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Country report

Gender equality



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Country report

Gender equality

How are EU rules transposed into national law?

Bulgaria

Genoveva Tisheva

Reporting period 1 July 2015 – 1 April 2016

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1. Introduction

1.1 Basic structure of the national legal system

In terms of direct sources of law, the Bulgarian legal system is based on a strictly defined hierarchy of the sources of law as follows:

EU Law has supremacy over the internal legal provisions of the legislation of Bulgaria (including the Constitutional provisions) which contradict it and it has direct effect. This is also valid for the field of legislation related to gender equality.

The Constitution

The provisions of the Constitution are directly applicable.

Decisions of the Constitutional Court

These are obligatory interpretations of the Constitution. The Constitutional Court is also entitled to declare provisions contained in an Act of Parliament to be anti-constitutional.

International Treaties

According to Art. 5, para. 4 of the Constitution: 'International treaties, ratified in compliance with the constitutional procedure, promulgated and entered into force for the Republic of Bulgaria are part of the domestic law of the country and have supremacy over those provisions of the domestic law which contradict them.'

Acts of Parliament and Codifications

Among the major codes currently in force in Bulgaria are: the Administrative Procedure Code from 2006, the Civil Procedure Code, effective as from March 1, 2008, the Social Insurance Code from 1999, the Labour Code from 1986, the Criminal Code from 1968, the Criminal Procedure Code from 2006, and the Family Code from 2009. The Law on Protection from Discrimination, adopted in 2003, is also a *sui generis* codification in the field.

Delegated Legislation

The Constitution provides for and a number of Acts of Parliament delegate to the Council of Ministers, the Ministers separately, other public bodies and/or officials the authority to issue decrees, regulations, ordinances and instructions and thus the detailed regulation of specific areas of economic or social activity.

The Practice of the Courts

The judgments issued by the Bulgarian courts in individual proceedings have no universal applicability, i.e. they are binding on the parties involved. At the same time, some judgments and interpretative decisions of the Supreme Administrative Court (SAC) and of the Supreme Court of Cassation are a source of law and have an impact on legislation and practice in all fields.

The judicial system

The administration of justice in Bulgaria is based on three instances. The courts are state bodies that administer justice in civil, criminal and administrative cases. The following courts exist in Bulgaria: district courts – 113; provincial/regional courts – 28; administrative courts – 28; Specialized Criminal Court – 1; courts of appeal – 5;

Specialised Criminal Court of Appeal – 1; military courts – 5; Military Court of Appeal – 1; Supreme Court of Cassation – 1; Supreme Administrative Court – 1. The organisation and activities of the Bulgarian courts are governed by the Judicial System Act.¹

Anti-discrimination and gender equality legislation

Developments in Bulgarian legislation and practice in the field of anti-discrimination, equal treatment and equal opportunities were made possible thanks to the process of the full integration of Bulgaria into the EU.

The National Assembly is the legislative body which adopts legislation, also in the field of anti-discrimination and gender equality. The Council of Minister is the central body responsible for the policy on gender equality. The Council of Ministers adopts regulatory acts and decisions regarding gender equality. Namely, it has adopted the National Strategy on Gender Equality 2009-2015 and it adopts the yearly national action plans on gender equality, the reports on their implementation, and regulatory acts like Decree No. 313/ 2004 for the establishment at the Council of Ministers of a National Council on gender equality (NCGE). The NCGE is defined as a coordinating and consultative body, a body for cooperation between the national and territorial structures of the executive and the non-profit organizations dealing with gender equality. No new strategy has been adopted yet.

Since 2000 the Ministry of Labour and Social Policy has organized and coordinated the national policy on gender equality, in cooperation with many other institutions and organizations. The section in this Ministry entitled 'Equal opportunities, anti-discrimination and social assistance' which is part of the Directorate on 'Policy for persons with disabilities, equal opportunities and social assistance' has competency in this field and serves as the Secretariat of the National Council on Gender Equality. In the different ministries there are focal point coordinators on gender equality.

The Commission for Protection from Discrimination was created in 2005 as an independent jurisdiction under the Law on Protection from Discrimination and its mandate covers all types of direct and indirect discrimination, including discrimination based on sex, prohibited by law and by international instruments to which Bulgaria is a party. The Commission has broad competences, including initiating discrimination cases of its own violation and assisting the victims of discrimination in bringing a claim. The administrative procedure before the Commission is very flexible and easy to follow by the petitioners. The position and competences of the Commission are regulated in Chapter 3 of the Law on Protection from Discrimination: the Commission finds violations, orders the prevention of or the halting of the violations and the restoration of the initial situation, issues coercive prescriptions, imposes sanctions, makes suggestions to national and local governmental bodies, provides independent support to victims of discrimination, gives opinions on drafts for normative acts, and carries out independent research and monitoring.

The Commission for Protection from Discrimination is not a body that deals specifically with the promotion, monitoring or analysis of equal treatment based on sex. These functions of the equality body, required by the EU standards, have not yet been implemented in a consistent manner by any of the mentioned bodies. In fact there is no institution dealing exclusively, on a permanent basis, with gender equality.

¹ Promulgated in S.G. No. 64/2007.

1.2 List of main legislation transposing and implementing Directives

- Law on Protection from Discrimination²
- Code of Social Insurance³
- Labour Code⁴

² Protection against Discrimination Act, S.G. 86/2003, in force since 1 January 2004, Bulgarian version available at <http://lex.bg/laws/ldoc/2135472223>.

³ S.G No. 110/99, in force since 1 January 2000, full Bulgarian version available at <http://lex.bg/laws/ldoc/1597824512>.

⁴ S.G. No. 26/ 86, in force since 1 January 1987, Bulgarian version available at <http://www.lex.bg/bg/laws/ldoc/1594373121>.

2. General legal framework

2.1 Constitution

2.1.1 Does your national Constitution prohibit sex discrimination?

Yes, the Bulgarian Constitution from 1991 prohibits sex discrimination, among other discrimination grounds.

Article 6 of the Constitution/S.G. No. 56/1991 addresses these issues. This provision proclaims that all people are born free and equal in dignity and rights, and that all people are equal before the law. No limitations or privileges are allowed based on race, nationality, ethnic origin, sex, origin, religion, education, belief, political affiliation, personal and social status, or property status.

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

Yes. Article 14 of the Constitution stipulates that the family, maternity and children are under the protection of the state and society.

Article 46 of the Constitution stipulates that the spouses have equal rights and obligations in a marriage and in the family. The marriage is a voluntary union between a man and a woman.

Another relevant provision is Article 47 of the Constitution, which declares that the care and education of children until they reach the age of majority represent a right and obligation of their parents, with the support of the state. Special protection is ensured for mothers who are granted paid leave prior to and after giving birth, free obstetrical care, an alleviation of working conditions and social assistance.

