of women = 688).¹⁶⁷ Discrimination of women may still be an unspoken issue: in other research from 2018, the participants of a focus group interview (HR experts) only implicitly referred to the phenomenon of discrimination in relation to the employment of mothers of young children.¹⁶⁸

However, according to a research report, 51 % of the respondents in 2019 opined that more attention should be paid to the issue of discrimination in Hungary, which shows a slight increase compared to data from 2017, when the respective proportion was 46 %.¹⁶⁹

4.1.3 Other issues

The previous constitution, unlike the Fundamental Law (the current constitution), expressly guaranteed equal pay for equal work.¹⁷⁰

4.1.4 Political and societal debate and pending legislative proposals

The Action Plan on the Empowerment of Women in the Family and in Society (2021-2030), launched by the Government in October 2020, does not include any explicit reference to the issue of equal treatment of women at work.¹⁷¹

In March 2020 (a week after the Government introduced the 'state of danger', a temporary special legal order, due to the COVID-19 crisis), a Government decree was adopted that included provision that 'in a separate agreement, the employee and the employer may depart from the provisions of the Labour Code'.¹⁷² In May, a group of 51 opposition MPs

¹⁶⁶ Tardos, K., Paksi, V. (2020) 'Tudományos karrierutak kutatói értékelése: női és férfiperspektívák' (Evaluation of academic career paths: women's and men's perspectives) in *Kultúra, közösség és társadalom: Tanulmányok Tibori Timea tiszteletére* (Culture, community, society: Studies in Honour of Timea Tibori), Budapest, TK – Magyar Szociológiai Társaság, pp. 93-120, https://szociologia.hu/dynamic/8_tardos_paksi.pdf.

¹⁶⁷ Gregor A., Kováts E. (2018), *Women's Affairs 2018: Societal Problems and Solution Strategies in Hungary* (Friedrich Ebert Stiftung Budapest), available at: <https://library.fes.de/pdf-files/bueros/budapest/14462.pdf>. English summary of a research report in Hungarian: Gregor, A., Kováts E. (2018) *Nőügyek 2018: Társadalmi problémák és megoldási stratégiák* (Friedrich Ebert Stiftung Budapest), p. 5, available at: <http://library.fes.de/pdf-files/bueros/budapest/14461.pdf>.

¹⁶⁸ Lipták, K., Matiscsákné Lizák, M. (2018), 'A kisgyermekes nők foglalkoztatási helyzete és lehetőségeik' (The employment situation and opportunities of women with young children) *Vezetéstudomány – Budapest Management Review*, vol. 49, no. 3, p. 47, available at: <https://doi.org/10.14267/VEZTUD.2018.03.05>.

¹⁶⁹ Neményi M., Ságvári, B., Tardos, K. (2019), *A diszkrimináció személyes és társadalmi észlelése és az egyenlő bánásmóddal kapcsolatos jogtudatosság. Kutatási eredmények* (Personal and social perception of discrimination and rights awareness regarding equal treatment. Research results). Budapest, Equal Treatment Authority (Egyenlő Bánásmód Hatóság), Centre for Social Sciences Institute for Sociology (*Társadalomtudományi Kutatóközpont Szociológiai Intézet*), p. 149, available at: http://real.mtak.hu/104962/1/EBH_2019_FINAL_20191208_HU_vegles.pdf.

¹⁷⁰ 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).

¹⁷¹ Governmental Resolution 1685/2020 on the adoption of the Action Plan, prepared for the European Union, 'The Empowerment of Women in the Family and in Society' (2021-2030), and on the detailed plan of its implementation in 2021-2022 (1685/2020. (X. 22.) Korm. határozat az Európai Unió számára készített, „A nők szerepének erősítése a családban és a társadalomban” (2021–2030) akcióterv elfogadásáról, valamint a végrehajtásának a 2021–2022. évekre szóló Intézkedési Tervéről), 22 October 2020.

¹⁷² Government Decree No. 47/2020 (18 March) on immediate measures necessary for alleviating the effects of the coronavirus pandemic on national economy (47/2020. (III. 18.) Korm. Rendelet a koronavírus világgjárvány nemzetgazdaságot érintő hatásának enyhítése érdekében szükséges azonnali intézkedésekről), Article 6(4).

initiated an ex-post conformity review (posterior norm control)¹⁷³ by the Constitutional Court relating to this provision.¹⁷⁴ Actually, the initiative was facilitated by the Hungarian Trade Union Confederation (*Magyar Szakszervezeti Szövetség*), but the direct involvement of the MPs was essential, since – according to the current provisions on the procedures of the Constitutional Court – only the Government, one quarter of the Members of the National Assembly, the President of the *Kúria*, the President of the Supreme Administrative Court, the Prosecutor General or the Commissioner for Fundamental Rights may initiate such review.¹⁷⁵ The initiative was based on a rather sophisticated/theoretical argument, including a reference to the constitutional provision on legal equality between men and women.¹⁷⁶ At the heart of the argumentation is the core concept of modern labour law, that vulnerable individuals (employees) should be protected from the negative impacts of unbalanced power relations in the field of labour/employment; moreover, the argument recognises that some individuals may be relatively even more disadvantaged in this field (e.g. women compared to men) when it comes to negotiating employment relations under unregulated conditions. The initiative included references to the Directive 2006/54/EC of the European Parliament and of the Council, Article 4 ('Prohibition of discrimination'), and to the following ILO Conventions: Equal Remuneration Convention (No. 100), Discrimination (Employment and Occupation) Convention (No. 111), Holidays with Pay Convention (No. 132). In June, an *amicus curiae* was submitted relating to the initiative, signed by the Minister for Innovation and Technology defending the provision in question from the aspect of constitutional and international norms (e.g. by referring broadly to the Council of Europe's European Social Charter).¹⁷⁷ Meanwhile, the Government lifted the 'state of danger' order, and provided that the decree in question would cease its effect from 1 July 2020.¹⁷⁸ Consequently, the Constitutional Court had no other option than to issue an order to extinguish the proceedings, given that the remedy available within the framework of abstract norm control is the annulment of the legal provision, and, naturally, it would be impossible in the case of an already effectless legal provision.¹⁷⁹

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'.¹⁸⁰

¹⁷³ Act CLI of 2011 on the Constitutional Court (*2011. évi CLI. törvény az Alkotmánybíróságról*), 21 November 2011, Section 24(1). English translation is available on the website of the Constitutional Court: <https://hunconcourt.hu/act-on-the-cc>.

¹⁷⁴ Case no. II/00887/2020.

¹⁷⁵ Fundamental Law of Hungary (*Magyarország Alaptörvénye*), 25 April 2011, Article 24(2)(2).

¹⁷⁶ Fundamental Law of Hungary (*Magyarország Alaptörvénye*), 25 April 2011, Article XV(3).

¹⁷⁷ Available at:

[http://public.mkab.hu/dev/dontesek.nsf/0/ab15bd5f76aa9c90c1258575005c060f/\\$FILE/II_887_4_2020_a_micus_Innovmin_anonim.pdf](http://public.mkab.hu/dev/dontesek.nsf/0/ab15bd5f76aa9c90c1258575005c060f/$FILE/II_887_4_2020_a_micus_Innovmin_anonim.pdf).

¹⁷⁸ Act LVIII of 2020 on the transitional provisions relating to the cessation of the state of danger, and on the state of epidemic preparedness (*2020. évi LVIII. törvény a veszélyhelyzet megszűnésével összefüggő átmeneti szabályokról és a járványügyi készületségről*), Article 56(2)d.

¹⁷⁹ Constitutional Court Ruling (*AB végzés*) No. 3326/2020. (VIII. 5.), 14 July 2020.

¹⁸⁰ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 12(1).

The Equal Treatment Act also prohibits direct and indirect wage discrimination¹⁸¹ and refers to the same article in the Labour Code.¹⁸²

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,¹⁸³ defines indirect discrimination,¹⁸⁴ regulates the institutional scope,¹⁸⁵ and lays down the relational scope of the act;¹⁸⁶ furthermore, it prohibits direct and indirect wage discrimination.¹⁸⁷

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 healthcare institution complained that her salary was lower than for men who worked in the same field.¹⁸⁸ The employer asked for judicial review of the decision of the Equal Treatment Authority establishing direct sex discrimination by the Budapest-Capital Regional Court, which dismissed the claim in 2019. The judgment is not final.¹⁸⁹ In this case, the employer did not dispute that the petitioner's pay was lower than that of her male colleagues but argued that the differences in pay could be explained by differences in their respective positions; their age; their work experience; the time that they had spent at their place of employment and the number of hours they had worked. The Equal Treatment Authority identified the year 2017 as the period under investigation. The petitioner acted as team leader for a team of employees responsible for work safety, fire safety and property protection, with the rest of the team being made up of three of her male colleagues who worked as her subordinates. In December 2017 there was a reorganisation at the petitioner's workplace, and as part of that process, the unit responsible for the protection of work and property and protection from fire was split into three distinct units. The petitioner was put in charge of one of the groups, while two of her male colleagues who had previously been her subordinates were appointed as the two other unit managers. It is indisputable that the differences between the salaries of public employees may be justified by reasons such as the ones specified by the employer. Nevertheless, in the case at hand it was apparent that throughout the entire period investigated, all of the petitioner's male colleagues had received a monthly bonus – in addition to their base salary, and a pay supplement to bring their salary to the level of the legally guaranteed minimum wage. This was awarded on the basis of the employer's discretionary decision, while during the same period the petitioner only received the legally guaranteed minimum wage. It was further possible to determine that as soon as the

¹⁸¹ 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(f).

¹⁸² Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 12(1).

¹⁸³ 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.

¹⁸⁴ 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.

¹⁸⁵ 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.

¹⁸⁶ 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.

¹⁸⁷ 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(f).

¹⁸⁸ Equal Treatment Authority (Egyenlő Bánásmód Hatóság) Decision No. EBH/152/2018.

¹⁸⁹ Budapest Capital Regional Court No. 107.K.700.759/2018/7.

petitioner's male colleagues were appointed team managers, they also received a monthly supplement for the performance of their additional responsibilities as team leaders, while the petitioner did not receive an additional allowance for her work. This difference was not justified by the factors that the employer had invoked. Furthermore, the employer failed to provide other explanations for the pay difference, even though it bore the burden of proof. Based on the above, the Authority concluded that the petitioner was not awarded the supplement because of her sex.

In 2017, in one case, the Equal Treatment Authority used statistical evidence to establish a case of indirect wage discrimination. 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 in-patient 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.¹⁹⁰

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.¹⁹¹ A resolution of the Equal Treatment Authority's Advisory Body (from 2008) provided that the general rules of exemption provided by the Equal Treatment Act cannot be applied in sex-based discrimination cases where the principle of 'equal pay for work of equal value' is violated.¹⁹²

4.2.6 Requirement for comparators

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

In most of the published cases the arguments are phrased in general terms;¹⁹³ 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

¹⁹⁰ 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>. See also at Section 3.4.2 of this report.

¹⁹¹ 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).

¹⁹² Resolution no. 384/4/2008. (III.28.) TT. of the Advisory Body of the Equal Treatment Authority relating to the share of the burden of proof (*Az Egyenlő Bánásmód Tanácsadó Testület 384/4/2008. (III.28.) TT. sz. állásfoglalása a bizonyítási kötelezettség megosztásával kapcsolatban*), available at: https://www.egyenlobanasmod.hu/sites/default/files/content/torveny/bizonyitasi_kotelezettseg.pdf.

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.¹⁹⁴

In a 2020 case (see also in 3.3.1, 5.2.5), a pregnant bank assistant did not get a salary increase – compared to her non-pregnant female colleague in the same position who did get it. As her employer claimed, those employees who are going for maternity leave or going to retire soon would not be given additional tasks and therefore their salaries would not be increased as the employer did not count on their work in the (near) future. The Equal Treatment Authority established discrimination based on pregnancy. (Please note that motherhood, including pregnancy, and fatherhood are explicitly listed as grounds of discrimination in the Equal Treatment Act, besides sex as a ground). The employer was ordered by the Authority to cease the discriminatory practice and to pay a fine of HUF 300 000 (c. EUR 830). The employer sought judicial review at the Metropolitan Court (*Fővárosi Törvényszék*) of Budapest but eventually withdrew.¹⁹⁵

In a 2016 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.¹⁹⁶

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'.¹⁹⁷

The last 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.

¹⁹⁵ Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) Decision No. EBH/160/2020.

¹⁹⁶ Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) Decision No. EBH/19/2016.

¹⁹⁷ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 12(3).

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 Job evaluation and classification systems

The Ministry of Interior, within the framework of a project funded by the EU Structural Funds in 2015, implemented a comprehensive job evaluation initiative in the public administration sphere; moreover, it developed and implemented job evaluation and classification training courses.¹⁹⁸

4.2.10 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 %.¹⁹⁹ For civil servants working at some specific public institutions the adjustment cannot be bigger than 30 %.²⁰⁰ 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.

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.²⁰¹ 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,²⁰² 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.

4.2.11 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.

¹⁹⁸ See: Ministry of Interior: *Új közzolgálati életpálya* (ÁROP-2.2.17-2012-2013-000), <https://bmprojektek.kormany.hu/uj-kozzolgalmati-eletpalya>.

¹⁹⁹ Act CXCIX of 2011 on Civil Servants (2011. évi CXCIX. törvény a közzolgálati tisztviselőkről), 30 December 2011, Article 133(3).

²⁰⁰ Act CXCIX of 2011 on Civil Servants (2011. évi CXCIX. törvény a közzolgálati tisztviselőkről), 30 December 2011, Article 134(1).

²⁰¹ Supreme Court (*Legfelsőbb Bíróság*) Judgment No. Mfv.II.10.514/2011; adopted as Decision in Principle No. 2424/2011. in Labour Law.

²⁰² Supreme Court (*Kúria*) Judgment No. Mfv.I.10.563/2013; adopted as Decision in Principle No. 19/2014. in Labour Law.

4.2.12 Other measures, tools or procedures

The Action Plan on the Empowerment of Women in the Family and in Society (2021-2030), launched by the Government in October 2020, does not include any explicit reference to the issue of pay transparency or pay equality.²⁰³

Mothers of four (or more) children, including adopted children, are addressed with a specific positive action measure: from 2020 they are entitled to a lifelong personal income tax break.²⁰⁴

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; governmental administration personnel; public servants; tax and customs administration personnel; judges; other employees of the judiciary; public prosecutors; professional and contractual service relationships in law enforcement and the military; professional foster parents; temporary employment through an agency,²⁰⁵ 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.²⁰⁶

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

As for the material scope, the Equal Treatment Act²⁰⁷ 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, 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

²⁰³ Governmental Resolution 1685/2020 on the adoption of the Action Plan, prepared for the European Union, 'The Empowerment of Women in the Family and in Society' (2021-2030), and on the detailed plan of its implementation in 2021-2022 (1685/2020. (X. 22.) Korm. határozat az Európai Unió számára készített, „A nők szerepének erősítése a családban és a társadalomban” (2021–2030) akcióterv elfogadásáról, valamint a végrehajtásának a 2021–2022. évekre szóló Intézkedési Tervéről), 22 October 2020.

²⁰⁴ Act CXVII of 1995 on the Personal Income Tax (1995. évi CXVII. törvény a személyi jövedelemadóról), 22 December 1995, Article 29/D.

²⁰⁵ 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(a).

²⁰⁶ 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(b).

²⁰⁷ 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(a)-(i).

nature of the job and is based on all relevant and legitimate terms and conditions that may be taken into consideration in the course of employment'.²⁰⁸

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 provides²⁰⁹ 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 Act²¹⁰ 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).²¹¹

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 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 50 employees are obliged to adopt an 'Equal Opportunity Plan'.²¹² However, these plans, as a rule, contain

²⁰⁸ 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)(a).

²⁰⁹ 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)(b).

²¹⁰ 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)(b).

²¹¹ 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).

²¹² 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(4).

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 leave²¹³ (obviously, women are disproportionately represented in this group) or women with three or more children.²¹⁴ 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').²¹⁵

The Hungarian Academy of Sciences (*Magyar Tudományos Akadémia*) has introduced an extension of the age limit (of 30 years as a default) set for Junior Research Fellow positions²¹⁶ by two years per child in the case of female applicants raising young children (below the age of 10 years); male applicants may also be eligible for this extension if they have spent some time on parental leave, or if they are single fathers. This provision may be considered as a form of positive measure – and not a form of direct sex discrimination – because it recognises women's disadvantages in the field of academia stemming from childcare responsibilities, but it does not exclude men who take a significant share of childcare. Moreover, this measure does not create an entitlement or guarantee access to a position and does not even provide any advantage for women during the selection process, it just widens the circle of potential female applicants. In the case of the Post-doctoral Fellowship of the Hungarian Academy of Sciences, the age limit (40 years as a default) may also be raised in cases of applicants who have children (by two years per child, but by a maximum of four years), but this applies only for those applicants who have spent some time on childcare leave²¹⁷ – i.e. this regulation does not differentiate between women and men (mothers and fathers) but focuses only on parental involvement.

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 provision²¹⁸ 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*.

4.5 Remaining issues

There are no surveys regarding the impacts of the COVID-19 crisis on the pay/wage or treatment in employment of men and women during the COVID-19 crisis that could be referred to here. There is only anecdotal evidence that during the lockdown some working mothers were subjected to unfavourable measures, based on the 'justification' by their

²¹³ Act LII of 2018 on the social contribution tax (2018. évi LII. törvény a szociális hozzájárulási adóról), 31 July 2018, Article 11.

²¹⁴ Act LII of 2018 on the social contribution tax (2018. évi LII. törvény a szociális hozzájárulási adóról), 31 July 2018, Article 12.

²¹⁵ 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>.

²¹⁶ See e.g. a call from 2019 (in Hungarian): <https://iti.btk.mta.hu/hu/21-hirek/700-fiatal-kutato-i-palyazat-2019>.

²¹⁷ See the latest call, from 2019 (in Hungarian): <https://mta.hu/aktualis-palyazati-kiirasok/mta-premium-posztdoktori-kutato-i-program-109449>.

²¹⁸ 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)(a).

employer that they were apparently overwhelmed with their childcare or home-schooling -related tasks, and they could not focus properly on their work. There is no information of such cases involving fathers/male employees.

As for the general context, an amendment of the Labour Code should be mentioned, in force from 1 January 2019, often referred to by critics as the 'Slave Law'. It provides an increase of the annual overtime period allowed by the law to 400 hours (from 250 hours) and the increase of the reference period to 36 months (from 12 months). According to the public statement of the Hungarian Trade Union Confederation (*Magyar Szakszervezeti Szövetség*), the legislation is a direct infringement of the working time provisions of Directive 2003/88/EC /Article 19/ Chapter 4: and the increase 'could lead in practice to excessive vulnerability of employees and further shift the balance to the benefit of employers'. According to available data, in Hungary, men are more likely to work overtime than women, which reinforces men's role as breadwinners, and which may affect the division of work within the family, i.e. women may end up performing more unpaid/care work.

Case law from 2020 in the field of equal treatment or equal pay is scarce. Supposedly this may be due, partly at least, to the logistical aspects of COVID-19: courts were closed temporarily in 2020 due to the national lockdown, and the processes have apparently been slowed down. Parties may ask for the delay of hearings, with respect to the virus situation, and courts are willing to accept these requests. Others may be discouraged by the practical difficulties (and the health risks) of starting litigation in the middle of the pandemic.

5 Pregnancy, maternity, and leave related to work-life balance for workers (Directive 92/85, relevant provisions of Directives 2006/54, 2010/18 and 2019/1158)²¹⁹

5.1 General (legal) context

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

The authors of a study on the impact of COVID-19 on the gender division of childcare work in Hungary conclude that during the pandemic (especially during lockdown), gender inequality increased regarding the amount of time dedicated to childcare, especially among college-educated parents, among urban parents, and among parents working from home; and this suggests, according to the authors, that 'even when men are physically present in the household, even if the burden of reproductive work increases suddenly and significantly, women are expected to shoulder a larger share'.²²⁰

The Amnesty International study about gender-based discrimination in Hungarian Workplaces (from 2020) concludes that the state 'urgently needs to take steps to change the widespread negative perception concerning pregnant employees and employees with young children among employers and the wider society, as well as the need for men to play a more significant role in family life'.²²¹

UNICEF Hungary carried out comprehensive research (based on mixed methods, including representative surveys, between November 2019 and August 2020) about the labour market participation of mothers of young children. The study concludes that while there is an apparent consensus in Hungarian society that women's employment is an important issue, when it comes to a mother with young children, the dominant opinion is that her career ambitions and professional life 'should not in any way interfere with the life of the family'.²²²

According to an analysis published in 2019, the labour market situation of mothers with young children depends both on family and employment policies in Hungary; the authors argue that the relevant policies struggle 'to find a balance between two contradicting principles: providing sufficient family allowances and maintaining labour market flexibility by weak protection of employees', and suggest that labour reforms would be needed: measures concerning working time arrangements, part-time work and protection against dismissal (including the protection of fathers with young children).²²³

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

²¹⁹ 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>.

²²⁰ Fodor, É., Gregor, A., Koltai, J., Kovács, E. (2021): The impact of COVID-19 on the gender division of childcare work in Hungary, *European Societies*, vol. 23, issue sup1, pp. S107, <https://doi.org/10.1080/14616696.2020.1817522>.

²²¹ Amnesty International (2020): No Working Around It: Gender-based Discrimination in Hungarian Workplaces, p. 51, <https://www.amnesty.org/download/Documents/EUR2723782020ENGLISH.PDF>.

²²² UNICEF Hungary (2020): *Kisgyerekes anyák munkaerőpiaci részvétele* (Labour market participation of mothers of young children), p. 6, https://unicef.hu/wp-content/uploads/2020/11/sv_indotek-kutatas_unicef_20201123.pdf.

²²³ Hungler, S., Kende, Á. (2019) 'Nők a család- és foglalkoztatáspolitikai keresztútján' (Women at the crossroads of family policies and employment policies), *Pro Futuro*, vol. 9, no. 2., available at: <https://doi.org/10.26521/Profuturo/1/2019/3881>.

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.²²⁴

5.1.2 Other issues

The Action Plan on the Empowerment of Women in the Family and in Society (2021-2030), launched by the Government in October 2020, includes the commitment 'to implement comprehensive studies aimed at investigating women's situation, with a special regard to supporting the reconciliation of family life and employment, through promoting share of labour between women and men, through mapping the reasons behind the low prevalence of atypical forms of employment; then, to elaborate new measures based on the results of studies, with a special regard to utilising the advantages of digitalisation'; according to the document (unspecified) European Union funding would be used to realise these elements of the Plan.²²⁵

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);²²⁶
- 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);²²⁷
- Act on the Support of Families (provisions on childcare allowances);²²⁸
- Act on the Benefits of Compulsory Health Insurance (provisions on maternity and parental leave);²²⁹
- Act on Social Governance and Social Benefits (provisions on different care allowances);²³⁰ and
- Act on Work Safety (provisions on protecting workers' reproductive health and foetal health).²³¹

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.

²²⁴ 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>.

²²⁵ Governmental Resolution 1685/2020 on the adoption of the Action Plan, prepared for the European Union, 'The Empowerment of Women in the Family and in Society' (2021-2030), and on the detailed plan of its implementation in 2021-2022 (1685/2020. (X. 22.) Korm. határozat az Európai Unió számára készített, „A nők szerepének erősítése a családban és a társadalomban” (2021–2030) akcióterv elfogadásáról, valamint a végrehajtásának a 2021–2022. évekre szóló Intézkedési Tervéről), 22 October 2020.

²²⁶ Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012.

²²⁷ Act CCXI on the Protection of Families (2011. évi CCXI. törvény a családok védelméről), 31 December 2011.

²²⁸ Act LXXXIV of 1998 on the Support of Families (1998. évi LXXXIV. törvény a családok támogatásáról), 24 December 1998.

²²⁹ Act LXXXIII of 1997 on the Benefits of Compulsory Health Insurance (1997. évi LXXXIII. törvény a kötelező egészségbiztosítás ellátásairól), 25 July 1997.

²³⁰ Act III of 1993 on Social Governance and Social Benefits (1993. évi III. törvény a szociális igazgatásról és szociális ellátásokról), 27 January 1993.

²³¹ Act XCIII of 1993 on Work Safety (1993. évi XCIII. törvény a munkavédelemről), 3 November 1993.

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.²³² (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 168th day after the birth of the child (unless the child was born prematurely).²³³

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:²³⁴ 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).²³⁵ 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).²³⁶

5.2.2 Obligation to inform employer

According to the Labour Code,²³⁷ 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.²³⁸ The modified article²³⁹ 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.²⁴⁰

²³² Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 65(5).

²³³ Act LXXXIII of 1997 on the Benefits of Compulsory Health Insurance (*1997. évi LXXXIII. törvény a kötelező egészségbiztosítás ellátásairól*), 25 July 1997, Article 40.

²³⁴ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Articles 51(3) and 60.

²³⁵ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 55(1)(e).

²³⁶ Act XCIII of 1993 on Work Safety (*1993. évi XCIII. törvény a munkavédelemről*), 3 November 1993, Article 49(1)(c).

²³⁷ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 65(5).

²³⁸ Constitutional Court Decision (*AB határozat*) No.17/2014. (V. 30.), 30 May 2014.

²³⁹ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 65(3).

²⁴⁰ 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).

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 a 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 HUF 1 000 000 (c. EUR 2 800) and prohibited the employer from engaging in similar discrimination in the future.²⁴¹

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

The regulations laid down by both the Labour Code²⁴² and the Act on Work Safety²⁴³ 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:²⁴⁴ it provides that an employee can only be employed to perform given work when that work does not endanger her (or his) reproductive abilities and her foetus.²⁴⁵

According to the Labour Code,²⁴⁶ 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 Code²⁴⁷ 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 parent and not any other working conditions, which creates a gap in the Hungarian implementation.

The Labour Code provides 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;²⁴⁸ 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

²⁴¹ Decision of the Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) No. EBH/379/2014.

²⁴² Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012.

²⁴³ Act XCIII of 1993 on Work Safety (*1993. évi XCIII. törvény a munkavédelemről*), 3 November 1993.

²⁴⁴ Act XCIII of 1993 on Work Safety (*1993. évi XCIII. törvény a munkavédelemről*), 3 November 1993, Article 42.

²⁴⁵ Act XCIII of 1993 on Work Safety (*1993. évi XCIII. törvény a munkavédelemről*), 3 November 1993, Article 49(1)(c).

²⁴⁶ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 60.

²⁴⁷ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 59.

²⁴⁸ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 51(3).

the obligation to work if the employer cannot offer her any alternative job compatible with her state of health.²⁴⁹

Since 2009, Hungarian labour law has recognised a special category of fixed-term employment – ‘simplified employment’ (*egyszerűsített foglalkoztatás*) – which is regulated by the Labour Code²⁵⁰ and the Act on Simplified Employment,²⁵¹ 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.²⁵²

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

Previously, in 2014, the Equal Treatment Authority established 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 c. EUR 2 000.²⁵³

5.2.6 Prohibition of night work

The Labour Code defines night work as work performed between 22.00 and 6.00.²⁵⁴ 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 years old – even in cases when the employee would consent to perform night work.²⁵⁵ This means that, for example, if a waitress would like to return to work in a bar – which is open during 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.²⁵⁶

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

²⁴⁹ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 60(1).

²⁵⁰ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Articles 201-203.

²⁵¹ 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.

²⁵² Act LXXV of 2010 on Simplified Employment (*2010. évi LXXV. törvény az egyszerűsített foglalkoztatásról*), 12 July 2010.

²⁵³ Decision of the Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) No. EBH/189/2014.

²⁵⁴ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Section 89.

²⁵⁵ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Section 113(1)(a)-(b), (3).

²⁵⁶ 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/>.

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.²⁵⁷

5.2.8 Prohibition of dismissal

A dismissal with notice is prohibited during pregnancy, maternity leave, parental leave and IVF treatment for six months.²⁵⁸ Employees in executive positions are protected during pregnancy, maternity leave and during IVF treatment for six months, but not during parental leave.²⁵⁹ 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 (s)he was employed before, which corresponds to the capabilities, practice and qualification used by the employee in his/her current job.²⁶⁰

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,²⁶¹ 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.

²⁵⁷ Decision of the Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) No. EBH/310/2007.

²⁵⁸ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 65(3)(a)-(c), (e).

²⁵⁹ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 209(2)(b).

²⁶⁰ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 66(6).

²⁶¹ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 78.

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.²⁶² No justification is needed for terminating the employment during the probationary period.²⁶³

5.2.11 Case law on the protection against dismissal

In a recent case from 2020 (see also in 3.3.1), a public servant's employment was terminated during the probation period because she had to take sick leave as she was hospitalised twice due to her high-risk pregnancy during the probation period. Her employer claimed that due to the limited time she was able to work during the probation period the employer could not assess her ability to perform the work and in any case, due to the high-risk pregnancy the employer could not count on her work in the future, therefore the employer terminated her employment. The Equal Treatment Authority ordered the employer to cease the discriminatory practice, to pay a fine of HUF 250 000 (c. EUR 680), and to publish the decision for 30 days.²⁶⁴

Similarly, in another 2020 case, a female employee's employment was terminated during her probation period when she reported to her direct supervisor her high-risk pregnancy and the need to go on sick leave. While she was on sick leave the termination notice was delivered to her and according to the post stamp it was posted on the day following the reporting and her position was already advertised on the same day when she reported her pregnancy to her supervisor. In the procedure before the Equal Treatment Authority, her employer (the director of the company who exercised the employer's rights) claimed that he had no information about the employee's pregnancy and her employment was terminated during the probation period because there was no longer any need for her work, due to technological innovation. However, the employer could not substantiate any of his claims. The Equal Treatment Authority established direct discrimination based on pregnancy and ordered the employer to cease the discriminatory practice, to pay a fine of HUF 1 500 000 (c. EUR 4 130), and to publish the decision for 30 days.²⁶⁵ The Equal Treatment Authority reviewed the income of the company and imposed a higher amount of fine to deter the company from such discriminatory practice in the future.

In 2019, two relevant cases were closed with friendly settlement,²⁶⁶ while the Equal Treatment Authority established violation of the equal treatment in three other cases, when the termination of the employment contract was due to pregnancy.²⁶⁷

5.3 Maternity leave

5.3.1 Length

According to the Labour Code, mothers are entitled to 24 weeks of maternity leave (*szülési szabadság*);²⁶⁸ parents are entitled to childcare leave (*fizetés nélküli szabadság gyermek gondozása céljából*) until, under certain circumstances, the 10th birthday of the child.²⁶⁹

²⁶² Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 22(5).

²⁶³ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 79(1)(a).

²⁶⁴ Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) Decision No. EBH/166/2020.

²⁶⁵ Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) Decision No. EBH/HJF/209/27/2020.

²⁶⁶ Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) Decision No. EBH/182/2019, EBH/9/2019. See these cases also at 3.3.1 of this report.

²⁶⁷ Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) Decision No. EBH/218/2019, EBH/238/2019 and EBH/348/2019. See these cases also at 3.3.1 of this report.

²⁶⁸ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 127(1).

²⁶⁹ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Articles 128(1), 130.

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).²⁷⁰ 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.²⁷¹

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.²⁷²

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).²⁷³ 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 actual annual wage increases implemented by the employer will apply.²⁷⁴

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. During maternity leave, the 'infant care fee' (*csecsemőgondozási díj*) 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).²⁷⁵ (Note: the Minister Without Portfolio for Families announced in November 2020²⁷⁶ that the gross amount of the infant care fee will be increased, from July 2021, to 100 % of the daily average pay, and because of tax alleviations, the take-home amount of this fee will be somewhat higher than the previous wage of the mother). (For comparison, in the case of sick leave, the employer pays 70 % of the employee's payment during the first 15 days of sickness.²⁷⁷ 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).²⁷⁸

²⁷⁰ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 127(1).