All citizens have the right to work and the state creates the conditions for the realization of this right. Everybody has the right to choose freely his/her profession and workplace. Workers and employees have the right to safety and health at work, to the minimum wage and to remuneration correspondent to the work implemented, as well as the right to a break and a right to leave under the conditions defined by law (Article 48).

Article 51 of the Constitution guarantees the right to social security and social assistance.

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

Yes. The provisions of the Constitution have direct/immediate effect. Article 5 paragraph 2 of the Constitution.

2.2 Equal treatment legislation

2.2.1 Does your country have specific equal treatment legislation?

Yes, Bulgaria has adopted a Law on Protection from Discrimination/S.G. No. 86/2003, last amended by S.G. 26/2015, in force since 1 January 2004. The Law on Protection from Discrimination (LPFD) contains the prohibition of discrimination on a broad range of grounds, including on the ground of sex/gender. Besides a prohibition on discrimination based on this ground, the ban encompasses the grounds of race, nationality, ethnicity, human genome, citizenship, origin, religion and belief, education, conviction, political affiliation, personal or social status, disability, age, sexual orientation, family status,

property status, or any other ground, defined by law or in an international treaty to which Bulgaria is a party - Article 4 paragraph 1 of the LPFD.

Apart from the Commission for Protection from Discrimination, which deals with cases of discrimination based on sex, there is no official body defined by law with a gender equality policy remit, with all the functions required by the EU directives. In order to fill the gap in the structure of the mechanism for gender equality and Government policy, a draft law on gender equality was proposed by the Ministry of Labour and Social Policy and adopted by the Bulgarian National Assembly on 26 April 2016.⁵ The law regulates state policy on gender equality, sets out the main principles of this policy, including positive measures for promoting gender equality and the mechanism for the adoption of such measures. The law affirms the duties of the Ministry of Labour and Social Policy as the body that will manage, coordinate and control gender equality policy. State policy in the field is also implemented by units in the different ministries, in the regional administration and at the level of the local self-governance bodies.

⁵ Bulgaria, Gender Equality Act, 26 April 2016, State Gazette (SG) 33/2016. The Bulgarian version of the law is available at: <http://lex.bg/bg/laws/ldoc/2136803101>, last accessed on 12 July 2016.

3. Implementation of central concepts

3.1 Sex/gender/transgender

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

No.

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

Yes. According to the Additional provisions of the Law on Protection from Discrimination Paragraph 1 p. 17, the ground of sex in Article 4 paragraph 1 also encompasses cases of gender reassignment.

Gender identity is not explicitly included as a ground of discrimination.

3.2 Direct sex discrimination

3.2.1 Is direct sex discrimination explicitly prohibited in national legislation?

Yes. The definitions of direct discrimination and indirect discrimination correspond to the EU definitions. The prohibition of discrimination (as '(...) any limitation of the rights or any privileges') is laid down in Article 6(2) of the Bulgarian Constitution. In Article 4 the LPFD contains the definitions of direct (paragraph 2) and indirect discrimination (paragraph 3). Direct discrimination represents any less favourable treatment of a person than another person is, has been or would be treated under comparable circumstances. The Labour Code (Article 8 paragraph 3) ensures special protection against direct and indirect discrimination, including that based on sex, in the exercise of labour rights and obligations.

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

No. They are not explicitly prohibited as direct discrimination. Nevertheless, maternity discrimination can be subsumed partly under the ground of 'family status,' according to the definition of this ground in the Additional provisions of the LPFD: Paragraph 1 p. 13 defines family status as also encompassing the care for a dependent relative due to his/her age or disability.

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

No.

3.3 Indirect sex discrimination

3.3.1 Is indirect sex discrimination explicitly prohibited in national legislation?

Yes. Indirect discrimination is explicitly prohibited in Article 4 (3) of the LPFD and the Bulgarian definition is in compliance with the EU definition: to place a person in a less favourable position in comparison with other persons by means of an apparently neutral provision, criterion or practice, unless the said provision, criterion or practice can be objectively justified in view of a lawful aim and the means for achieving this aim are appropriate and necessary.

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

No.

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

Yes, the national courts correctly identify the concept and cases of indirect discrimination. Examples of case law encompass mainly cases of indirect discrimination based on grounds such as ethnicity and disability.

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

The case law of the Commission for Protection from Discrimination (KZD) and of the courts has so far mainly dealt with the notion of direct discrimination.

3.4 Multiple discrimination and intersectional discrimination

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

Multiple discrimination is addressed in the LPFD. Namely, multiple discrimination is addressed in the Additional provisions (para. 1 p. 11) as discrimination based on more than one ground. Furthermore, Article 11 paragraph 2 obliges governmental bodies, public bodies and the bodies of self-government to take priority measures for ensuring equal opportunities for persons who are victims of multiple discrimination as groups in a disadvantaged position, and more specifically in the field of education and vocational training.

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

There is no specific case law in the field which has an impact on the concept of intersectionality including gender.

3.5 Positive action

3.5.1 Is positive action explicitly allowed in national legislation?

Yes, positive action is allowed in Bulgarian legislation. There is no explicit definition of positive action.

The possibility to apply positive action measures for achieving gender equality is provided for in the Law on Protection from Discrimination. Such measures are allowed, along with measures in favour of disadvantaged groups in general. Thus positive action measures in favour of the under-represented sex may be taken in education and training for ensuring a balance in the participation of men and women, and as special measures for individuals or groups of persons in a disadvantaged position (Article 7 paragraphs 13 and 14 LPFD). In the sphere of employment relations, positive action can be taken for encouraging persons belonging to the less represented sex to apply for a certain job or

position and for encouraging the vocational development and participation of workers and employees belonging to the less represented sex (Article 24 LPFD).

Positive action measures are allowed in the process of hiring for positions in the state and local government administration. According to Article 39 of the Law, if the candidates for positions in the administration have equivalent qualifications in relation to the requirements for the position, the candidate from the under-represented sex will be appointed, except when there are specific circumstances for appointing the other candidate. This is also valid for determining the members of consultative and managerial and other bodies in this sphere, except when they are determined by elections or are subject to a competition/ tender.

Following an amendment of the law from August 2012, according to Article 7 pp. 17 and 18 of the LPFD the following are not considered to be discriminatory: treating people differently in the provision of goods and services when they are aimed exclusively or predominantly at one of the sexes, if the aim is legitimate and if the means are adequate and necessary; treating people differently in relation to initiatives mainly or exclusively promoting entrepreneurship among women, when they are the less represented sex, or for avoiding or compensating for disadvantages in a professional career.

These positive measures are regulated among other exclusions from equal treatment not representing discrimination.

It can be concluded that the Bulgarian legislation on positive action goes beyond the employment sphere and beyond EU standards in general. In the employment sphere, the regulation of positive action measures for the under-represented sex is an obligation for the employer. A general remark pertains to the lack of practical importance and implementation of positive action measures.