²⁷¹ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 127(3).

²⁷² Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 60.

²⁷³ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 127(5).

²⁷⁴ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 59.

²⁷⁵ Act LXXXIII of 1997 on the Benefits of Compulsory Health Insurance (*1997. évi LXXXIII. törvény a kötelező egészségbiztosítás ellátásairól*), 25 July 1997, Article 40.

²⁷⁶ See the announcement (in Hungarian) published via the Facebook page of the Minister Without Portfolio for Families, 10 November 2020: <https://www.facebook.com/watch/?v=387722659035026>.

²⁷⁷ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 146(5).

²⁷⁸ Act LXXXIII of 1997 on the Benefits of Compulsory Health Insurance (*1997. évi LXXXIII. törvény a kötelező egészségbiztosítás ellátásairól*), 25 July 1997, Article 48.

Following maternity leave, a complex system of leave and allowances are available for parents (mothers and fathers as well), and also in certain cases for grandparents and paid foster parents (see details in 5.12). As a general rule, parents are entitled to unpaid parental leave until, under certain circumstances, the 10th birthday of the child. Insured parents are eligible for the 'childcare fee' up until the child reaches the age of two (in cases of twins, age three). The 'childcare allowance', without eligibility criteria regarding service time or insurance, is paid until the child reaches the age of three (in cases of twins: until the children reach the minimum age of compulsory education). The 'childcare support', without eligibility criteria regarding service time or insurance, is paid for parents who raise at least three minor children in their household, until the eighth birthday of the youngest.

5.3.6 Additional statutory maternity benefits

A 'maternity allowance' (*anyasági támogatás*), which is a once-only in-cash benefit, is paid to every mother who has attended prenatal care. The allowance amounts to 225 % of the minimum amount of old-age pension,²⁷⁹ which in 2020 was HUF 64 125 (c. EUR 178), and HUF 85 500 (c. EUR 228) in the case of twins.

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

The 'infant care fee' (*csecsemőgondozási díj*)²⁸⁰ is paid during the 24 weeks of maternity leave 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). As a default, a mother (or father) 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 (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').²⁸¹ Higher education students or mothers who have recently graduated (or, under special circumstances such as the death of the mother, also fathers) are eligible without being insured previously for 365 days (in their case, the calculation may be based on the amount of the minimum wage, or on their actual salary, if they had insurance cover for at least 120 days).²⁸²

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)²⁸³ 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/parental leave does not terminate the employment relationship, therefore the employment contract remains in force during the leave;²⁸⁴
- The employee has to inform the employer at least 30 days in advance of the intention to return to work;²⁸⁵

²⁷⁹ Act LXXXIV of 1998 on the Support of Families (*1998. évi LXXXIV. törvény a családok támogatásáról*), 24 December 1998, Articles 29-33.

²⁸⁰ 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.

²⁸¹ Act LXXXIII of 1997 on the Benefits of Compulsory Health Insurance (*1997. évi LXXXIII. törvény a kötelező egészségbiztosítás ellátásairól*), 25 July 1997, Articles 40(1), 42/A(1).

²⁸² Act LXXXIII of 1997 on the Benefits of Compulsory Health Insurance (*1997. évi LXXXIII. törvény a kötelező egészségbiztosítás ellátásairól*), 25 July 1997, Article 42/F.

²⁸³ Act XXII of 1992 on the Labour Code (*1992. évi XXII. törvény a Munka Törvénykönyvéről*), 30 March 1992.

²⁸⁴ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Articles 127-128, 130.

²⁸⁵ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 133(2).

- It is a mandatory element of the employment contract to specify the job of the employee;²⁸⁶
- The employment contract may only be modified with the mutual consent of the parties;²⁸⁷
- 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.²⁸⁸

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 their original job.²⁸⁹

5.3.9 Legal right to share maternity leave

In the case of the 'infant care fee' (*csecsemőgondozási díj*), share arrangements are not available. (Fathers may be eligible under extraordinary conditions: when the mother is absent due to death, sickness or other serious circumstances).

5.3.10 Case law

No relevant case law is available from 2020.

In 2019, in a case before the Equal Treatment Authority, the complainant claimed that she was discriminated against based on her motherhood, since she did not receive extra benefits during her maternity leave and annual leave time whereas her colleagues did receive such a benefit during their annual leave. Whereas according to the law she is not entitled to such benefits during her maternity leave, she is entitled to the benefits during annual leave. The employer did not provide any justification for the difference in treatment; therefore, the Equal Treatment Authority established the violation of equal treatment based on motherhood.²⁹⁰

In a case before the Equal Treatment Authority in 2017, 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

²⁸⁶ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 45(1).

²⁸⁷ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 58.

²⁸⁸ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 59.

²⁸⁹ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 83(1)(a)-(b).

²⁹⁰ Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) Decision No. EBH/433/2019. See this case also at Section 3.3.1 of this report.

and found that the employer did not provide any reasonable justification for not providing the option of working remotely for the complainant.²⁹¹

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'.²⁹²

5.4 Adoption leave

5.4.1 Existence of adoption leave in national law

In Hungarian law, adoption leave – combined with various allowances – is provided for (prospective) adoptive parents (of both sexes). (Note: several favourable measures were introduced from 2020).

According to the Labour Code, from 2020, prospective adoptive parents are entitled (during the adoption procedure) up to 10 days of paid leave annually, in order to meet personally with adoptable children.²⁹³

The Labour Code provides also that adoptive parents are entitled to parental leave for three years (calculated from the date when they started to take care of the child), or in the case of children older than three years, for six months.²⁹⁴

The 'childcare allowance' (*gyermekgondozást segítő ellátás*), without eligibility criteria regarding service time or insurance, is paid for adoptive parents as well, with (favourable) modifications from 2020: until the child reaches the age of 3; in cases of chronically ill or disabled children: until the child reaches the age of 10, but up to an additional 6 months of allowance is available in the case of an older child's adoption, without age limit;²⁹⁵ this allowance amounts to the minimum old-age pension; in 2020 this amounted to HUF 28 500 gross (c. EUR 80; reduced by taxes: HUF 25 650, c. EUR 70) per month.

The 'childcare fee' (*gyermekgondozási díj*), up until the child reaches the age of two (in cases of twins, age three) for insured parents is available for adoptive parents as well, with (favourable) modifications from 2020: if the adopted child is close to the age limit, an additional period of eligibility may be provided, up to 6 months;²⁹⁶ the fee is equal to 70 % of the average daily pay, with a ceiling of 70 % of twice the minimum wage (*minimálbér*), which was HUF 225 288 gross per month in 2020 (c. EUR 625; reduced by taxes: HUF 169 050, c. EUR 470).

In 2020, a new form of benefit was introduced, especially for (insured) parents who adopt an older child (without age limit): the 'adoption fee' (*örökbefogadói díj*) is provided for six months, and with regards to the eligibility criteria and the calculation of the amount, it is similar to the 'childcare fee'.²⁹⁷

²⁹¹ Decision of the Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) No. EBH/57/2017.

²⁹² 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: http://www.ajbh.hu/ebffsites/default/files/tajekoztatok/report_en.pdf.

²⁹³ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 55(1)(j).

²⁹⁴ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 128(2).

²⁹⁵ Act LXXXIV of 1998 on the Support of Families (*1998. évi LXXXIV. törvény a családok támogatásáról*), 24 December 1998, Article 20/B.

²⁹⁶ Act LXXXIII of 1997 on the Benefits of Compulsory Health Insurance (*1997. évi LXXXIII. törvény a kötelező egészségbiztosítás ellátásairól*), 25 July 1997, Article 42/B(1)(b).

²⁹⁷ Act LXXXIII of 1997 on the Benefits of Compulsory Health Insurance (*1997. évi LXXXIII. törvény a kötelező egészségbiztosítás ellátásairól*), 25 July 1997, Article 42/H.

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.²⁹⁸

Otherwise, the same rules apply to adoptive parents as to biological parents: dismissal with notice is prohibited during maternity leave and parental leave.²⁹⁹ Employees in executive positions are protected during maternity leave, but not during parental leave.³⁰⁰ A dismissal with immediate effect could be applied during any period of the employment relationship, 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.³⁰¹

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, most importantly, by the provisions of the Labour Code.³⁰²

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.³⁰³ For civil servants, the relevant provisions are provided by the Act on Civil Servants;³⁰⁴ these provisions are substantively identical to the respective provisions in the Labour Code. Note: under certain circumstances, insured (working / not retired) grandparents may be eligible for parental leave as well, given that the child is being raised in his/her parents' household (see details in 5.12).

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, typically 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),³⁰⁵ thus they are not entitled to insurance-based childcare benefits.

²⁹⁸ Act CCXI on the Protection of Families (2011. évi CCXI. törvény a családok védelméről), 31 December 2011, Article 18(c).

²⁹⁹ Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 65(3)(b)-(c).

³⁰⁰ Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 209(2)(b).

³⁰¹ Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 78.

³⁰² Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012.

³⁰³ Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Articles 128-130.

³⁰⁴ Act CXCIX of 2011 on Civil Servants (2011. évi CXCIX. törvény a közszolgálati tisztviselőkről), 30 December 2011, Articles 110-114.

³⁰⁵ Act LXXV of 2010 on Simplified Employment (2010. évi LXXV. törvény az egyszerűsített foglalkoztatásról), 12 July 2010, Article 10(1)(a).

5.5.4 Length of parental leave

The eligibility periods differ in the cases of the different allowances, however, as a general rule, parents are entitled to unpaid parental leave (*fizetés nélküli szabadság gyermek gondozása céljából*) until, under certain circumstances, the 10th birthday of the child.³⁰⁶

5.5.5 Age limits

The age limits differ in the cases of different types of allowances, however, parents are entitled to unpaid parental leave (*fizetés nélküli szabadság gyermek gondozása céljából*) until, under certain circumstances, the 10th birthday of the child;³⁰⁷ adoptive parents may be eligible for parental leave, under certain circumstances, until the child reaches the age of majority (18 years).

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.

The Hungarian system of parental leave (different types of child-related leave and benefits) has been criticised for perpetuating gender inequalities by encouraging arrangements where the mother stays away from the labour market for a relatively long period of time (up to two or three years per child), while the father is the primary breadwinner. However, an amendment of the regulation of the income-related 'childcare fee' (*gyermekgondozási díj*),³⁰⁸ in effect since 2016, creates the opportunity for (one of the) parents to work full time from the sixth month after the child's birth until his/her second birthday, while still getting the fee. While the number of fathers who apply for the fee is increasing (the proportion of men among the applicants grew from 4.7 % in 2016 to 8 % in 2017³⁰⁹), supposedly, it does not necessarily mean that they would actually stay at home with their young children.³¹⁰

There are scenarios where the father applies for this fee after the first six months, as his income is higher compared to the mother's (so the fee would be higher), while, in practice, the mother continues to stay at home to take care of the child, and she is left in a particularly vulnerable situation: not just without independent income, but even without insurance.³¹¹

5.5.7 Transferability of the right to parental leave

The 'childcare fee' (*gyermekgondozási díj*), and 'childcare allowance' (*gyermekgondozást segítő ellátás*) may be transferred to grandparents.

³⁰⁶ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Articles 128(1), 130.

³⁰⁷ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Articles 128(1), 130.

³⁰⁸ 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-F.

³⁰⁹ Kovács-Angel, M. (2018): 'Rákapcsoltak az apák: megduplázódott a GYED-en lévő férfiak száma' (Fathers have sped up: the number of men on parental leave has doubled) 24.hu, 17 June, <https://24.hu/belfold/2018/06/17/rakapcsoltak-az-apak-megduplazodott-a-gyed-en-levo-ferfiak-szama/>.

³¹⁰ Kardos, K. (2019): 'Kisgyermekes anyák foglalkoztatása' (Employment of mothers with young children), *Infojegyzet*, 2019/48., *Országgyűlés Hivatal* (Office of the Parliament), https://www.parlament.hu/documents/10181/1789217/Infojegyzet_2019_48_Kisgyermekes_anyak_foglalkoztatasa.pdf/7c2d9a99-777a-0b39-ad8d-3f282553c0ec?t=1573810293701.

³¹¹ 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*), pp. 55-56, available at: https://issuu.com/hungreenstone/docs/tanulmany_final_0404_vegleges_web.

5.5.8 Form of parental leave

As a general rule, parents are entitled to unpaid parental leave (*fizetés nélküli szabadság gyermek gondozása céljából*) until, under certain circumstances, the 10th birthday of the child.

Both parents of children under 16 years are entitled to additional days of paid leave: annually 2 days in the case of one child, 4 days in the case of two children, and 7 days in the case of three or more children³¹² (parents of disabled children are entitled to 2 more days annually).³¹³

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

Insurance requirements are set regarding the eligibility of allowances during parental leave. A parent is considered to be insured, thus eligible for allowances during parental leave, if (s)he has had insurance cover for 365 days over a period of two years prior to the birth of the child (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';³¹⁴ higher education students or mothers who have recently graduated (or, under special circumstances such as the death of the mother, also fathers) are eligible without being insured previously for 365 days (in their case, the calculation may be based on the amount of the minimum wage, or on their actual salary, if they had insurance cover for at least 120 days).³¹⁵

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 15 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.³¹⁶

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.

In a case in 2011,³¹⁷ 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.

³¹² Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 118(1).

³¹³ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 118(2).

³¹⁴ Act LXXXIII of 1997 on the Benefits of Compulsory Health Insurance (*1997. évi LXXXIII. törvény a kötelező egészségbiztosítás ellátásairól*), 25 July 1997, Articles 40(1), 42/A(1).

³¹⁵ Act LXXXIII of 1997 on the Benefits of Compulsory Health Insurance (*1997. évi LXXXIII. törvény a kötelező egészségbiztosítás ellátásairól*), 25 July 1997, Article 42/F.

³¹⁶ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 133.

³¹⁷ Supreme Court (*Legfelsőbb Bíróság*) Judgment No. Mfv.11134/2010/4, 2 November 2011.

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

Parents of chronically ill or severely disabled children are entitled to parental leave until the child reaches the age of 10.³¹⁸

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

As provided by the Family Protection Act, employees are protected against dismissal during the period of the adoption procedure.³¹⁹

According to the Labour Code, from 2020, prospective adoptive parents are entitled (during the adoption procedure) up to 10 days of paid leave annually, in order to meet personally with adoptable children.³²⁰

The Labour Code provides also that adoptive parents are entitled to parental leave for three years (calculated from the date when they started to take care of the child), or in the case of children older than three years, for six months.³²¹

From 2020, a 'maternity allowance' (*anyasági támogatás*), which is a once-only in-cash benefit, and is not conditional upon service time or insurance, is provided for adoptive parents (of both sexes) regardless of the age of the child; this allowance amounts to 225 % of the minimum amount of old-age pension,³²² which in 2020 was HUF 64 125 (c. EUR 178), and HUF 85 500 (c. EUR 228) in the case of twins.

The 'childcare allowance' (*gyermekgondozást segítő ellátás*), without eligibility criteria regarding service time or insurance, is paid for adoptive parents as well, with (favourable) modifications: until the child reaches the age of 3; in cases of chronically ill or disabled children: until the child reaches the age of 10, but up to an additional 6 months of allowance is available in the case of an older child's adoption, without age limit;³²³ this allowance amounts to the minimum old-age pension; in 2020 this amounted to HUF 28 500 gross (c. EUR 80; reduced by taxes: HUF 25 650, c. EUR 70) per month.

The 'childcare fee' (*gyermekgondozási díj*), up until the child reaches the age of two (in cases of twins, age three) for insured parents is available for adoptive parents as well, with (favourable) modifications from 2020: if the adopted child is close to the age limit, an additional period of eligibility may be provided, up to 6 months;³²⁴ the fee is equal to 70 % of the average daily pay, with a ceiling of 70 % of twice the minimum wage (*minimálbér*), which was HUF 225 288 gross per month in 2020 (c. EUR 625 reduced by taxes: HUF 169 050, c. EUR 470).

³¹⁸ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 130.

³¹⁹ Act CCXI on the Protection of Families (*2011. évi CCXI. törvény a családok védelméről*), 31 December 2011, Article 18(c).

³²⁰ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 55(1)(j).

³²¹ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 128(2).

³²² Act LXXXIV of 1998 on the Support of Families (*1998. évi LXXXIV. törvény a családok támogatásáról*), 24 December 1998, Article 29(1)(b).

³²³ Act LXXXIV of 1998 on the Support of Families (*1998. évi LXXXIV. törvény a családok támogatásáról*), 24 December 1998, Article 20/B.

³²⁴ Act LXXXIII of 1997 on the Benefits of Compulsory Health Insurance (*1997. évi LXXXIII. törvény a kötelező egészségbiztosítás ellátásairól*), 25 July 1997, Article 42/B(1)(b).

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;³²⁵ 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 Code³²⁶) 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 different forms of parental leave (including parent's leave to take care of a sick child) does not terminate the employment relationship, therefore the employment contract remains in force during the leave;³²⁷
- the employee has to inform the employer at least 30 days in advance of the intention to return to work;³²⁸
- it is a mandatory element of the employment contract to specify the job of the employee;³²⁹
- the employment contract may only be modified with the mutual consent of the parties;³³⁰
- 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.³³¹

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.

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.³³²

³²⁵ 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)(l); Article 9.

³²⁶ Act XXII of 1992 on the Labour Code (1992. évi XXII. törvény a Munka Törvénykönyvéről), 30 March 1992.

³²⁷ Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Articles 127-128, 130.

³²⁸ Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 133(2).

³²⁹ Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 45(1).

³³⁰ Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 58.

³³¹ Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 59.

³³² Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 83(1)(a)-(b).

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

The childcare fee (*gyermekgondozási díj*) is paid to insured parents and grandparents during parental leave in every sector.

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.

5.5.23 Case law

No relevant case law is available from 2020.

In a 2012 Supreme Court case³³³ 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.

³³³ Supreme Court (*Kúria*) Judgment No. Mfv. 10.036/2012/3, 17 April 2013.

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 (including cases when the child is stillborn or dies within two months after birth); the days of the leave are allocated as requested by the father.³³⁴ Paternal leave is covered from the state budget.³³⁵

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,³³⁶ which may provide a certain level of protection against unfavourable treatment of workers who take paternity leave.

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 for *force majeure*

5.7.1 Time off for *force majeure*

According to the Labour Code, workers are entitled to be away from work on grounds of *force majeure*, for the duration of personal or family circumstances of special concern or justified by unavertable causes.³³⁷

In the event of the death of a relative, employees are entitled to two days' paid leave³³⁸ (100 % of the average daily salary).³³⁹

Short-term leave is also granted for the period of receiving IVF treatment in a healthcare institution.³⁴⁰

5.7.2 Case law

Relevant case law is not available in relation to time off for *force majeure*.

³³⁴ Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 118(4).

³³⁵ 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).

³³⁶ 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).

³³⁷ Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 55(1)(k).

³³⁸ Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 55(1)(f).

³³⁹ Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 146(3)(b).

³⁴⁰ Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 55(1)(b).

5.8 Care leave

5.8.1 Existence of care (or carers') leave in national law

Unpaid leave of between 30 days and 2 years is available to care for relatives subject to medical certification that this is necessary.³⁴¹ 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 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*)³⁴² for the duration of the unpaid leave, from the social security system. Four hours of daily work is allowed while receiving this allowance, relating to the care of adult family members / relatives. In 2019, the amount of the care allowance varied between HUF 39 365 and HUF 70 857 gross (reduced by taxes: between HUF 35 429 and HUF 63 772; c. EUR 98 and EUR 177) per month depending upon the condition of the person being cared for.

Parents are entitled to sick leave to take care of their children (under the age of 12 years, the allowance amounts to 50-60 % of the parent's average daily salary): 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).³⁴³

From 2019, parents are entitled to take a new form of care leave, to care at home for their disabled or permanently ill children (*gyermekek otthonozási díja*).³⁴⁴ The amount of the fee provided for this leave was HUF 123 910 (EUR 344) gross in 2020 (reduced by taxes: HUF 111 519, c. EUR 310). The parent may perform paid work from home, or outside the home up to four hours per day.

5.8.2 Case law

In a key case adjudicated by the Equal Treatment Authority in 2017, female employees (shift workers) claimed that the preconditions of the extra '13th month payment' (an in-cash benefit), set by the collective agreement, constituted indirect discrimination, as only those employees who were away from work for less than 25 days per year were eligible for the benefit. The calculation of the workers' days of absence did not include the annual paid holiday, work-related illness, or illness resulting in hospitalisation. Although the regulation appeared to be neutral, it was disproportionately detrimental towards mothers who had been on sick leave to take care of their children under the age of 12 (which is the age limit in the case of care leave for parents 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 who did not have children under the age

³⁴¹ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 131.

³⁴² 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.

³⁴³ Act LXXXIII of 1997 on the Benefits of Compulsory Health Insurance (*1997. évi LXXXIII. törvény a kötelező egészségbiztosítás ellátásairól*), 25 July 1997, Article 44.

³⁴⁴ Act III of 1993 on Social Governance and Social Benefits (*1993. évi III. törvény a szociális igazgatásról és szociális ellátásokról*), 27 January 1993, Articles 38-39, 39A-C.

of 12. The statistical investigation showed that the rule determined by the collective agreement was disproportionately disadvantageous for female workers with young children compared to workers of both sexes without children. On the basis of this statistical evidence, and the fact that the employer did not provide any objective justification or rely on any specific exemption, the Equality Body did not apply the objective justification test but concluded that indirect discrimination had occurred, and ordered the employer to cease the discriminatory practice, to reconsider the eligibility criteria of the benefit, and to send a written report on the measures taken to improve the situation within 60 days. The Equal Treatment Authority did not impose a fine in this case.³⁴⁵

5.9 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.

5.10 Flexible working time arrangements

5.10.1 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 four years (or in the case of three or more children in the family, up to the age of six of the youngest) and (s)he requests the modification of the employment contract to a part-time job.³⁴⁶ The Labour Code refers to an 'employee' without specifying whether it is the parent of the child or some other relative. There are no specific eligibility criteria or any limitations on its purpose; the size of the firm is of no relevance. The part-time work and the childcare allowance (*gyermekgondozást segítő ellátás*) or childcare fee (*gyermekgondozási díj*) may be combined.

The right to reduced working time does not apply to workers in simplified employment relationships.³⁴⁷

A special 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).³⁴⁸

5.10.2 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.³⁴⁹ When scheduling working time, the employer is legally obliged to take into account the requirements of workplace safety and the nature of the work,³⁵⁰ but not the employees' personal needs.

³⁴⁵ 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>. See also at Section 3.4.2 of this report.

³⁴⁶ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 61(3).

³⁴⁷ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 203(1)(e).

³⁴⁸ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 55(1)(e).

³⁴⁹ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Articles 93(1) and 96(1).

³⁵⁰ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 97(1).

5.10.3 Right to work from home or remotely

Working from home *per se* is not regulated in the Labour Code, working remotely is based on the decision of 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.³⁵¹

During the period of the first wave of COVID-19 in Hungary, between 19 March and 1 July 2020, the Government adopted a resolution that during this period the employer can unilaterally order the employee to work from home or work remotely.³⁵² From 12 November 2020, up to now, remote work can be based on the mutual agreement of the parties, the employer cannot unilaterally order the employee to work remotely. The newly adopted Government decree³⁵³ does not regulate working from home, therefore the rules for home office remain unclear, which may lead to legal disputes in the future.

5.10.4 Other legal rights to flexible working arrangements

Other legal rights to flexible working arrangements are not provided.

5.10.5 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.³⁵⁴ 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.

5.11 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.

It should be mentioned, however, that Hungary was one of the four Member States voting against the adoption of Directive 2019/1158 (on work-life balance for parents and carers and repealing Council Directive 2010/18/EU) in June 2019.³⁵⁵ According to Hungary's statement:

³⁵¹ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 96(2)-(3).

³⁵² Government Decree No. 47/2020 (18 March) on immediate measures necessary for alleviating the effects of the coronavirus pandemic on the national economy (*47/2020. (III. 18.) Korm. rendelet a koronavírus világgjárvány nemzetgazdaságot érintő hatásának enyhítése érdekében szükséges azonnali intézkedésekről*), Article 6(2)(b).

³⁵³ Government Decree No. 487/2020 (11 November) on the application of the rules of remote work during the state of danger (*487/2020. (XI. 11.) Korm. rendelet a veszélyhelyzet során a távmunkával kapcsolatos szabályok alkalmazásáról*), Article 3.

³⁵⁴ Decision of the Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) No. EBH/57/2017.

³⁵⁵ Voting result: Directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU (First reading), Interinstitutional File: 2017/0085 (COD), 13 and 14 June 2019, Luxembourg, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CONSIL:ST_10282_2019_INIT&from=EN.

'[o]ne of the key elements of the Hungarian family policy is to support the adequate balance between work and family life, to help women with children to be able to return to work and to support men's involvement in the life of the family,'

but:

'Hungary is strongly convinced that we shall not intervene in the life of families and force their decision regarding the uptake of parental leave, without respecting their freedom of decision based on their personal, social and financial circumstances. This is particularly true regarding the non-transferability of parental leave.'³⁵⁶

According to an analysis from 2020 of the labour market situation of women in the Visegrád countries (i.e. in Hungary, Slovakia, the Czech Republic and Poland), '[t]hough parental leaves are aimed at both parents, the provision of leaves for the exclusive use of fathers is poor'.³⁵⁷

5.12 Remaining issues

The Hungarian system of types of leave and allowances related to childcare, available for parents and, in certain cases, for grandparents or foster parents as well, is very complex and diverse.

In cases of insurance-dependent benefits, as a default, a mother/parent/grandparent 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 (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');³⁵⁸ higher education students or mothers who have recently graduated (or, under special circumstances such as the death of the mother, also fathers) are eligible without being insured previously for 365 days (in their case, the calculation may be based on the amount of the minimum wage, or on their actual salary, if they had insurance cover for at least 120 days).³⁵⁹

Following maternity leave, up until the child reaches the age of two (in cases of twins, age three), a 'childcare fee' (*gyermekgondozási díj*)³⁶⁰ is paid to insured (working/studying) parents and from 2020, working grandparents³⁶¹ and paid foster parents³⁶² are also eligible. According to the eligibility criteria, parents are supposed to raise the child in their own household; in the case of grandparents, the child is supposed to be raised in his/her parents' household. Parents may perform paid work besides getting this fee; grandparents are not to perform paid work unless they work from home.

The amount of the fee:

- In the case of working parents and grandparents, it is equal to 70 % of the average daily pay, with a ceiling of 70 % of twice the minimum wage (*minimálbér*), which

³⁵⁶ See: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CONSIL:ST_9310_2019_ADD_1&from=EN.

³⁵⁷ Cukrowska-Torzewska, E., Lovasz, A., Rigo, M. (2020): 'The Labor Market Situation of Women in the Visegrad Countries', CERS-IE WP, 2020/45 [November], <https://www.mtaki.hu/wp-content/uploads/2020/11/CERSIEWP202045.pdf>.

³⁵⁸ Act LXXXIII of 1997 on the Benefits of Compulsory Health Insurance (1997. évi LXXXIII. törvény a kötelező egészségbiztosítás ellátásairól), 25 July 1997, Articles 40(1), 42/A(1).

³⁵⁹ Act LXXXIII of 1997 on the Benefits of Compulsory Health Insurance (1997. évi LXXXIII. törvény a kötelező egészségbiztosítás ellátásairól), 25 July 1997, Article 42/F.

³⁶⁰ 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-G.

³⁶¹ Act LXXXIII of 1997 on the Benefits of Compulsory Health Insurance (1997. évi LXXXIII. törvény a kötelező egészségbiztosítás ellátásairól), 25 July 1997, Article 42/G.

³⁶² 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(3).

was HUF 225 288 gross per month in 2020 (c. EUR 625; reduced by taxes: HUF 169 050, c. EUR 470);

- In the case of parents studying at BA level: a fixed fee, 70 % of the gross minimum wage, HUF 112 644 gross per month in 2020 (c. EUR 313; reduced by taxes HUF 84 525, c. EUR 235);
- In the case of parents studying at MA or PhD levels: a fixed fee, 70 % of the gross minimum wage for secondary education graduates (*garantált bérminimum*), HUF 147 420 gross per month in 2020 (c. EUR 410; reduced by taxes HUF 110 565, c. EUR 307);
- In the case of paid foster parents: at least 55 % of the gross minimum wage, HUF 85 550 in 2020 (c. EUR 238; reduced by taxes HUF 64 163, c. EUR 178).

The 'childcare allowance' (*gyermekgondozást segítő ellátás*), without eligibility criteria regarding service time or insurance, is 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) and amounts to the minimum old-age pension;³⁶³ in 2020 this amounted to HUF 28 500 gross (c. EUR 80; reduced by taxes: HUF 25 650, c. EUR 70) per month. (Note: the amount of this benefit has not been increased since 2008). This allowance is paid:

- for parents: they shall raise the child in their own household, and they shall not perform paid work during the first six months of the child's life;
- for grandparents: the child shall be raised in the parents' household, and the grandparent shall not perform any paid work until the child's third birthday, after that, (s)he may work from home, or outside home for a maximum of 30 hours per week.

The 'childcare support' (*gyermeknevelési támogatás*), without eligibility criteria regarding service time or insurance, is paid for parents who raise at least three minor children in their household (from the third until the eighth birthday of the youngest) and amounts to the minimum old-age pension;³⁶⁴ in 2020 this amounted to HUF 28 500 gross (c. EUR 80; reduced by taxes: HUF 25 650, c. EUR 70) per month. (Note: the amount of this benefit has not been increased since 2008). The parent may perform paid work from home, or outside home for a maximum of 30 hours per week.

As for the general trends in the field of work-life balance in Hungary, a study from 2019, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the FEMM Committee, highlighted that since 2011, the Government has committed itself to promoting family mainstreaming (instead of gender mainstreaming).³⁶⁵

As for the impacts of the COVID-19 crisis, supposedly, and according to anecdotal evidence, mothers'/parents' rights were violated during the pandemic (when mothers/parents had to balance between working from home and taking care of their children); however, available case law from 2020 may not give a reliable picture of the situation. Courts (and also the Equal Treatment Authority) were closed temporarily in the

³⁶³ Act LXXXIV of 1998 on the Support of Families (1998. évi LXXXIV. törvény a családok támogatásáról), 24 December 1998, Articles 20-22.

³⁶⁴ Act LXXXIV of 1998 on the Support of Families (1998. évi LXXXIV. törvény a családok támogatásáról), 24 December 1998, Articles 23-24.

³⁶⁵ Hungler, S., Kende, Á. (2019) 'Nők a család- és foglalkoztatáspolitikai keresztútján' ('Women at the crossroads of family policies and employment policies'), *Pro Futuro*, vol. 9, no. 2., available at: <https://doi.org/10.26521/Profuturo/1/2019/3881>.

spring of 2020 due to the national lockdown relating to the first wave of COVID-19, and although some hearings were held online, the processes have been slowed down, apparently (parties may ask for the delay of hearings, with respect to the virus situation, and courts are willing to accept these requests). Moreover, some victims may have been discouraged by the practical difficulties (and the health risks) of starting a litigation procedure in the middle of the pandemic, or because they felt too vulnerable to confront their employers among the economic hardships relating to COVID-19.

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,³⁶⁶ and the prohibition of direct and indirect discrimination is applicable to occupational social security schemes³⁶⁷ (detailed regulations on social security are also included in the Equal Treatment Act).³⁶⁸

6.3 Personal scope

The personal scope, as defined by the Equal Treatment Act³⁶⁹ and the Act on Occupational Pensions and Institutions (adopted in 2007),³⁷⁰ 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 Pensions³⁷¹ now expressly lists all forms of employment relationships that fall under the scope of the Act, provided by:

- Act on the Labour Code,³⁷²
- Act on Civil Servants;³⁷³
- Act on Public Servants,³⁷⁴

³⁶⁶ 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.