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

There are no specific difficulties but the principle is simply not applied sufficiently often and there is no relevant practice.

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

No.

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

There are no policy measures aimed at addressing the gender balance on company boards to our knowledge. There are just research projects within the framework of the EU schemes but no advocacy campaigns so far.

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

No.

3.6 Harassment and sexual harassment

3.6.1 Is harassment explicitly prohibited in national legislation?

Yes. Harassment and sexual harassment are explicitly forbidden and defined by the Law on Protection from Discrimination. According to Article 5 of the LPFD harassment and sexual harassment represent discrimination.

According to Paragraph 1 p. 1 of the Additional provisions, harassment is any unwanted conduct based on the grounds defined in Article 4 paragraph 1, expressed physically, verbally or in any other way, which has as its purpose or effect the violation of the dignity of the person and the creation of a hostile, degrading, humiliating, offensive and intimidating environment.

The definition complies with the EU requirements.

The case law consists of court cases and cases before the equality body, initiated by women concerning sexual harassment and the number of such cases is increasing. There are still gaps in the practical implementation, however: there are delays in proceedings and the application of the burden of proof by the Commission for Protection from Discrimination and by the courts was not in full compliance with EU standards until recently. This was also due to the fact that the provision on the burden of proof in the LPFD – Article 9 was not fully in compliance with the respective provisions in the EU directives/the Recast Directive, Directive 2004/113, for example. At the beginning of 2015 the Law was amended and the correct wording was introduced in the definition of the rule on the burden of proof in cases of discrimination. Prior to that, the inconsistent practice of both the Commission and the courts was reflected in the level of proof required from women who were complaining, for example of sexual harassment, and, as a result, their access to justice was limited.

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

Yes. Bulgarian law goes beyond the regulation of harassment at the workplace and also explicitly covers protection from harassment in educational institutions (Article 31 of the Law), and harassment in the area of the establishment, equipment and extending of an economic activity (Article 37 paragraph 3). Harassment in the latter sphere is explicitly defined as follows: the refusal or the acceptance by a person of conduct which represents harassment or sexual harassment cannot be a ground for taking a decision which affects this person.

3.6.3 Is sexual harassment explicitly prohibited in national legislation?

Yes. According to Paragraph 1 p. 2 of the Additional provisions, sexual harassment is any unwanted conduct of a sexual nature, expressed physically, verbally or in any other way, which violates the dignity and honour of the person and creates a hostile, degrading, humiliating, offensive and intimidating environment. Namely sexual harassment occurs when a person refuses to accept such behaviour or the compulsion to accept it which might influence the taking of decisions affecting this person. The definition corresponds to the EU standards. It is noted that in this definition only the effect on dignity is identified as sexual harassment. It would be better to have the expression '*which have as a purpose or effect*' also in the definition of sexual harassment.

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

Yes. Bulgarian law goes beyond the regulation of sexual harassment at the workplace and also explicitly covers protection from sexual harassment in educational institutions (Article 31 of the Law), and harassment in the area of the establishment, equipment and extending of an economic activity (Article 37 paragraph 3). In the latter sphere the refusal or the acceptance by a person of conduct which represents harassment or sexual harassment cannot be a ground for taking a decision which affects this person.

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

Yes. The person's rejection of or submission to such conduct is mentioned in the definition of sexual harassment which amounts to discrimination. It is also mentioned explicitly in the prohibition of harassment and sexual harassment in the sphere of establishing an economic activity. But it is not mentioned separately and explicitly as discrimination in other cases. In our opinion this cannot form an obstacle to practical implementation in all spheres, due to the very comprehensive nature of the LPFD.

3.7 Instruction to discriminate

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

Yes, an instruction to discriminate is prohibited as an element of the notion of incitement to discrimination (see question 3.7.3 below).

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

Not to our knowledge, more specifically in the field of discrimination based on sex.

3.8 Other forms of discrimination

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

We think that although it is not explicitly defined as other forms of discrimination, the definition of the meaning of 'based on the grounds of Article 4 paragraph 1 of the LPFD' refers to such forms of discrimination. Paragraph 1 p. 8 of the Additional provisions reads: *'...on the basis of the real, current or past existence, or assumed existence of one or more grounds in connection with the person discriminated against or with a person connected to the discriminated person.'* 'Connected persons' are also defined in the Additional provisions.

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

4.1 Equal pay

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

Yes. The principle of equal pay is regulated in the Labour Code and in the Law on Protection from Discrimination (Article 14). The employer shall ensure equal remuneration for equal or equivalent work. It shall apply to all types of pay – any remuneration, paid directly or indirectly, in cash or in kind. The notion of equal pay includes the assessment criteria in determining the labour remuneration and the assessment of the work performance. These criteria shall be equal for all employees, regardless of the duration of the contract or the working time, and shall be determined by collective labour agreements or by internal administrative rules regarding salaries.

The principle enshrined in the Law on Protection from Discrimination is not defined as a typical equal pay clause between men and women only but encompasses all discrimination grounds.

Article 243 of the Labour Code defines the equal pay principle between men and women as ensuring equal remuneration for equal or equivalent work, by encompassing also all elements of pay.

The EU standards of equal pay are fully transposed in Bulgarian legislation. However, there is a big gap between the formal recognition of the equal pay principle and its implementation in practice. No specific and consistent legislative or policy measures have so far been adopted to address the gender pay gap.

There is a specific procedure for the assessment of civil servants.

In principle, no justifications for differences in pay for women and men are accepted. This is confirmed by the case law of the Commission for Protection from Discrimination (e.g. *Devnya Cement* – Decision of the CPFDP No. 29/4.07.2006, confirmed by Decision No. 10594/1.11.2007 of the Supreme Administrative Court). The case law on this issue is not recent and is not sufficiently important for the development of the notion of equal pay.

The law provides, as an exception to the principle of non-discrimination in Article 7, for the possibility of more advantageous working conditions in relation to different working experience or seniority, when it is objectively justified for achieving a legitimate aim with the means deemed necessary.

4.1.2 Is the concept of pay defined in national legislation?

No. There is no separate, explicit and general definition of pay.

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

Yes, in relation to the definition contained in Article 14 of the LPFD mentioned above.

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

This is not explicitly required, but yes, it may sometimes be required in practice.

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

Not explicitly in the law. As mentioned above, the notion of equal pay includes the assessment criteria in determining the labour remuneration and the assessment of work performance. These criteria shall be equal for all employees, regardless the of duration of the contract or the working time, and shall be determined by collective labour agreements or by internal administrative rules regarding salaries.

There are specific rules and procedures, for example for the assessment, including the periodic assessment of civil servants, regardless of the grounds defined in Article 4 paragraph 1 of the LPFD.

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

Not specifically.