³⁶⁷ 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.

³⁶⁸ 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.

³⁶⁹ 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.

³⁷⁰ Act CXVII of 2007 on Employers' Pensions and Institutions (2007. évi CXVII. törvény a foglalkoztatói nyugdíjról és intézményeiről), 26 October 2007.

³⁷¹ Act CXVII of 2007 on Employers' Pensions and Institutions (2007. évi CXVII. törvény a foglalkoztatói nyugdíjról és intézményeiről), 26 October 2007, Article 2(23).

³⁷² Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012.

³⁷³ Act CXCIX of 2011 on Civil Servants (2011. évi CXCIX. törvény a közszolgálati tisztviselőkről), 30 December 2011.

³⁷⁴ Act XXXIII of 1992 on the Legal Status of Public Servants (1992. évi XXXIII. törvény a közalkalmazottak jogállásáról), 2 June 1992.

- Act on the Status of Military Personnel;³⁷⁵
- Act on the Service Relationship of Professional Members of Law Enforcement Organisations;³⁷⁶
- Act on the Service Status of Judicial Employees;³⁷⁷
- Act on the Status and Remuneration of Judges;³⁷⁸
- Act on the Status of the Chief Public Prosecutor, Prosecutors and Other Prosecutorial Employees and the Prosecutorial Career;³⁷⁹
- Act CXXV of 2018 on the Governmental Administration;³⁸⁰
- Act CXXX of 2020 on the Legal Status of the Personnel of the National Tax and Customs Administration,³⁸¹ and
- The clergy.

6.4 Material scope

The material scope, as defined by the Equal Treatment Act³⁸² and the Act on Occupational Pensions and Institutions,³⁸³ 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.³⁸⁴

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.³⁸⁵

³⁷⁵ Act CCV of 2012 on the Status of Military Personnel (*2012. évi CCV. törvény a honvédek jogállásáról*), 18 December 2012.

³⁷⁶ 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.

³⁷⁷ Act LXVIII of 1997 on the Service Status of Judicial Employees (*1997. évi LXVIII. törvény az igazságügyi alkalmazottak szolgálati jogviszonyáról*), 23 July 1997.

³⁷⁸ Act CLXII of 2011 on the Status and Remuneration of Judges (*2011. évi CLXII. törvény a bírák jogállásáról és javadalmazásáról*), 2 December 2011.

³⁷⁹ 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 ügyészségi alkalmazottak jogállásáról és az ügyészi életpályáról*), 28 November 2011.

³⁸⁰ Act CXXV of 2018 on the Governmental Administration (*2018. évi CXXV. törvény a kormányzati igazgatásról*), 21 December 2018.

³⁸¹ Act CXXX of 2020 on the Legal Status of the Personnel of the National Tax and Customs Administration (*2020. évi CXXX. törvény a Nemzeti Adó- és Vámhivatal személyi állományának jogállásáról*), 11 December 2020.

³⁸² 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.

³⁸³ Act CXVII of 2007 on Employers' Pensions and Institutions (*2007. évi CXVII. törvény a foglalkoztatói nyugdíjról és intézményeiről*), 26 October 2007.

³⁸⁴ 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.

³⁸⁵ 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.

6.5 Exclusions

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

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 be developed 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 2016,³⁸⁶ 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'³⁸⁷ 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.'³⁸⁸

³⁸⁶ Act CXVII of 2007 on Occupational Pensions and Institutions (*2007. évi CXVII. törvény a foglalkoztatói nyugdíjról és intézményeiről*), 26 October 2007.

³⁸⁷ 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.

³⁸⁸ 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.

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

A form of old-age pension, the so-called Women 40 (*Nők 40*) pension scheme, provides women with at least 40 years of 'eligibility period' (including periods of maternity or parental leave) with an early retirement option.³⁸⁹

7.1.3 Overview of national acts

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

- Act on State Pensions;³⁹⁰
- Act on Social Governance and Social Benefits.³⁹¹

7.1.4 Political and societal debate and pending legislative proposals

The legislation on the early retirement scheme for women 'Women 40' (*Nők 40*)³⁹² has been slightly amended recently. The amendment does not affect the core concept of the legislation: the relevant tax rules have been modified, for the benefit of women in this scheme who are working while being retired, and it is also beneficial for the employers of these women. From 1 July 2020, only 15 % personal income tax is due on the income of these women, but not the other (social insurance, etc.) taxes. Prior to 1 July 2020, this alleviation was only available in the cases of those women who were retired within the framework of this ('Women 40') scheme and were meanwhile working based on an employment contract. Now this alleviation is extended to other forms of employment, including assignment contracts (which are prevalent in the Hungarian context), but not to public service employment.

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.³⁹³

³⁸⁹ Act LXXXI of 1997 on State Pensions (*1997. évi LXXXI. törvény a társadalombiztosítási nyugellátásról*), 25 July 2007, Article 18(2a)-(2d).

³⁹⁰ Act LXXXI of 1997 on State Pensions (*1997. évi LXXXI. törvény a társadalombiztosítási nyugellátásról*), 25 July 1997.

³⁹¹ Act III of 1993 on Social Governance and Social Benefits (*1993. évi III. törvény a szociális igazgatásról és szociális ellátásokról*), 27 January 1993.

³⁹² Act LXXXI of 1997 on State Pensions (*1997. évi LXXXI. törvény a társadalombiztosítási nyugellátásról*), 25 July 2007, Article 18(2a)-(2d).

³⁹³ 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.

However, according to the provision of the Fundamental Law: 'An Act may lay down the conditions for entitlement to state pension also with regard to the requirement for stronger protection for women'.³⁹⁴

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,³⁹⁵ 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.³⁹⁶

7.4 Material scope

The general rules on the material scope of the Equal Treatment Act are applicable to all statutory social security schemes,³⁹⁷ 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 amendment³⁹⁸ of the Act on State Pensions (the details of this measure have been amended several times since it came into force in 2011) is relevant, which established an early retirement option only for women.³⁹⁹ The 'Women 40' (*Nők 40*) pension scheme is a form of old-age pension available for women with at least 40 years of 'eligibility period', which is somewhat different from the concept of 'contribution period' or 'service period': in this context, it refers to time spent with gainful activity, and it may include time spent caring for children (different forms of maternity or parental leave).⁴⁰⁰

According to an analysis from 2018, the 'Women 40' scheme is a 'flawed pension product' for three main reasons: it provides a lower pension for women (compared to the pension they could have if they did not make use of the early retirement option), which may lead to situations where eligible women are pressured by their families, colleagues or even by their employers (informally) to make use of the possibility of early retirement; it is discriminatory towards men (who have been involved fathers), and the scheme is not synchronised with the (ongoing) increase of the general retirement age.⁴⁰¹ It should also be mentioned that the OECD's policy paper from 2017 suggested that Hungary should reduce 'work disincentives for the elderly' and remove 'pathway into early retirement for women'.⁴⁰² The authors of an analysis from 2017 claim that the 'Women 40' scheme would

³⁹⁴ Fundamental Law of Hungary (*Magyarország Alaptörvénye*), Article XIX(4).

³⁹⁵ 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.

³⁹⁶ 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(c) and (j).

³⁹⁷ 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.

³⁹⁸ 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.

³⁹⁹ Act LXXXI of 1997 on State Pensions (1997. évi LXXXI. törvény a társadalombiztosítási nyugellátásról), 25 July 2007, Article 18(2).

⁴⁰⁰ Act LXXXI of 1997 on State Pensions (1997. évi LXXXI. törvény a társadalombiztosítási nyugellátásról), 25 July 2007, Article 18(2a)-(2d).

⁴⁰¹ Gerencsér, L. (2018) 'Nyugdíjvita: A „Nők 40” hibás nyugdíjtermék' (Debate on Pensions: The "Women40" is a flawed pension product), *Új Egyenlőség*, 9 December, available at: <http://ujegyenloseg.hu/nyugdijvita-a-nok-40-hibas-nyugdijtermek/>.

⁴⁰² OECD (2017) 'Hungary', in *Economic Policy Reforms 2017: Going for Growth*, p. 205, available at: <http://www.oecd.org/economy/growth/Going-for-Growth-Hungary-2017.pdf>.

increase pension-related gender inequality, as 'men are overrepresented among high income earners and women among low earners (due to their lower wages and generally shorter employment records)'.⁴⁰³ The pension gap would be further widened by the gradual increase of the general retirement age, while the early retirement option for women remains unchanged.⁴⁰⁴

The competent State Secretary of the Ministry of Human Capacities claimed in January 2019 that the importance of the 'Women 40' scheme is shown by the data that 241 000 women have made use of it since 2011, and the scheme 'reflects the basic value of the Government of providing the greatest support for those who combine work and raising children', and added that the scheme is 'rather meant to be a measure of supporting families than a pension policy provision, because it helps families, for example, by allowing grandmothers to participate in taking care of grandchildren'.⁴⁰⁵ According to expert opinion, the (obviously very popular) 'Women 40' scheme not only reflects the Hungarian Government's conservative approach to women's roles, but the basic concept of it is unprecedented in other countries, i.e. that a pension scheme is explicitly aimed at encouraging the fertility of younger generations (by promoting grandmothers' unpaid care work in families).⁴⁰⁶

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,⁴⁰⁷ which based its decision on the Article on Initiating Referendums, on the European Citizens' Initiative, and on the Referendum Procedure,⁴⁰⁸ providing 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 Fundamental Law.⁴⁰⁹ 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.⁴¹⁰ 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.⁴¹¹ However, a majority of the Constitutional Court agreed that the referendum cannot be allowed

⁴⁰³ Szikra, D., Kiss, D. (2017) 'Beyond Nationalization: Assessing the Impact of the 2010-2012 Pension Reform in Hungary', *Review of Sociology* Vol. 27, No. 4, p. 100, available at: http://szociologia.hu/dynamic/2017_04_83_107_oldal.pdf.

⁴⁰⁴ Szikra, D. (2017) 'A magyar nyugdíjrendszer a rendszerváltás óta' (The Hungarian pension system since the political change) in: Ferge, Zs. (ed.) *Társadalom - és szociálpolitika, Magyarország, 1990-2015* (Social politics and social policies, Hungary, 1990-2015) (Budapest: Osiris) p. 306, available at: http://real.mtak.hu/84683/1/TB_25_Szikra.pdf.

⁴⁰⁵ See the official website of the Hungarian Government: 'Több mint 240 ezren vették igénybe a Nők40 programot 2011 óta' (More than 240 000 have made use of the Women40 scheme since 2011), 12 January 2019, available at: <https://2015-2019.kormany.hu/hu/emberi-eroforrasok-miniszteriuma/parlamentiallamtitkarsag/hirek/tobb-mint-240-ezren-vettek-igenybe-a-nok40-programot-2011-ota>.

⁴⁰⁶ Szikra, D. (2017) 'A magyar nyugdíjrendszer a rendszerváltás óta' (The Hungarian pension system since the political change) in: Ferge, Zs. (ed.) *Társadalom - és szociálpolitika, Magyarország, 1990-2015* (Social politics and social policies, Hungary, 1990-2015) (Budapest: Osiris) pp. 305-306, available at: http://real.mtak.hu/84683/1/TB_25_Szikra.pdf.

⁴⁰⁷ National Election Committee (*Nemzeti Választási Bizottság*), Decision No. 83/2015, 30 April 2015.

⁴⁰⁸ 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 kezdeményezésről, valamint a népszavazási eljárásról), 23 December 2013, Article 11.

⁴⁰⁹ Fundamental Law of Hungary (*Magyarország Alaptörvénye*), 25 April 2011, Article 8(3)(b).

⁴¹⁰ Constitutional Court Case No. IV/02774/2015 (submitted 27 August 2015), IV/02779/2015 (submitted 28 August 2015), IV/02822/2015 (3 September 2015).

⁴¹¹ Constitutional Court Decision (*AB határozat*) No. 28/2015. (IX. 24.), 22 September 2015.

because it violates the provision of the Fundamental Law that prohibits the holding of any referendum on issues related to the central budget and its regulating laws.⁴¹² 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,⁴¹³ fundamental rights must be enjoyed by all without differentiating on the basis of sex,⁴¹⁴ and that men and women are equal before the law.⁴¹⁵ Specific rules, however, allow Parliament to adopt laws that protect families, children, women, the elderly and persons living with disabilities.⁴¹⁶ The last sentence of Article XIX(4)⁴¹⁷ 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.

⁴¹² Fundamental Law of Hungary (*Magyarország Alaptörvénye*), 25 April 2011, Article 8(3)(b).

⁴¹³ Fundamental Law of Hungary (*Magyarország Alaptörvénye*), 25 April 2011, Article XV.

⁴¹⁴ Fundamental Law of Hungary (*Magyarország Alaptörvénye*), 25 April 2011, Article XV(1).

⁴¹⁵ Fundamental Law of Hungary (*Magyarország Alaptörvénye*), 25 April 2011, Article XV(2).

⁴¹⁶ Fundamental Law of Hungary (*Magyarország Alaptörvénye*), 25 April 2011, Article XV(5).

⁴¹⁷ 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

Female entrepreneurs interviewed within the framework of a research project, claimed that they were affected by sexist stereotypes throughout their professional lives.⁴¹⁸

According to a recent publication, the proportion of women (35 %) among entrepreneurs is lower than the proportion of women (46 %) among those who are employed.⁴¹⁹ In 2017, a higher proportion (62 %) of female entrepreneurs worked alone, while in the case of male entrepreneurs, only 48 %.⁴²⁰

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';⁴²¹
- in the Act on Occupational Pensions, the notion of self-employed person covers both private and corporate entrepreneurs;⁴²² 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 may be mentioned that contain references to the transposition of Directive 2010/41/EU: the Equal Treatment Act⁴²³ and the often-modified Act on the

⁴¹⁸ Keveházi, K. (2017), 'Nem-ügy. Nemi alapú diszkrimináció a munkahelyeken és a vállalkozási szférában' (Sex matter. Sex-based discrimination at workplaces and in the field of entrepreneurship), in Csiszárík-Kocsir, Á., *Vállalkozásfejlesztés a XXI. században* (Entrepreneurship development in the 21st century) VIII. (Budapest: Óbudai Egyetem), pp. 255-272, available at: http://kgk.uni-obuda.hu/sites/default/files/18_KevehaziKata.pdf.

⁴¹⁹ Kardos, K. (2020): 'Önfoglalkoztatás' (Self-Employment), *Infogygyzet*, 2020/30., *Országgyűlés Hivatal* (Office of the Parliament), https://www.parlament.hu/documents/10181/4464848/Infogygyzet_2020_30_onfoglalkoztatatas.pdf/d0521bbc-9015-7624-d29e-171503509c5c?t=1588584087300.

⁴²⁰ *Központi Statisztikai Hivatal* (Central Statistical Office): *Munkaerőpiaci helyzetkép, 2014–2018* (Status Report on the Labour Market, 2014–2018), <http://www.ksh.hu/docs/hun/xftp/idoszaki/munkerohelyz/munkerohelyz17.pdf>.

⁴²¹ 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.

⁴²² Act CXVII of 2007 on Occupational Pensions and Institutions (2007. évi CXVII. törvény a foglalkoztatói nyugdíjról és intézményeiről), 26 October 2007.

⁴²³ 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.

Benefits of Compulsory Health Insurance.⁴²⁴ 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:

- Article 17 of Act IV of 1991 on the Promotion of Employment and on Assistance Provided for the Unemployed⁴²⁵ 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,⁴²⁶ the notion of self-employed covers both private and corporate entrepreneurs; and
- the Act on Private Entrepreneurs and Sole Proprietorship⁴²⁷ 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,⁴²⁸ and from 2009, there is a special arrangement for same-sex couples: registered partnership (*bejegyzett élettársi kapcsolat*).⁴²⁹ The rights of life partners in the specific context of self-employment are, however, not regulated.

⁴²⁴ Act LXXXIII of 1997 on the Benefits of Compulsory Health Insurance (*1997. évi LXXXIII. törvény a kötelező egészségbiztosítás ellátásairól*), 25 July 1997.

⁴²⁵ 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.

⁴²⁶ Act CXVII of 2007 on Occupational Pensions and Institutions (*2007. évi CXVII. törvény a foglalkoztatói nyugdíjról és intézményeiről*), 26 October 2007.

⁴²⁷ Act CXV of 2009 on Private Entrepreneurs and Sole Proprietorships (*2009. évi CXV. törvény az egyéni vállalkozóról és az egyéni cégről*), 26 November 2009.

⁴²⁸ Act V of 2013 on the Civil Code (*2013. évi V. törvény a Polgári Törvénykönyvről*), 26 February 2013, Section 6:514(1).

⁴²⁹ 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 kapcsolatról, az ezzel összefüggő, valamint az élettársi viszony igazolásának megkönnyítéséhez szükséges egyes törvények módosításáról*), 8 May 2009.

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.⁴³⁰

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*).⁴³¹ 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 yet taken any positive action measures in the field of self-employment, although the Action Plan on the Empowerment of Women in the Family and in Society (2021-2030), launched by the Government in October 2020, includes a vague measure on supporting women's entrepreneurship.⁴³²

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 Act⁴³³ 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

⁴³⁰ 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.

⁴³¹ 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)(b), Article 5(d) and Article 21(f).

⁴³² Governmental Resolution 1685/2020 on the adoption of the Action Plan, prepared for the European Union, 'The Empowerment of Women in the Family and in Society' (2021-2030), and on the detailed plan of its implementation in 2021-2022 (1685/2020. (X. 22.) Korm. határozat az Európai Unió számára készített, „A nők szerepének erősítése a családban és a társadalomban” (2021-2030) akcióterv elfogadásáról, valamint a végrehajtásának a 2021-2022. évekre szóló Intézkedési Tervéről), 22 October 2020.

⁴³³ 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.

is safeguarded by the provision of the Equal Treatment Act⁴³⁴ which obliges the authorities to follow the rules on equal treatment in all their legal relationships, and also by the provision on social security.⁴³⁵

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 system, the amount of which is equal to 70 % of the average daily wage of the mother (with no ceiling on payments).⁴³⁶ (Note: the Minister Without Portfolio for Families announced in November 2020⁴³⁷ that the gross amount of the infant care fee will be increased, from July 2021, to 100 % of the daily average pay, and because of tax alleviations, the take-home amount of this fee will be somewhat higher than the previous wage of the mother).

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;⁴³⁸ it was HUF 28 500 (c. EUR 80) gross (reduced by taxes: HUF 25 650, c. EUR 70) per month in 2020. Note: the amount of this benefit has not been increased since 2008.

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 precarious 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 an occupational pension institution.⁴³⁹

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).

⁴³⁴ 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.

⁴³⁵ 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.

⁴³⁶ 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.

⁴³⁷ See the announcement (in Hungarian) published via the Facebook page of the Minister Without Portfolio for Families, 10 November 2020, <https://www.facebook.com/watch/?v=387722659035026>.

⁴³⁸ Act LXXXIV of 1998 on the Support of Families (*1998. évi LXXXIV. törvény a családok támogatásáról*), 24 December 1998, Articles 20-22.

⁴³⁹ Act CXVII of 2007 on Occupational Pensions and Institutions (*2007. évi CXVII. törvény a foglalkoztatói nyugdíjról és intézményeiről*), 26 October 2007, Article 8(4).

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*).⁴⁴⁰

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

Apparently, many small-scale businesses, typically run by self-employed women, were hit hard by the COVID-19 situation, e.g. small beauty salons, flower shops.

⁴⁴⁰ 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)(b).

9 Goods and services (Directive 2004/113)⁴⁴¹

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.

The authors of a study (published in late 2020) about the Hungarian sexcam industry suppose that due to the economic impact of COVID-19, more women will be forced to become a 'model' via an interactive webcamming platform.⁴⁴²

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.⁴⁴³

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.⁴⁴⁴

⁴⁴¹ 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>.

⁴⁴² Barna, E., Katona, N. (2021): *A magyarországi szexkamera-iparág: Digitális technológia, platformkapitalizmus és a szexipar normalizálása* (The Hungarian sexcam industry: Digital technology, platform capitalism and the normalisation of the sex trade), *Replika*, no. 117-118, pp. 93-125, doi: 10.32564/117-118.4.

⁴⁴³ 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.

⁴⁴⁴ 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.

9.4 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.

9.5 Justification of differences in treatment

According to the general provisions on exceptions of the Equal Treatment Act,⁴⁴⁵ 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 c. 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.⁴⁴⁶ 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.⁴⁴⁷ 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.⁴⁴⁸ The decision

⁴⁴⁵ 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).

⁴⁴⁶ 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.

⁴⁴⁷ 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).

⁴⁴⁸ Magyarkúti, 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/.

of the Equal Treatment Authority in 2013⁴⁴⁹ became final by the decision of the Constitutional Court in 2016.⁴⁵⁰

In a similar case,⁴⁵¹ 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 c. EUR 7 to enter (HUF 2 500), while women only need to pay c. EUR 2.70 (HUF 1 000), whilst also receiving a c. EUR 1.40 (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.⁴⁵²

9.6 Actuarial factors

Article 5(1) of Directive 2004/113 was transposed to national law by a provision of the Equal Treatment Act.⁴⁵³ 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.⁴⁵⁴

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 specifies⁴⁵⁵ 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 2004/113.⁴⁵⁶ Moreover, it specifies⁴⁵⁷ 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 provisions⁴⁵⁸ 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.⁴⁵⁹

⁴⁴⁹ Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) Decision No. EBH/545/13/2013.

⁴⁵⁰ Constitutional Court Decision (*AB határozat*) No.3001/2016. (I. 15.), 15 January 2016.

⁴⁵¹ Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) Decision No. EBH/22/2016.

⁴⁵² Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) Decision No. EBH/357/2018.

⁴⁵³ 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.

⁴⁵⁴ Act LXXXVIII of 2014 on the Business of Insurance (2014. évi LXXXVIII. törvény a biztosítási tevékenységről), 22 December 2014.

⁴⁵⁵ Act LXXXVIII of 2014 on the Business of Insurance (2014. évi LXXXVIII. törvény a biztosítási tevékenységről), 22 December 2014, Article 134(1).

⁴⁵⁶ 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.

⁴⁵⁷ Act LXXXVIII of 2014 on the Business of Insurance (2014. évi LXXXVIII. törvény a biztosítási tevékenységről), 22 December 2014, Article 134(2).

⁴⁵⁸ Act LXXXVIII of 2014 on the Business of Insurance (2014. évi LXXXVIII. törvény a biztosítási tevékenységről), 22 December 2014, Article 134(2)(c).

⁴⁵⁹ 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 regulation in the Act on the Business of Insurance correctly follows the timing provided by the EU *acquis*: the unisex rule does not apply to contracts concluded before 21 December 2007.⁴⁶⁰ 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 2012,⁴⁶¹ and the Act specifies⁴⁶² that only derogations allowed under the unisex rule⁴⁶³ 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 Act⁴⁶⁴ (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.⁴⁶⁵ 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),⁴⁶⁶ 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 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.⁴⁶⁷

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

⁴⁶⁰ Act LXXXVIII of 2014 on the Business of Insurance (2014. évi LXXXVIII. törvény a biztosítási tevékenységről), 22 December 2014, Article 447.

⁴⁶¹ Act LXXXVIII of 2014 on the Business of Insurance (2014. évi LXXXVIII. törvény a biztosítási tevékenységről), 22 December 2014, Article 447.

⁴⁶² Act LXXXVIII of 2014 on the Business of Insurance (2014. évi LXXXVIII. törvény a biztosítási tevékenységről), 22 December 2014, Article 447.

⁴⁶³ Act LXXXVIII of 2014 on the Business of Insurance (2014. évi LXXXVIII. törvény a biztosítási tevékenységről), 22 December 2014, Article 134.

⁴⁶⁴ 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.

⁴⁶⁵ Act LXXXVIII of 2014 on the Business of Insurance (2014. évi LXXXVIII. törvény a biztosítási tevékenységről), 22 December 2014.

⁴⁶⁶ Governmental Decree 1/2012 (I. 20.) on the System of Student Loans (1/2012. (I. 20.) Korm. rendelet a hallgatói hitelrendszeréről), 20 January 2012.

⁴⁶⁷ Constitutional Court Decision (*AB határozat*) No.3363/2018. (XI. 28.), 20 November 2018.

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.⁴⁶⁸ In this case, the Equal Treatment Authority concluded that the complainant suffered direct discrimination based on maternity/parenthood (as this characteristic is explicitly listed as a protected ground in the Equal Treatment Act).⁴⁶⁹

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 Act⁴⁷⁰ in which the group life, accident and sickness insurances are generally exempt from the unisex rule.

9.11 Remaining issues

The lack of case law from 2020 may not necessarily give a reliable picture of the situation regarding gender equality and access to goods/services. Courts (and also the Equal Treatment Authority) were closed temporarily in the spring of 2020 due to the national lockdown relating to the first wave of COVID-19, and although some hearings were held online, the processes have been slowed down, apparently (parties may ask for the delay of hearings, with respect to the virus situation, and courts are willing to accept these requests). Moreover, some victims may have been discouraged by the practical difficulties (and the health risks) of starting a litigation procedure in the middle of the pandemic.

According to anecdotal information, women giving birth were sometimes hindered in exercising their right to have a companion (partner/husband, other family member or friend, a doula) during labour and childbirth, due to COVID-related policies applied in public hospitals. In other cases, mothers who were (suspected to be) infected with the coronavirus, were not allowed to share a room with their newborns. However, given the hectic, or dramatic, conditions in healthcare institutions, and the uncertainty regarding the health risks associated with this disease, it is rather difficult to say whether these cases could be considered as discrimination or not. Case law is not available regarding this phenomenon.

⁴⁶⁸ Decision of the Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) No. EBH/161/2014.

⁴⁶⁹ 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).

⁴⁷⁰ 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. 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.⁴⁷¹

As for the context of COVID-19 in 2020: '[i]n line with global trends, reported cases of domestic violence have increased during the corona lockdown in Hungary too. In March alone, a one-third increase in cases was reported, according to official sources (women's organisations' helplines had already been overloaded prior to corona too).⁴⁷²

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,⁴⁷³ and especially the provisions on:

- homicide (*emberölés*);⁴⁷⁴
- bodily harm (*testi sértés*);⁴⁷⁵
- sexual coercion (*szexuális kényszerítés*);⁴⁷⁶
- sexual violence (*szexuális erőszak*);⁴⁷⁷
- sexual abuse (against children) (*szexuális visszaélés*);⁴⁷⁸
- incest (*vérfertőzés*);⁴⁷⁹
- partnership violence (*kapcsolati erőszak*) – a subsidiary offence;⁴⁸⁰ and
- stalking (*zaklatás*).⁴⁸¹

⁴⁷¹ Tóth, O. (2018), 'A nők elleni párkapcsolati erőszak Magyarországon: Az elmúlt 20 év kutatási eredményeinek összegzése' (Intimate partner violence against women in Hungary: A summary of research 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.

⁴⁷² Kováts, E. (2020): 'Pandemic management on the backs of women in Hungary', Heinrich Böll Stiftung Prague, 5 June 2020, <https://cz.boell.org/en/2020/06/05/pandemic-management-backs-women-hungary>.

⁴⁷³ Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), 13 July 2012.

⁴⁷⁴ Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), 13 July 2012, Article 160.

⁴⁷⁵ Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), 13 July 2012, Article 164.

⁴⁷⁶ Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), 13 July 2012, Article 196.

⁴⁷⁷ Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), 13 July 2012, Article 197.

⁴⁷⁸ Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), 13 July 2012, Article 198.

⁴⁷⁹ Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), 13 July 2012, Article 199.

⁴⁸⁰ Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), 13 July 2012, Article 202/A.

⁴⁸¹ 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).⁴⁸²

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.⁴⁸³

Relevant criminal provisions may be:

- stalking (*zaklatás*) (engaging in 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);⁴⁸⁴
- partnership violence (*kapcsolati erőszak*);⁴⁸⁵
- coercion (*kényszerítés*);⁴⁸⁶
- extortion (*zsarolás*);⁴⁸⁷
- misuse of personal data (*személyes adattal való visszaélés*);⁴⁸⁸
- defamation (*rágalmazás*);⁴⁸⁹
- libel (*becsületsértés*);⁴⁹⁰
- child pornography (*gyermekpornográfia*);⁴⁹¹
- making false audio or image recording capable of harming the reputation of another person (*becsület csorbítására alkalmas hamis hang- vagy képfelvétel készítése*);⁴⁹²
- disclosing false audio or image recording capable of harming the reputation of another (*becsület csorbítására alkalmas hamis hang- vagy képfelvétel nyilvánosságra hozatala*);⁴⁹³
- aiding suicide (*öngyilkosságban való közreműködés*);⁴⁹⁴
- degrading treatment of a vulnerable person (*kiszolgáltatott személy megalázása*);⁴⁹⁵
- incitement against a community (*közösség elleni uszítás*).⁴⁹⁶

⁴⁸² 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.

⁴⁸³ 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>.

⁴⁸⁴ Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), 13 July 2012, Article 222.

⁴⁸⁵ Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), 13 July 2012, Article 2012/A.

⁴⁸⁶ Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), 13 July 2012, Article 195.

⁴⁸⁷ Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), 13 July 2012, Article 367.

⁴⁸⁸ Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), 13 July 2012, Article 219.

⁴⁸⁹ Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), 13 July 2012, Article 226.

⁴⁹⁰ Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), 13 July 2012, Article 227.

⁴⁹¹ Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), 13 July 2012, Article 204.

⁴⁹² Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), 13 July 2012, Article 226/A.

⁴⁹³ Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), 13 July 2012, Article 226/B.

⁴⁹⁴ Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), 13 July 2012, Article 162.

⁴⁹⁵ Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), 13 July 2012, Article 225.

⁴⁹⁶ Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), 13 July 2012, Article 332.

Some provisions of the Civil Code may also be relevant, e.g. on the violation of the right to the protection of one's image and recorded voice (*képmáshoz és a hangfelvételhez való jog megsértése*).⁴⁹⁷

10.1.4 Political and societal debates

In the course of 2019 and 2020 there have been high-visibility cases of domestic violence infanticide and femicide that generated public outrage, and also triggered a response from the Government. In December 2019, in the city of Győr, a father – who previously tried to kill his partner, and after three years in prison got conditional release because of good behaviour – killed two of his children on the first visitation occasion.⁴⁹⁸

Practically as a follow-up to the case in Győr, in January 2020, the Government proposed a draft bill 'on the amendment of certain Acts with the aim of providing a higher level of protection for victims of serious forms of intrapersonal violence committed by a relative.'⁴⁹⁹ This proposal was meant to be, apparently, a domestic solution (substitute) instead of the Istanbul Convention's ratification (which has been signed but not ratified by Hungary). An umbrella organisation of women's NGOs, the Hungarian Women's Lobby, and two member organisations reacted to the proposal. They questioned the relevance of the proposed measures and even underlined the threat that the tightening of some criminal provisions, e.g. the conditions of release on parole, could have a detrimental effect on abused women who turn against their (primary) abusers eventually.⁵⁰⁰ Quite parallelly, the Hungarian Helsinki Committee also reacted to the governmental plans with concerns.⁵⁰¹

On 20 October 2020, the above-mentioned amendment of criminal provisions (aimed at 'substituting' the ratification of the Istanbul Convention) was adopted by the Parliament.⁵⁰² A representative of a women's NGO, PATENT Association, raised concerns regarding the adequacy of these amendments, claiming that a more holistic approach (with a view to family law as well, especially the enforcement of custody and visiting rights after divorce) would better serve the interest of abused women and children than e.g. the extension of application scope of court-ordered mandatory psychiatric treatment.⁵⁰³

On 25 November (on the International Day for the Elimination of Violence against Women) in 2020, the Minister of Justice announced that two new victim support centres will start operating in December (in Szeged and in Kecskemét), and recommended the non-stop,

⁴⁹⁷ Act V of 2013 on the Civil Code (*2013. évi V. törvény a Polgári Törvénykönyvről*), 26 February 2013, Section 2:43(g).