4.1.7 Is the European Commission's Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency applied in your country?⁶ If so, how?

Not specifically. Only the data and campaign within the EU were reflected in the news and public debates around this date.

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

The law provides for the possibility to have more advantageous working conditions in relation to different working experience or seniority, when it is objectively justified for achieving a legitimate aim with the means deemed necessary.

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

No. The legal practice on ensuring equal pay is being developed by the Commission for Protection against Discrimination. The Commission is still the preferred forum for women who seek protection against unequal pay. Despite the fact that the case law mentioned below is not recent, the first case which had an impact is worth mentioning.

The *Devnya Cement* case was decided by the *Second specialised panel of the Commission* and was confirmed by the Supreme Administrative Court 119. The Commission found continuous unequal treatment of the applicant, a female worker at 'Devnya Cement,' in that she was provided with unequal pay for work of equal value, when compared to her male colleagues. The Commission declared that it constituted both a violation of Article 14 paragraph 1 (the equal pay provision) of the Law on Protection against Discrimination (LPAD), and direct discrimination based on sex within the meaning of Article 4 paragraph 2 of the law. Before the Commission the defendant could not justify the difference of BGN 45 (around EUR 23) in pay on a monthly basis vis-à-vis the applicant and to her detriment, compared to her male colleagues. The Commission ordered 'Devnya Cement' to discontinue the practice of unequal treatment based on sex in the enterprise, and to amend the collective agreement so as to include

⁶ 2014/124/EU OJ 2014 L 69, p. 112-116.

guarantees of equal pay, based on sex and on all other grounds, as required by Article 14 paragraphs 1 and 2 of the anti-discrimination law.⁷

4.2 Access to work and working conditions

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

Yes, we consider that the definition of a worker in Bulgarian law is in line with the CJEU case law. Chapter 2 Section 1 of the Anti-Discrimination Law regulates protection against discrimination in the employment sphere. Without explicitly indicating the personal scope of the protection, the law uses the term 'employer' which encompasses, in the first place, labour relations, and also applies to relations between workers and employers under a labour contract. According to Article 28 of the Anti-Discrimination Law, this protection is also extended to civil servants under the special civil servants' contracts. The persons obliged to ensure equal pay and equal access to work and working conditions are the employers. The definition of the concept of 'employer' is contained in the Additional Provisions of the Labour Code, Paragraph 1.1.: the term 'employer' is associated with any physical or legal person, or its branches, or any other unit which is autonomous from an organizational and economic point of view, and who/which hires workers and employees independently under a labour contract, including homeworkers or workers for distance working, as well as in cases of sending a worker or employee for temporary work to another enterprise called the beneficiary. It is to be noted that the definition of an employer was extended so that it is also applicable to the categories of homeworkers, distance workers and temporary workers as a result of the amendments to the Labour Code in 2011 and 2012 (S.G. 33/2011, 82/2011 and 7/2012).

The alternative to the labour contract is to work under a civil contract but, as mentioned above, only those working under a labour contract are protected under the Anti-Discrimination Law. The rights of persons under such contracts are regulated under the Law on Contracts and Obligations.

Discrimination based on the grounds indicated in Article 4 paragraph 1 of the LPFD is also prohibited in the field of the public and the real (economic) sector, directly or indirectly, in relation to the development of an economic activity, according to Chapter 2 Section 3 Article 37 paragraph 2.

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

Yes. The protection given by the Bulgarian legislation in the field of access to work and working conditions is almost in full compliance with the EU equal treatment directives (except the lack of an explicit statement on equality in the benefits provided for by trade unions and other professional organisations). The main guarantees are provided by the Law on Protection from Discrimination, supplemented by the guarantees of the Labour Code (for labour contracts) and by the respective provisions of the Law on Civil Servants. The detailed protection corresponding to the requirements of the directive is provided in the Anti-Discrimination Law. Namely, Article 12 lays down the principle of non-discrimination in the field of recruitment and Article 13 ensures the right to equal working conditions. Article 14 relates to the right to equal pay. Article 15 guarantees the right to equal conditions for vocational training and retraining, for upscaling qualification or requalification, for professional promotion, and promotion in terms of position or rank, by ensuring equal conditions for professional assessment. Equal criteria in applying

⁷ Decision of the Commission for Protection against Discrimination No. 29/4. 07. 2006, confirmed by Decision No. 10594/1. 11. 2007 of the Supreme Administrative Court.

disciplinary sanctions is required by Article 20 and Article 21 lays down equal conditions for the termination of employment.

The protection provided by the law covers all aspects of working life and is extended to all types of employment relations, including those related to sex discrimination in the implementation of military service in the armed forces, with the exception of activities and positions where sex constitutes a determining factor - Article 27 of the LPFD. The protection also covers civil service relationships. In addition to the requirements in the Directive, Bulgarian law also contains protection against discrimination in unemployment.

Article 37 paragraph 2 mentioned above extends this protection to the public and real (economic) sectors in all cases of the establishment, initiation, equipment or expanding of any economic activity.

Article 36 lays down the principle of non-discrimination in the subscription to/ adherence to, terms of membership and participation in trade unions and in all kinds of professional organisations, besides the requirement of specific education in the professional organisations. Equality in the benefits provided by such organisations is not explicitly included but could be related to the terms of participation.

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

Yes. As an exception, different treatment is allowed by reason of the nature of a particular occupation or activity, or of the conditions under which it is performed, when gender characteristics constitute an essential and decisive occupational requirement, the aim is legitimate and the requirement does not go beyond what is necessary for its achievement - Article 7 paragraph 2 of the LPFD. The lists of activities where gender characteristics constitute an essential requirement are in principle defined by an ordinance of the Minister of Labour and Social Policy/MLSP/, in accordance with the Minister of Internal Affairs, as well as by an ordinance of the Minister of Defence/ Article 7 paragraph 2/. Two such ordinances have been adopted – Ordinance No. 4 of 30 March 2004 of the MLSP and Ordinance No. 14 of 10 October 2005 of the Minister of Defence. The first one rather focuses on selection for artistic performances and is almost without practical importance as it is not among the regulatory acts listed on the website of the MLSP. The second ordinance on activities and positions in the armed forces is also progressively losing its practical importance and has been amended, as will be further indicated.

More concrete and rigid exceptions are provided in cases of differential treatment based on religion, faith or sex in occupational activities and religious education or training at religious institutions or organisations - Article 7 paragraphs 3 and 4. We are of the opinion that the detailed regulation of these exceptions goes beyond EU law and presents a risk of non-compliance with the requirements for legality and proportionality and the exceptions based on religious considerations in relation to sex cannot be *a priori* justified.

As mentioned above, in spheres outside religious activities, the exceptions are currently being assessed and are progressively losing their importance. Even the ordinance of the Minister of Defence was amended in 2010 in order to abolish the requirements related to sex for service in the National Guard. This was done after a challenge before the courts by two young women who contested the prohibition on women having access to the National Guard. The case was discontinued by the court after the particular provision of the ordinance was repealed.