⁴⁹⁸ See e.g.: Kolba, G. (2019): 'Society Murderer in Győr kills two children while third witnessed it', *Daily News Hungary*, 17 December, <https://dailynewshungary.com/hungary-murderer-in-gyor-kills-two-children-while-third-witnessed-the-scene/>.

⁴⁹⁹ The proposal is available in Hungarian at: https://2015-2019.kormany.hu/download/2/f0/c1000/felt%C3%A9teles_normasz%C3%B6veq_indokol%C3%A1s_20012_1.pdf.

⁵⁰⁰ See: 'A NANE Egyesület, a PATENT Egyesület és a Magyar Női Érdekérvényesítő Szövetség véleménye a hozzátartozók sérelmére elkövetett súlyos személy elleni erőszakos bűncselekmények áldozatainak fokozottabb védelme érdekében egyes törvények módosításáról szóló előterjesztésről' (Joint opinion of the NANE Association, the PATENT Association and the Hungarian Women's Lobby on the proposed amendment of certain acts with the aim of providing a higher level of protection for victims of serious forms of intrapersonal violence committed by a relative): <https://nokjoqa.hu/wp-content/uploads/ve-leme-nyeze-s-torvenyjavaslat-nane-patent-no-i-e-rdek-2020-01-27.pdf>.

⁵⁰¹ See: Hungarian Helsinki Committee (2020): 'A „hirtelen felindulásból elkövetett” szigorítás nem segít az áldozatokon' (Tightening the law 'under a sudden impulse' does not help the victims) 29 January, <https://www.helsinki.hu/a-hirtelen-felindulasbol-elkovetett-szigoritas-nem-segit-az-aldozatokon/>.

⁵⁰² The draft bill is available in Hungarian at: <https://www.parlament.hu/irom41/10953/10953.pdf>.

⁵⁰³ Blaskó, Zs. (2020): 'PATENT: nem segíti érdemben a családon belüli erőszak elleni fellépést a ma elfogadott törvénymódosítás' (PATENT: The legislative amendment, adopted today, does not promote significantly the combat against domestic violence), *Mérce.hu*, 20 October, <https://merce.hu/2020/10/20/patent-a-mai-napon-elfogadott-torvenymodositas-nem-segiti-erdemben-a-csaladon-beluli-eroszak-elleni-fellepest/>.

free of charge victim support line for anyone who is 'in the current virus situation or for other reasons, is unable or unwilling to visit our Victim Support Centres in person'.⁵⁰⁴

10.2 Ratification of the Istanbul Convention

The Istanbul Convention was signed by Hungary on 14 March 2014,⁵⁰⁵ but has not yet been ratified.⁵⁰⁶

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 MPs⁵⁰⁷ 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, argued 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.

In June 2015, 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.⁵⁰⁸ This proposal has been highly criticised by the Hungarian Women's Lobby (*Magyar Női Érdekvédelem Szövetsége*, an NGO umbrella organisation) and other women's organisations because it lags behind compared to the provisions outlined in the Istanbul Convention.⁵⁰⁹ However, it was adopted by the Parliament.⁵¹⁰

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).⁵¹¹

⁵⁰⁴ See the announcement (in Hungarian and English) published via the Facebook page of the Minister of Justice 10 November 2020:

<https://www.facebook.com/VargaJuditMinisterofJustice/videos/706620336661844>.

⁵⁰⁵ See: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures>.

⁵⁰⁶ Balogh, L. (2020): The Ratification Status of the Council of Europe's Istanbul Convention Among EU Member States, MTA Law Working Papers, 2020/7, <https://jog.tk.hu/mtalwp/the-ratification-status-of-the-council-of-europes-istanbul-convention-among-eu-member-states>.

⁵⁰⁷ 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.

⁵⁰⁸ 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.

⁵⁰⁹ Hungarian Women's Lobby (*Magyar Női Érdekvédelem Szövetsége*), 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-sajtokozlemenyoqyh-javaslatra.pdf>.

⁵¹⁰ 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.

⁵¹¹ Jámbor, 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/>.

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.⁵¹² 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.⁵¹³

It should be noted that on 28 November 2019, none of the MEPs from Hungary voted against the resolution on the EU's accession to the Convention; however, 12 MEPs absented (11 out of the 13 MEPs delegated by the governing coalition).⁵¹⁴

On 30 January 2020, the Minister of Justice published an article on a news portal in which she claimed that 'the Hungarian Government does not support the ratification of the Istanbul Convention, because certain provisions of it contravene the Government's migration politics. The Government is not intending to implement the concept of gender or the Convention's gender ideology into domestic law'.⁵¹⁵ The article refers to an overview of 'The legal tools of protecting women and combating relationship violence [domestic violence]', published in the form of a table, comparing the national measures with the provisions of the Istanbul Convention – but not the provisions of the latter on migration and asylum.⁵¹⁶

In May 2020 (during the national lockdown due to COVID-19), MPs of the junior coalition member party (Christian Democrats) submitted a proposal for a political declaration, calling the Government to reject the ratification of the Istanbul Convention by Hungary and to oppose the ratification of it by the European Union.⁵¹⁷ Due to the dominance of the governmental forces, the Parliament adopted the proposal on 5 May 2020. The (approximately 100 minutes long) plenary debate on the previous day was, however, an enumeration of the different political views, which entailed a remarkable turn of the Jobbik

⁵¹² SZP (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>.

⁵¹³ Botos, T. (2018), "'Orbán azt mondta, szerződne a nőkkel. Itt a lehetőség: ratifikálja a kormány az Isztambuli 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-isztambuli-egyezmenyt>.

⁵¹⁴ The source of data is the VoteWatch Europe's database: <https://www.votewatch.eu/en/term9-eu-accession-to-theistanbul-convention-and-other-measures-to-combat-gender-based-violence-motion-fo-8.html#/##vote-tabs-list-4>.

⁵¹⁵ Varga, J. (2020) 'Az Isztambuli Egyezményről' (On the Istanbul Convention), *Mandiner*, 30 January, https://mandiner.hu/cikk/20200130_az_isztambuli_egyezmenyrol.

⁵¹⁶ See the table (in Hungarian): https://2015-2019.kormany.hu/download/1/71/c1000/Isztambul%20%C3%A1ttekint%C5%91%20t%C3%A1bl%C3%A1zat_200123.pdf.

⁵¹⁷ The draft proposal is available in Hungarian at: <https://www.parlament.hu/irom41/10393/10393.pdf>.

party (considered as far right) that apparently became a supporter of the ratification of the Convention.⁵¹⁸

⁵¹⁸ See the transcript of the debate in Hungarian at: <https://bit.ly/3brwFe9>.

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

According to the conclusions of the Amnesty International research report from 2020 (the empirical research was implemented just before the emergence of the COVID-19 crisis) there are several legal and practical barriers to access justice in gender-based discrimination, because the available avenues often do not adequately compensate the victims for the damage suffered, and this is particularly problematic with proceedings before the Equal Treatment Authority, where fines are paid to the state (and not to the victim); '[a]dditionally, potential repercussions against employees who experience discrimination and seek justice further restrict their ability to exercise their right to effective remedies whilst also resulting in additional violations of their rights.'⁵¹⁹

Previously, the Equal Treatment Authority and the Hungarian Academy of Sciences (HAS) Centre for Social Sciences' Institute for Sociology undertook a joint research project; according to the findings, published in 2017, only 44 % of the respondents were even aware 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.⁵²⁰

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.

11.1.4 Gender mainstreaming

Gender mainstreaming is not incorporated in law- and policy-making in Hungary.

A study from 2019, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the FEMM Committee, highlights that since 2011, the Hungarian Government has committed itself to introducing family mainstreaming instead of gender mainstreaming. According to an analysis, this approach puts women at the 'crossroads of employment and family policies', without sufficiently ensuring women's/mothers' (or fathers') rights in the field of employment.⁵²¹

⁵¹⁹ Amnesty International (2020): No Working Around It: Gender-based Discrimination in Hungarian Workplaces, p. 51, <https://www.amnesty.org/download/Documents/EUR2723782020ENGLISH.PDF>.

⁵²⁰ 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.

⁵²¹ Hungler, S., Kende, Á. (2019) 'Nők a család- és foglalkoztatáspolitikai keresztútján' ('Women at the crossroads of family policies and employment policies'), *Pro Futuro*, vol. 9, no. 2., available at: <https://doi.org/10.26521/Profuturo/1/2019/3881>; <https://ojs.lib.unideb.hu/profuturo/article/view/3881>.

11.2 Victimisation

The Equal Treatment Act addresses the issue of victimisation by the provision on retaliation,⁵²² 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;⁵²³ 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 the Equal Treatment Authority and the HAS Centre for Social Sciences' Institute for Sociology.⁵²⁴

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).⁵²⁵

The Civil Code addresses the issue of discrimination in the context of 'protection of rights relating to personality'⁵²⁶ where it is listed among the specific personality rights violations:

'a) harm to life, physical integrity and health; b) violation of personal liberty and privacy, and trespass; c) *discrimination against a person*; d) defamation or violation of good reputation; e) violation of the right to keep personal secrets and the right to the protection of personal data; f) violation of the right to a name; g) violation of the right to the protection of one's image and recorded voice.'⁵²⁷

In the case of launching a personality rights claim (*személyiségi jogi per*) for the violation of equal treatment, the claimant is exempt from having to advance the procedural fees due to the subject matter of the action (*tárgyi illetékfeljegyzési jog*).⁵²⁸ In this case, however, if the claimant loses the litigation, he or she has to pay the court fees, including

⁵²² 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).

⁵²³ 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.

⁵²⁴ 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.

⁵²⁵ Supreme Court (Kúria), Decision in Principle No. 22/2014 in Labour Law.

⁵²⁶ Act V of 2013 on the Civil Code (2013. évi V. törvény a Polgári Törvénykönyvről), 26 February 2013, Section 2:42(1): 'Everyone shall have the right, subject to limitations by law and by the rights of others, to exercise his personality rights freely, in particular the right to respect for his private and family life, his home, and to his communications made by whatever ways or means, and the right to good reputation and not to be hindered by anyone from exercising these rights. (2) Everyone shall respect human dignity and the personality rights derived from it. Personality rights are protected by this Act.'

⁵²⁷ Act V of 2013 on the Civil Code (2013. évi V. törvény a Polgári Törvénykönyvről), 26 February 2013, Section 2:43.

⁵²⁸ Act XCIII of 1990 on Stamp Duties (1990. évi XCIII. törvény az illetékekről), Article 59(1).

the procedural fee, the fee for the legal representative of the adverse party and the expert fees.

In the spring of 2020, courts (and also the Equal Treatment Authority) were closed temporarily due to the national lockdown relating to the first wave of COVID-19, and although some hearings were held online, the processes have been slowed down, apparently (parties may ask for the delay of hearings, with respect to the virus situation, and courts are willing to accept these requests).

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, and they may request a down payment to cover the court fees.⁵²⁹ However, the means-test threshold is very low,⁵³⁰ and if the claimant loses the case (s)he may be obliged to pay back the lawyer's fee.⁵³¹

According to the Act on Legal Aid, legal aid providers shall give assisted persons legal advice or prepare submissions or other papers for them, and (if so authorised) inspect the documents of their case, and the state shall pay or advance the legal aid providers for the pertinent costs and fees.⁵³²

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 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.⁵³³

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

The impact of the *Bauer* judgment is not perceivable yet regarding the field of gender equality in Hungary.

11.5 Burden of proof

The rule of the shared burden of proof applies. In direct discrimination cases, the complainant has to demonstrate that it is probable that s/he suffered a disadvantage compared to the comparator, and that s/he actually, or as assumed by the respondent,

⁵²⁹ 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).

⁵³⁰ Act LXXX of 2003 on Legal Aid (2003. évi LXXX. törvény a jogi segítségnyújtásról), 6 November 2003, Article 5(1)-(2).

⁵³¹ Act LXXX of 2003 on Legal Aid (2003. évi LXXX. törvény a jogi segítségnyújtásról), 6 November 2003, Article 11/B(2).

⁵³² Act LXXX of 2003 on Legal Aid (2003. évi LXXX. törvény a jogi segítségnyújtásról), 6 November 2003, Article 1(2).

⁵³³ See: 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.>

possessed any of the protected characteristics listed in the Equal Treatment Act⁵³⁴ 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 revolved around the issue that men had to pay a fee for services which were provided free of charge for women.⁵³⁵ 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.

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.⁵³⁶ 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 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.

⁵³⁴ 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.

⁵³⁵ Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) Decision No. EBH/545/13/2013. See the details at Section 9.5 of the present report.

⁵³⁶ National court decision (Judgment No. Mfv.I.10.371/2017) of the *Kúria* 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>.

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,⁵³⁷ 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:

Section 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';

Section 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

Section 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.

The Civil Procedures Code allows for *class actions*,⁵³⁸ including cases of sex discrimination claims. Two different types of class actions are recognised: either compulsory joinder of parties (*kényszerű pertársaság*) or permissive joinder of parties (*célszerűségi pertársaság*). In the case of sex discrimination claims, the latter form is relevant:

'Multiple plaintiffs may bring an action together, and multiple defendants may be sued together if a) the *res judicata* effect of the judgment adopted on the matter would apply to the co-litigants, even without their involvement in the action, b) the claims in the action arise from the same legal relationship, or c) the claims in the

⁵³⁷ Act V of 2013 on the Civil Code (*2013. évi V. törvény a Polgári Törvénykönyvről*), 26 February 2013, Section 2:42-43.

⁵³⁸ Act CXXX of 2016 on the Code of Civil Procedures (*2016. évi CXXX. törvény a polgári perrendtartásról*), 2 December 2016, Articles 36-37.

action arise from a similar factual and legal basis, and the territorial jurisdiction of the same court may be established with respect to all defendants.⁵³⁹

In Hungary, 'labour and administrative' courts apply the Labour Code.⁵⁴⁰ 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;⁵⁴¹ and if the discrimination is manifested in the unlawful termination of the employment, the employer shall compensate the employee for the damages suffered.⁵⁴² 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.⁵⁴³ 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).⁵⁴⁴ 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.⁵⁴⁵

As an administrative procedure,⁵⁴⁶ if the Equal Treatment Authority, or from 1 January 2021: the Commissioner for Fundamental Rights, 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 c. EUR 140 (HUF 50 000) to a maximum of c. EUR 16 700 (HUF 6 million). The decision of the Authority, or from 1 January 2021: the Commissioner for Fundamental Rights, 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, or from 1 January 2021: the Commissioner for Fundamental Rights, so requests.

The Equal Treatment Authority, or from 1 January 2021: the Commissioner for Fundamental Rights, 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

⁵³⁹ Act CXXX of 2016 on the Code of Civil Procedures (*2016. évi CXXX. törvény a polgári perrendtartásról*), 2 December 2016, Article 37.

⁵⁴⁰ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012.

⁵⁴¹ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 27.

⁵⁴² Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 82.

⁵⁴³ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 83.

⁵⁴⁴ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 167.

⁵⁴⁵ Act I of 2012 on the Labour Code (*2012. évi I. törvény a munka törvénykönyvéről*), 6 January 2012, Article 167.

⁵⁴⁶ 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.

its own website and that of the violator.⁵⁴⁷ However, the Equal Treatment Authority, or from 1 January 2021: the Commissioner for Fundamental Rights, 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); fines shall constitute a revenue of the central budget.⁵⁴⁸

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 is 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 Protection,⁵⁴⁹ 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

For the application of effective, proportional and dissuasive sanctions, the applicant is better to submit the case to a court of law (instead of, or after, the procedure at the Equal Treatment Authority, or from 1 January 2021: the Commissioner for Fundamental Rights). 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.