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

Yes. Article 7 p. 7 stipulates that the special protection of pregnant women and mothers under the law does not constitute discrimination. Within this category are also women at an advanced stage of in-vitro fertilization. There is an exception to the exception, however: this protection does not apply when women in such situations do not want to avail themselves of this protection and they have informed their employer thereof in writing, accordingly. This last argument has no practical implications for the exception, as it cannot potentially affect the rights of other persons protected under the anti-discrimination principle.

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

No.

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

5.1 Pregnancy and maternity protection

5.1.1 Does national law define a pregnant worker?

Yes, an explicit definition of this notion has been recently provided in joint Ordinance No. RD-07-4 from 15 June 2015 from the Minister of Labour and Social Policy and the Minister of Health: Ordinance for improving the working conditions for pregnant women, women who have given birth or breastfeeding women.⁸ This ordinance was meant to ensure full compliance with Directive 92/85. Paragraph 1 p. 1 of the Additional provisions defines the notion of a pregnant worker as follows:

'1. "Pregnant worker" is a worker or employee with the confirmed status of pregnancy as well as the one in an advanced stage of in-vitro treatment within the meaning of § 1, p. 13 of the Additional provisions of the LC and who has duly informed her employer about her status with a document issued by the competent health authorities.'

In this recently issued ordinance the notions of a woman worker who has given birth and a breastfeeding worker are defined as well.

'A female worker or employee who has given birth' is one who has returned to work prior to 90 days after having given birth and has informed her employer of her status with a document issued by the health authorities.

'A breastfeeding female worker or employee' is one who breastfeeds her child herself and has informed her employer of her status with a document issued by the health authorities.

We note that in Bulgarian legislation protection which is symmetrical to the one guaranteed to pregnant women is granted to female workers and employees who are at an advanced stage of in-vitro treatment. Their rights were made consistent with those of pregnant female workers and employees and with those who are breastfeeding. According to Paragraph 1 p. 13 of the Additional provisions of the Labour Code and to p. 16 paragraph 1 of the Additional provisions of the Anti-Discrimination Law, this advanced stage corresponds to the period up to 20 days from the aspiration of the ova until the transfer of the embryo.

Notification of the employer by the pregnant woman is regulated in Article 313a of the LC as an obligation of the woman in order to avail herself of the rights of pregnant workers and employees provided for in the Labour Code.

The definition of a pregnant worker is consistent with the requirements of the Directive.

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

Yes, these protective measures are ensured in Bulgarian legislation.

Articles 307 and 309 LC regulate this protection. The employer cannot compel a pregnant or breastfeeding woman, or a woman at an advanced stage of in-vitro fertilization, to perform work which entails a risk to their safety or health. The pregnant

⁸ Promulgated in S.G. 46/2015.

woman has the right to refuse to perform work which is defined as harmful to her health or for the health of the child or which, as a result of a risk assessment, is defined as representing considerable harm to their health. The assessment is carried out, based on regulatory acts, such as an Ordinance by the Minister of Labour and Social Policy, issued jointly with the Minister of Health (No. 5 from 1999). The assessment is carried out by the employer, with the participation of units dealing with labour medicine, the bodies dealing with health and safety at work and other specialists in the enterprise. The employer can also invite other external experts and organisations.

A list of the working activities and the working conditions which pose a risk to the health and safety of pregnant workers is provided in a joint Ordinance of the Minister of Labour and Social Policy and of the Minister of Health. This is currently regulated by the mentioned Ordinance No. RD-07-4 from 15 June 2015 of the Minister of Labour and Social Policy and the Minister of Health: Ordinance for improving the working conditions for pregnant women, women who have given birth or breastfeeding women. In this ordinance there is also a reference to the above-mentioned Ordinance No. 5 from 1999 on the procedure, methodology and periodic review for the risk assessment for the health and safety of pregnant workers, workers who have given birth or are breastfeeding. The recently issued ordinance from June 2015 contains non-exhaustive lists of the risk factors, work processes and working conditions for women of the protected categories.

Under Bulgarian law, and according to Article 309 LC, the employer is obliged to adjust any working conditions which are not suitable for pregnant or breastfeeding women or, if this is not technically and objectively possible, the employer has to transfer the worker to other suitable work. The provisions by the health authorities are obligatory both for the pregnant worker and for the employer in such cases. Until the adequate adjustment is made, the pregnant or breastfeeding worker is exempted from the obligation to perform the unsuitable work. In all cases the levels of the remuneration received prior to the adjustment for this category of workers should be maintained, and in case of wage differences after the adjustment the worker should be compensated up to the amount received prior to that. In addition to the Ordinance mentioned above, the Ordinance for an adjustment to the workplace for pregnant workers, workers who have given birth and breastfeeding workers is valid as well - Ordinance adopted by Decree No. 72/ 86 of the Council of Ministers.

In addition, the LC provides for a standing obligation for the employer to define on a yearly basis, in conjunction with the health authorities, the working positions and workplaces which are suitable for pregnant workers, workers in an advanced stage of in-vitro treatment and breastfeeding workers.

According to Article 140 paragraph 4 of the LC, night work is forbidden for pregnant workers and workers in an advanced stage of in-vitro treatment; this is also valid for mothers with children up to 6 years old, and mothers who take care of children with disabilities, notwithstanding their age, unless their explicit written consent is given.

The possibility for a transfer to daytime work or leave from work, or an extension of maternity leave, is not explicitly provided for such cases. But it can be considered to be an implicit possibility in view of the protection provided by the provisions mentioned above. To this the long maximum duration of maternity leave in Bulgaria can be added.

According to our assessment, the protection required by the Directive is ensured by Bulgarian law.

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

Yes, the provisions on the conditions for the dismissal of such categories of workers are in compliance with the Directive.

The prohibition is not absolute. According to Article 333 paragraph 5 LC, a pregnant worker or a worker at an advanced stage of in-vitro treatment may only be dismissed based on the grounds of Article 328, paragraph 1, pp. 1, 7, 8, 12 with previous notice, and without notice only based on Article 330 paragraph 1 and paragraph 2 p. 6 LC. In the latter case/Article 330 para 2 p. 6 a dismissal will only be possible with the prior permission of the Labour Inspectorate. In the case of Article 328 LC these hypothetical situations cover: the closing down of the enterprise, a refusal by the worker to follow the enterprise or its unit if it is moved to another location, when the position has to be vacated in favour of the return of an illegally dismissed worker or employee, and when there is an objective impossibility to perform the duties under the labour contract. Article 330 paragraph 1 covers cases when the worker is detained for the enforcement of a verdict and paragraph 2 p. 6 LC covers a dismissal for a breach of discipline.

Increased protection is provided in cases of the dismissal of a female worker or employee mother of a child up to three years of age. According to Article 333 paragraph 1, a preliminary approval for each individual case is required before a dismissal under Article 328 paragraph 1, pp. 2, 3, 5 and 11 and Article 330 paragraph 2 p. 6 LC. This covers the closing down of part of the enterprise or a reduction in personnel, a decrease in the volume of work, a lack of qualities and skills by the worker or employee for the effective performance of the work, a change to the job requirements and when the worker or employee does not comply with them.

Maximum protection is provided for a worker or employee who is on leave under Article 163 LC: for pregnancy, giving birth or adoption. According to Article 333 paragraph 6 LC, this category of workers may only be dismissed when the enterprise has to close down/Article 328 para. 1. If the employee is made redundant during her maternity leave until its end she is entitled to maternity benefits up to 410 days, as guaranteed under Bulgarian legislation.

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

Yes, According to Article 335 LC the dismissal must be in writing and in most cases written notice is required where the specific grounds are substantiated. The sanction for not respecting this provision is that the dismissal will be declared illegal by the courts.

5.2 Maternity leave

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

Female employees are entitled to pregnancy and maternity leave for 410 days for each child, 45 days of which must be used before the birth (Article 163 paragraph 1 LC). A female employee who adopts a child is entitled to leave which is equal to the difference between the child's age when he/she was given up for adoption and the expiration of the period of the maternity leave. This extended leave was introduced in January 2009.

Therefore Bulgarian legislation goes beyond the minimum requirements of EU law.

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

Yes, as mentioned above this period is 45 days - Article 163 LC.

The maternity leave after giving birth is formulated as a right of the working mother - Article 163 paragraph 1 LC.

It is noted that according to Article 7 paragraph 1 p. 7 the special protection for pregnant women and mothers which is established by law does not constitute discrimination, except in cases where they do not want to benefit from this protection and they have notified the employer of this in writing.

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

Yes, the rights are ensured and the issue was covered in 5. 1. 2 above.

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

Yes, and this question was partly dealt with in 5. 1. 2 above.

In addition to that, according to Articles 13 and 15 of the PADA, a woman on maternity leave shall be entitled, at the end of her maternity leave, to return to her job or to an equivalent position under terms which are no less favourable to her and to benefit from any improvement in the working conditions. These rights are also attributed to women on childcare leave. The father/adoptive father can also benefit from these rights upon his return from leave for raising a child. Those persons also have the right to be trained with regard to technological changes related to their job which have taken place in their absence.

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

The maternity benefits during pregnancy and maternity leave amount to 90 % of the average remuneration or the average insurance income based on which the worker or employee contributed to social security or based on which the contribution is due in the previous 24 months - Article 49 of the Code of Social Insurance/COSI. It is equivalent to the maximum pay for sick leave.

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

Not to my knowledge.

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

Yes, according to Article 48a of COSI, the principle is that persons under a labour contract who are insured for general sickness and maternity have the right to maternity benefits if they have 12 months of insurance contributions for this risk.

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

Yes. Women on maternity leave as well as fathers on paternity and childcare leave are explicitly recognised as having the right to return to their job or to an equivalent post and to benefit from improvements in working conditions - Articles 13 and 15 of the PADA.

5.3 Adoption leave

5.3.1 Does national legislation provide for adoption leave?

Yes. Adoptive mothers are entitled to the rights under Article 163 paragraph 1 of the Labour Code, as mentioned above. In addition, a more recent provision in the Labour Code: Article 164b LC⁹ has introduced a new type of leave – paid leave for raising an adopted child between two and five years of age. The adoptive mother has the right to leave for up to 365 days, and after six months from the adoption of the child the remainder of this leave can be transferred to the father.

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

Adoptive parents have the same rights as persons on leave under Article 163 and as mothers of children up to three years of age.

Therefore Bulgarian legislation provides special protection for adoptive parents to some extent.

5.4 Parental leave

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

Yes. The compliance of Bulgarian legislation with Directive 2010/18 was achieved prior to the adoption of the Directive and within the expiry of the transposition period. The means of applying the parental leave beyond the minimum standards were also defined after that period. Harmonization was made possible mainly through amendments to the Labour Code (LC), and also to the Protection against Discrimination Act (PADA). Unpaid leave for raising a child until he/ she reaches eight years of age was introduced in 2004 and is regulated in Article 167a LC. After having used the leave for raising a child up to the age of two, any of the parents (adopters), if they work under a labour contract, and if the child has not been placed in an institution with full public support, upon request, shall have the right to make use of unpaid leave of up to six months to take care of a child until he/she reaches eight years of age. The law has introduced the principle of the individual right of each parent to use the parental leave of six months' duration since 1 January 2007, when this leave became non-transferable. After the amendments to the LC by S.G. No. 7/ 2012, upon the expiry of the transposition period of the Directive, each of the parents (adoptive parents) can make use of up to five months of the leave of the other parent. Therefore the legislation is in compliance with the minimum standards set by the Directive. There is no difference provided by law in the duration of parental leave in the public and the private sectors.

⁹ SG 104/2013, in force since 1 January 2014.

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

Yes.

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

The only requirement is the availability of a labour contract under the Labour Code.

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

The duration is given in 5.4.1. above and there is no difference between the two sectors.

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

Yes, this is an individual right of each of the parents.

5.4.6 What form can parental leave take (full-time or part-time, piecemeal, or in the form of a time-credit system)? Do the various available options allow taking into account the needs of both employers and workers and if so, how is that done (see Clause 3 of Directive 2010/18)?

The unpaid leave for raising a child up to the age of eight years can be used in parts, the minimum being five days. The law does not require a regular sequence in using the leave, i.e. each parent decides when to use the right to parental leave. The person who would like to benefit from the leave has to notify the employer 10 days in advance of the planned leave. The leave is regulated as a right of the respective parent and has to be granted by the employer upon receiving notice thereof.

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

This is explained in 5.4.6. above.

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

Yes, the special leave for adoptive parents can be considered as such a measure. There are no other specific measures in this field.

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

No.

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

Not according to the law.

5.4.11 Are there special arrangements for small firms?

Not specifically in the legislation.

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

Not in the legislation on parental leave.

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

Yes. Workers and employees are protected against less favourable treatment and dismissal in relation to an application for or the taking of parental leave through the general anti-discrimination provisions of the Labour Code (Article 8) and the PADA (Article 4) which introduce a prohibition on less favourable treatment, among others, on the ground of family status.

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

In view of the full compliance with Directive 2010/18/EU, a new Article 167b has been introduced.¹⁰ It provides for the rights of persons returning from leave under Articles 163- 167a LC, including parental leave under the Directive. They can negotiate with their employer on the length and division of their working time, as well as other conditions under the labour contract, in view of facilitating their return to work. The employer has to take into account the suggestions of those returning, if they can be accommodated. The law also provides for the possibility of negotiations and changes to the employment conditions during the period of leave.