However, two serious sanctions can be imposed by the Equal Treatment Authority, or from 1 January 2021: the Commissioner for Fundamental Rights, which might have some deterrent effect: (1) imposing a fine, the amount of which ranges from c. EUR 140 (HUF 50 000) to EUR 16 700 (HUF 6 million);⁵⁵⁰ and (2) publishing the decision on the websites of the defendant and the Equal Treatment Authority, or from 1 January 2021: the Commissioner for Fundamental Rights. Note: fines shall constitute a revenue of the central budget.⁵⁵¹

Notably, 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 2016,⁵⁵² the Equal Treatment Authority referred to two European Court

⁵⁴⁷ 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).

⁵⁴⁸ 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(1a).

⁵⁴⁹ Act CLV of 1997 on Consumer Protection (1997. évi CLV. törvény a fogyasztóvédelemről), 23 December 1997, Article 45/A(3)(f).

⁵⁵⁰ 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).

⁵⁵¹ 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(1a).

⁵⁵² Decision of the Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) No. EBH/182/2016.

Cases, *Carole Louise Webb*⁵⁵³ and *Tele Danmark*,⁵⁵⁴ 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 a case like this, in 2020, the Equal Treatment Authority established direct discrimination based on pregnancy and ordered the employer to cease the discriminatory practice, to pay a fine of HUF 1.5 million (c. EUR 4 160), and to publish the decision for 30 days.⁵⁵⁵ The Equal Treatment Authority reviewed the income of the company and imposed this (rather high) amount of fine to deter the company from such discriminatory practice in the future.

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)⁵⁵⁶ 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 and to prevent similar occurrences in the future, according to the opinion of the Advisory Committee on the application of the new Civil Code.⁵⁵⁷

11.7 Equality body

Until 31 December 2020, the Equal Treatment Authority served as the central administrative body mandated to implement the requirements of all equal treatment legislation, including gender equality law; from 1 January 2021, its tasks and competences were transferred to the Commissioner for Fundamental Rights.⁵⁵⁸

From 2021, the Commissioner for Fundamental Rights administers cases of equal treatment regarding all the protected grounds by the Equal Treatment Act.⁵⁵⁹ The list of grounds is non-exhaustive: it includes 19 characteristics, with a 20th proclaiming 'any other situation, attribution or condition of a person or group'.⁵⁶⁰

In this role, the Commissioner for Fundamental Rights shall:

- conduct complaint-based and *ex officio* investigations and decide on violations of equal treatment and, if necessary, apply sanctions on the basis of the investigation;
- initiate lawsuits;⁵⁶¹
- review and comment on legislative drafts on equal treatment;

⁵⁵³ CJEU Case C-32/93, *Carole Louise Webb v EMO Air Cargo (UK) Ltd*, judgment of 14 July 1994.

⁵⁵⁴ CJEU Case 109/00, *Tele Danmark A/S v Handels- og Kontorfunktionærernes Forbund i Danmark (HK)*, judgment of 4 October 2001.

⁵⁵⁵ Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) Decision No. EBH/HJF/209/27/2020.

⁵⁵⁶ Act V of 2013 on the Civil Code (*2013. évi V. törvény a Polgári Törvénykönyvről*), 26 February 2013, Section 2:52.

⁵⁵⁷ Advisory Body on the New Civil Code (*Új Ptk. Tanácsadó Testület*), Opinion related to Section 2:52, available at: https://kuria-birosag.hu/hu/ptk?tid%5B%5D=344&body_value=.

⁵⁵⁸ Act CXXVII of 2020 on the Amendment of Certain Laws with the Aim of Enhancing the Enforcement of the requirement of Equal Treatment (*2020. évi CXXVII. törvény egyes törvényeknek az egyenlő bánásmód követelménye hatékonyabb érvényesítését biztosító módosításáról*) 1 December 2020. See about this development in English: <https://www.equalitylaw.eu/downloads/5345-hungary-legislation-adopted-abolishing-the-equal-treatment-authority-and-transferring-its-tasks-to-the-ombudsman-126-kb>.

⁵⁵⁹ Act CXI of 2011 on the Parliamentary Commissioner for Fundamental Rights (*2011. évi CXI. törvény az alapvető jogok biztosáról*), 26 July 2011, Article 8.

⁵⁶⁰ 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.

⁵⁶¹ 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(1).

- make proposals concerning governmental decisions and legislation pertaining to equal treatment;
- regularly inform the public and the Parliament (the National Assembly) about the situation concerning the issue of equal treatment;
- in the course of performing its duties, co-operate with the social and representative organisations and the relevant state bodies;
- continually provide information to those concerned and offering assistance in acting against a violation of equal treatment;
- assist in the preparation of governmental reports to international organisations, especially to the Council of Europe concerning the principle of equal treatment; and
- assist in the preparation of the reports for the Commission of the European Union concerning the harmonisation of directives on equal treatment.

Administrative procedures based on the Equal Treatment Act are free of charge according to the Act on Stamp Duties.⁵⁶²

11.8 Social partners

The social partners in Hungary have the right to file a collective claim (*actio popularis*)⁵⁶³ and also to participate in different policy-making bodies.

Interest groups may represent the claimant⁵⁶⁴ and may also initiate proceedings before the Equal Treatment Authority (or from 1 January 2021: before the Commissioner for Fundamental Rights) 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*).⁵⁶⁵

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,⁵⁶⁶ 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 Code⁵⁶⁷ has widened the possibility of derogating from the legislation in collective agreements, the contents of collective agreements have 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.⁵⁶⁸
- In a case adjudicated in 2017 by the Equal Treatment Authority, the collective agreement contained a regulation which constituted indirect wage discrimination.⁵⁶⁹

⁵⁶² Act XCIII of 1990 on Stamp Duties (1990. évi XCIII. törvény az illetékekről), Annex 2, XIII. 5.

⁵⁶³ Act V of 2013 on the Civil Code (2013. évi V. törvény a Polgári Törvénykönyvről), 26 February 2013, Section 6:105(1)(d).

⁵⁶⁴ 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.

⁵⁶⁵ 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.

⁵⁶⁶ Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012, Article 277.

⁵⁶⁷ Act I of 2012 on the Labour Code (2012. évi I. törvény a munka törvénykönyvéről), 6 January 2012.

⁵⁶⁸ Decision of the Equal Treatment Authority (Egyenlő Bánásmód Hatóság) No. EBH/19/2016.

⁵⁶⁹ Decision of the Equal Treatment Authority (Egyenlő Bánásmód Hatóság) No. 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>.

Initiatives by social partners in addressing gender inequality problems are rare and rather ineffective.

11.9 Other relevant bodies

Prior to 1 January 2021, victims of discrimination, including victims of gender/sex-based discrimination, could turn to the Parliamentary Commissioner for Fundamental Rights (*alapvető jogok biztosa*), who is the 'Ombudsman' of Hungary, as an alternative to the specialised equality body: the Equal Treatment Authority. However, the latter ceased to exist on 31 December 2020, and its tasks and competences were transferred to the Commissioner for Fundamental Rights.⁵⁷⁰ This means that the previous 'other relevant body' became 'the body' – or, more precisely, a 'two-in-one body', since non-discrimination is a fundamental right, and the Ombudsman is already authorised to examine discrimination complaints in his current capacity.

According to the Fundamental Law,⁵⁷¹ the Parliamentary Commissioner (who is appointed by two-thirds parliamentary majority vote for six years, and who has two deputies responsible for the right of future generations and minorities, respectively) investigates violations of fundamental rights based on the procedural rules of the Act on the Parliamentary Commissioner for Fundamental Rights.⁵⁷² 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.

After the transition of the tasks of the Equal Treatment Authority to the Ombudsman, the complainant would have a choice as to whether (s)he wants the Ombudsman to act in his original capacity or in his capacity as successor of the Equal Treatment Authority. If (s)he chooses the latter, the Ombudsman shall proceed on the basis of the Code of Administrative Procedure.⁵⁷³ Furthermore, the amended Act on the Parliamentary Commissioner for Fundamental Rights stipulates that the Ombudsman may investigate a complaint in his capacity as Ombudsman first, and then, after the investigation is completed, also as the successor of the Equal Treatment Authority, upon the request of the complainant, or if the Ombudsman decides so *ex officio* (on the basis of the outcomes of the initial investigation).

⁵⁷⁰ Act CXXVII of 2020 on the Amendment of Certain Laws with the Aim of Enhancing the Enforcement of the requirement of Equal Treatment (*2020. évi CXXVII. törvény egyes törvényeknek az egyenlő bánásmód követelménye hatékonyabb érvényesítését biztosító módosításáról*), 1 December 2020. See about this development in English: <https://www.equalitylaw.eu/downloads/5345-hungary-legislation-adopted-abolishing-the-equal-treatment-authority-and-transferring-its-tasks-to-the-ombudsman-126-kb>.

⁵⁷¹ Fundamental Law of Hungary (*Magyarország Alaptörvénye*), 25 April 2011, Article 30.

⁵⁷² Act CXI of 2011 on the Parliamentary Commissioner for Fundamental Rights (*2011. évi CXI. törvény az alapvető jogok biztosáról*), 26 July 2011.

⁵⁷³ Act I of 2017 on the Code of Administrative Litigation (*2017. évi I. törvény a közigazgatási perrendtartásról*), 1 March 2017.

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 Treatment Act;⁵⁷⁴ being reluctant to apply dissuasive compensation; minimising the weight of violations against women; and not correctly applying the rules on the burden of proof.

Moreover, the abolition of the Equal Treatment Authority (and the transferring of its tasks and competences to the Commissioner for Fundamental Rights from 1 January 2021) raises concerns. While the Equal Treatment Authority had a single focus and mandate (dealing with non-discrimination issues), the Parliamentary Commissioner's Office is a large organisation, mandated with a wide range of tasks (environmental protection, rights of the child issues, monitoring of prisons, etc.). Presumably much less attention will be paid, and much fewer resources will be allocated for the issue of non-discrimination within the Parliamentary Commissioner's Office than in the Authority.⁵⁷⁵

11.11 Remaining issues

Case law from 2020 regarding gender equality issues may not give a reliable picture of the situation regarding gender equality and access to goods/services. Courts (and also the Equal Treatment Authority) were closed temporarily in the spring of 2020 due to the national lockdown relating to the first wave of COVID-19, and although some hearings were held online, the processes have been slowed down, apparently (parties may ask for the delay of hearings, with respect to the virus situation, and courts are willing to accept these requests). Moreover, some victims may have been discouraged by the practical difficulties (and the health risks) of starting a litigation procedure in the middle of the pandemic, or because they felt too vulnerable to confront their employers among the economic hardships relating to COVID-19.

As for the general public's awareness regarding equal treatment legislation and available remedies, it may be considered as a missed opportunity that the webpage of the Equal Treatment Authority (that is archived now, but still available) is not really user-friendly: case law is rather difficult to search. From 1 January 2021, as the tasks of the Equal Treatment Authority were transferred to the Commissioner for Fundamental Rights, the latter is in charge of informing the public about the outcomes of administrative procedures based on the Equal Treatment Act.

⁵⁷⁴ 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.

⁵⁷⁵ See about this development in English: <https://www.equalitylaw.eu/downloads/5345-hungary-legislation-adopted-abolishing-the-equal-treatment-authority-and-transferring-its-tasks-to-the-ombudsman-126-kb>.

12 Overall assessment

The following transposition problems were mentioned in this report:

- Possible exemptions should be narrower in cases of direct discrimination (in alleged direct discrimination cases, the scope of exemptions is similar to the scope allowed in Directive 2006/54 only in relation to indirect discrimination);
- Protection should be broader with regards to indirect discrimination. 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;
- The early retirement option (after 40 years of service) is available for women only;
- There is a lack of adequate protection of fathers in the labour market (especially in regard to certain aspects of parental leave and related rights);
- There is a lack of governmental will to introduce the concept of non-transferable parental leave (provided by Directive 2019/1158 on work-life balance for parents and carers).

With some gaps, Hungarian law formally transposed the majority of EU *acquis communautaire*, 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, 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.⁵⁷⁶ Consequently, protection is weak because the accused could exculpate him/herself in many cases. The amendment to the Equal Treatment Act⁵⁷⁷ 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.

As for the enforcement of the equal treatment legislation, the most controversial development during the past year was the abolishment of the specialised equality body, the Equal Treatment Authority, and the transfer of its tasks and competences to the Commissioner for Fundamental Rights. It is worrisome that while the Equal Treatment Authority had a single focus and mandate, the Commissioner's Office is mandated to carry

⁵⁷⁶ 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)(b).

⁵⁷⁷ 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).

out a wide range of tasks, and presumably much less attention will be paid, and much fewer resources will be allocated for the issue of non-discrimination. However, this new system only started to operate on 1 January 2021, thus its effectiveness cannot be evaluated yet. It should be mentioned, however, that the sanctions to be applied by the equality body – the Equal Treatment Authority (or, from 1 January 2021: the Commissioner for Fundamental Rights) – are limited, especially from the aspect of the complainant's existential interest, as within the framework of the administrative procedure based on the Equal Treatment Act, financial compensation or, for example, reinstatement in the original job, cannot be provided. As for the dissuasiveness of sanctions within this framework (in the field of gender equality), higher fines were mainly imposed in cases where pregnant women were dismissed during their probation period (which is, regrettably, a prevalent phenomenon).

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; 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.

With regards to positive action aimed at promoting women's opportunities, the only legally binding measure is the requirement towards a defined group of employers (budgetary organs and legal entities in state majority ownership employing more than 50 employees) to adopt an 'Equal Opportunity Plan', which may include gender equality objectives. However, these plans usually contain only soft provisions in the field of work-life balance, and there is neither an evaluation system to assess the content, nor a monitoring mechanism to supervise the implementation of these plans.

Apparently, the Hungarian Government has committed itself to introducing family mainstreaming instead of gender mainstreaming, however, without sufficiently ensuring women's/mothers' (or fathers') rights in the field of employment. Family policies have a clear demographic target: encouraging fertility by financial means (allowances, bonuses, special loan schemes); the Family Protection Action Plan, launched in 2019 by the Government, is a prominent example of this.

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. 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. Notably, Hungary voted against⁵⁷⁸ the adoption of Directive 2019/1158 (on work-life balance for parents and carers and repealing Council Directive 2010/18/EU), objecting to the non-transferability of parental leave, claiming that this feature would mean intervention in the life of families and in decisions based on personal, social and financial circumstances.⁵⁷⁹

Hungary signed the Council of Europe's Istanbul Convention (in 2014), but has not ratified it yet, and since 2017, the governmental rhetoric started to target and reject the (alleged) gender concept of the Convention, and moreover, its alleged impact on national migration

⁵⁷⁸ See: Voting result – Directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU (First reading), Brussels, 13 June 2019, 10282/19, 2017/0085 (COD), https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CONSIL:ST_10282_2019_INIT&from=EN.

⁵⁷⁹ See: Statements – Draft Directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU (first reading), Brussels, 29 May 2019, 9310/19 ADD 1, p. 4, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CONSIL:ST_9310_2019_ADD_1&from=EN.

policies. In May 2020, the Parliament adopted a political declaration, calling on the Government to reject the ratification of the Istanbul Convention by Hungary and to oppose the ratification of it by the European Union.

As for the impacts of the COVID-19 crisis, we have limited knowledge of the actual situation, but we have good reasons to suppose that it had a dramatic effect on the situation of women (especially pregnant women and mothers of young children) in the field of employment.⁵⁸⁰ The available case law may not provide a relevant picture of the situation, partly due to logistical factors (the courts and the equality body were closed during the national lockdown in the spring of 2020, and procedures have been slowed down), but also because employees may be less willing to confront their employers during this current, worrisome economic situation.

⁵⁸⁰ Amnesty International (2020): 'Hungary: Women face stark increase in discrimination and job insecurity in the workplace due to COVID-19 crisis', 3 June, <https://www.amnesty.org/en/latest/news/2020/06/hungary-women-face-stark-increase-in-discrimination-and-job-insecurity-in-the-workplace-due-to-covid19-crisis/>.

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