Women on maternity leave as well as fathers on paternity and childcare leave are explicitly recognised as having the right to return to their job or to an equivalent post and to benefit from improvements in working conditions - Articles 13 and 15 of the PADA. It is not provided for cases of parental leave according to the Directive. We note that Clause 6 of the Parental Leave Directive does not explicitly contain such a requirement.

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

Yes, in principle, although there is no such requirement in the Directive. Article 13 paragraph 3 of the Anti-Discrimination Law provides for the right of the mother who has benefited from pregnancy and maternity leave or from leave for child rearing, as well as the father who has benefited from the leave for caring for the child after his/her sixth month and from other forms of leave for caring for the child, have the right to return to the same position or another equivalent job position. The parental leave as regulated in the Labour Code is also considered to be a type of leave for caring for a child between two and eight years of age.

¹⁰ S.G. No. 7/2012.

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

This question is similar to the previous two. And the answers are similar, too.

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

Yes.

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

No, parental leave is unpaid.

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

No, no allowance is provided.

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

In our opinion, the minimum standards of the Directive have been formally met. The problem is that the existing regulation of the parental leave which is understood as unpaid leave for raising a child until he/she reaches eight years of age, as well as other related leave for raising a child, are still used predominantly by mothers, which is a substantive equality problem and an uneven balance in family and professional life for both parents.

The various forms of paid leave for both parents for raising a child until he/she reaches two years of age are more favourable provisions in Bulgarian law. The fact that the unpaid leave for raising a child between two and eight years of age is six months for each parent is also more favourable, compared to the minimum of four months.

5.5 Paternity leave

5.5.1 Does national legislation provide for paternity leave?

Yes. Since 2009, if the parents are married or live together in cohabitation, the father is entitled to 15 days of paid paternal leave upon the birth of his child after the child is brought home from the hospital (Article 163 LC). Fathers have the same social insurance rights for this paternity leave and also when they replace the mother after the child's sixth month.

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

Yes. As mentioned above, according to Article 13 paragraph 3 of the PADA, women on maternity leave as well as fathers on paternity and childcare leave are explicitly recognised as having the right to return to their job or to an equivalent post and to benefit from improvements in working conditions. Persons on leave under Article 163 also benefit from maximum protection against dismissal under Article 333 paragraph 6 LC.

5.6 Time off/care leave

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

Yes. According to Article 162 LC, the worker or employee has the right to leave as a result of a temporary inability to work due to general sickness but also due to the sickness of a child or another close relative or spouse, and due to medical examinations or other urgent family reasons related to a medical urgency. For this period the worker is entitled to social security benefits which amount to up to 70 % of his/her average remuneration during the first three days which are paid by the employer and to up to 80% for the rest of the leave. The length of this type of leave is unlimited for urgent medical reasons when they pertain to a child, is limited to 60 calendar days in a calendar year for taking care of a sick child, and may be up to 10 calendar days in one year for taking care of an adult relative. The detailed regulation is provided in Articles 40- 45 of the Code on Social Insurance (COSI).

5.7 Leave in relation to surrogacy

- 5.7.1 Is parental leave available in case of surrogacy?

No.

5.8 Leave sharing arrangements

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

Yes. As mentioned above, female employees are entitled to pregnancy and childbirth leave for 410 days for each child, 45 days of which must be used before the birth (Article 163 LC). A female employee who adopts a child is entitled to leave which is equal to the difference between the child's age when it was given up for adoption and the expiration of the period of the maternity leave of a biological mother. With the consent of the mother/adopter, after the child is six months old, the father/adopter may use the remaining paid leave of up to 410 days, and the paid leave of the mother is interrupted. For the time of this leave, the respective parent employee shall be paid cash compensation under the terms of and subject to the amounts specified in the Social Insurance Code.

Separate from this, since 2009 if the parents are married or live together in cohabitation, the father is entitled to 15 days of paid paternity leave upon the birth of his child, after the child is brought home from the hospital (Article 163 LC). In all cases, both when the child is born and adopted, fathers have the same social insurance rights for this paternity leave, also when they replace the mother after the child is six months old (this is applicable in all cases after the child reaches the age of six months).

After the leave for pregnancy, childbirth or adoption has been used, if the child is not placed in a childcare establishment, the mother, regardless of the number of children, is entitled to additional leave to raise her child until he/ she reaches the age of two (Article 164 paragraph 1 of the LC). With the consent of the mother (adopter), this leave shall be granted to the father (adopter) or to one of their parents if the grandparents work under an employment contract. During this leave, the mother (adopter), or the person who has taken over the raising of the child, is entitled to maternity benefits under the terms of and subject to the amounts specified in the Law on the Budget of the State Social Insurance Scheme.

There are no explicit provisions allowing the choice of the mother or father to take over maternity, paternity and/or parental leave on a part-time or full-time basis. The size of the employer is irrelevant when it comes to the rules on and the models of sharing childcare leave.

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

Yes, as mentioned above in 5. 4. 1., the law has introduced the principle of the individual right of each parent to use parental leave of six months since 1 January 2007, when this leave became non-transferable. After the amendments to the LC by S.G. No. 7/ 2012, upon the expiry of the transposition period of the Directive, each of the parents (adoptive parents) can use up to five months of the leave of the other parent.

5.9 Flexible working time arrangements

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

No, but this can be negotiated with the employer, but only upon their initiative.

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

Yes, but only upon the initiative of the worker or employee but only as a result of negotiations with the employer.

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

Yes, there is a right to work from home, based on the contract with the employer. The answer is the same as the previous two answers. It can only be achieved on a contractual basis.

Bulgarian law provides for part-time work arrangements. According to Article 138 of the Labour Code, the parties to a labour contract can agree on work for part of the legally defined working time/ part-time work. In such cases they define the duration and the distribution of the working time.

The recent amendments to the Labour Code¹¹ introduced additional possibilities for flexible working arrangements. The arrangements can be introduced in companies where the way in which the work is organised allows the establishment of variations of the working time arrangements. Under the principle set down in Article 139 (2) of the Labour Code, the obligatory period during the day when the employee has to be at work and the means of its calculation are defined by the employer. A new paragraph 3 of Article 139 sets cases when flexible working time arrangements can be applicable. When flexible working time is established by the employer, the worker or employee can negotiate for complementing her/his working hours during the next day or in other days of the working week. The calculation of the working time is done based on the internal rules of the company.

The aim of these LC amendments is to achieve more flexibility in favour of the worker and the establishment of a more liberal regime for adjusting the working time and for opportunities for reconciliation of work and family life. We note that the workers or

¹¹ Promulgated by State Gazette No. 54/2015 from 17 July 2015 [[web Link to amendments?](#)]

employees can benefit from such arrangements only upon the initiative of the employer in establishing flexible working time and outside the obligatory working periods established by the employer. In other words, the initiative is with the employer - the employee cannot ask for such general flexible arrangements.

Other flexible working arrangements are left to concrete agreements reached in the labour contract between the worker and the employer. Opportunities which are guaranteed by the law for such arrangements are provided in Article 167bLC which was adopted in view of reaching full compliance with Directive 2010/18/EU. It provides for the rights of persons returning from leave under Articles 163-167a LC: maternity leave, paternal leave, leave for caring for a child up to his/her second birthday, leave for breastfeeding and parental leave, including parental leave under the Directive. They can negotiate with their employer on the length and organisation of their working time, as well as other conditions of the labour contract, in view of facilitating their return to work. The employer has to take into account the suggestions of the returning parent, if they can be accommodated. The law also provides for the possibility for negotiations and changes to the employment conditions under the employment contract also in the course of any of the types of leave regulated under Articles 163-167 LC.

We note that the size of the employer is not a qualifying condition for part-time and flexible working time arrangements provided by law. There are no provisions explicitly allowing maternity leave or parental leave to be taken in the form of part-time working. Adopting part-time working arrangements as mentioned above is subject to the conditions under the labour contract. Concerning the other forms of flexible working arrangements which have been mentioned, the employer is obliged to consider the request of the worker/employee and the final arrangements are subject to negotiations and agreement. Based on that, it is also logical to conclude that returning to prior working arrangements is also a question of negotiations between the worker and the employer. There are no measures specifically aimed at encouraging men to make use of the legal rights for sharing parental responsibilities.

The Labour Code allows for arrangements to work from home or remotely as a result of the definition of the notion of 'employer' in the Additional Provisions of the Labour Code, Paragraph 1.1: the term 'employer' is associated with any physical or legal person, or its branches, or any other unit which is autonomous from an organizational and economic point of view, and who/which hires workers and employees independently under a labour contract, including homeworkers or workers for distance working, as well as in cases of sending a worker or employee for temporary work to another enterprise, called the beneficiary.

Working from home and remotely are also regulated in detail in specific sections of the LC dedicated to this type of agreements between the parties under the labour contract and the respective arrangements.

There are no legal limitations as to the size or type of the employer. There are no positive measures aimed at encouraging specifically men to work from home or remotely.

Thus the regulation of flexible working agreements is left to a great extent to negotiations between the parties and the individual employment contract.

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

Not explicitly but with the amendments to the LC since July 2015 on new opportunities for negotiations on flexible working arrangements, such models might also be possible.

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

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

We note that from the beginning of 2000, the pension system in Bulgaria consists of three pillars. The model was based on the World Bank's advice and is different from the pillars in the EU countries. The first pillar is the universal social security fund, a 'pay as you go' type, which is obligatory for persons in an employment relationship or self-employed persons. The second pillar is a mandatory and fully-funded pension fund with defined contributions which are allotted to individual accounts run by licensed pension insurance companies. The third pillar includes supplementary voluntary pension schemes.

In Bulgaria there are no second pillar pension schemes comparable to the type of occupational pension schemes recognised in EU law. Provisions for the establishment of occupational pension schemes are contained in the Code for Social Insurance within the third pillar as part of Additional Voluntary Social Insurance - Part III of the COSI. These schemes are not yet well developed in Bulgaria.

Direct and indirect discrimination based on sex is forbidden, first in acceptance into the schemes and also in the process of insurance under such schemes. Namely, no discrimination based on sex, including discrimination based on marital and family status is allowed within the scope of application of the schemes and the conditions for accessing them; the obligation to pay contributions and the calculation thereof; the calculation of retirement payments and other terms of the related rights.

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

Although compliance cannot be sought, these new schemes being part of the third pillar in Bulgaria, it can be said that additional voluntary pension insurance is open to all physical persons aged 16 and over - Article 210 COSI. In Bulgarian legislation, there are no occupational social security schemes which form part of a second pillar of social security, as in the old European Member States. The situation in Bulgaria and other new Member States has been explained in many reports within the framework of the Network.¹²

So compliance with the requested provision cannot be sought and measured.

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

Despite the fact that compliance should not be sought, it is worth mentioning that the voluntary insurance under the professional schemes of enterprises which are the insurers gives the right to a fixed-term pension, an ad hoc or postponed payment of the accumulated amounts under the individual account, an ad hoc or postponed payment of the accumulated amounts to the successors of a deceased insured person or of a retired person - Article 212 COSI.

¹² Renga, S., Molnar-Hidassy, D., Tisheva, G. (2010), *Direct and Indirect Gender Discrimination in Old-Age Pensions in 33 European Countries*, The European Network of Legal Experts in the field of Gender Equality, <http://www.equalitylaw.eu/downloads/2810-discrimination-old-age-pensions>.

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

No, as these provisions are not applicable.

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

No, as the schemes are not of the type provided under EU law and they have not yet been developed in practice.

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

No, as in the third pillar the solutions based on the *Test-Achats* case were adopted.

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

The differences and difficulties were explained above so there is no case law which is relevant to occupational social security schemes according to the Directive.

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

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

Yes, in the state social security tier of the first pillar. Article 3 Code of Social Insurance (COSI) states that one of the main guiding principles of the state social security system is equality between insured persons, thus also gender equality.

Statutory social security as a first pillar is formed in Bulgaria by two pillars - state social security/first Bulgarian pillar, and supplementary obligatory social security/second Bulgarian pillar or tier. The latter tier is publicly mandated but privately managed. In the second Bulgarian pillar/tier of the statutory social security scheme the insurance companies use gender-related actuarial factors for the different life expectancy of women and men. This contradicts the EU law on equality in statutory pensions.

As the Bulgarian second pillar comprises all women and men born after 1960, inequality affects a great number of women. Several legal cases challenging the use of gender-related actuarial factors in contravention of EU law have been brought before the Supreme Administrative Court.

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

The personal scope of state social security is in compliance with the Directive.

According to Article 2 of the COSI public social insurance provides benefits, allowances and pensions for:

- 1) a temporary inability to work;
- 2) a temporarily reduced ability to work;
- 3) disablement;
- 4) maternity;
- 5) unemployment;
- 6) old age; and
- 7) death.

The law differentiates between the benefits of persons insured against all social insurance risks, those insured against employment injuries and occupational diseases and persons insured against disablement by general sickness, old age and death (Articles 11-13 COSI).

Namely, as a matter of principle, Article 4 paragraph 1 COSI provides for the coverage of all risks for workers and employees, civil servants, judges and prosecutors, and those working on management contracts. Paragraph 3 regulates the circle of persons who are insured for disablement due to general illness, old age and death - self-employed persons, including agricultural workers. Those persons can insure themselves also for general illness and maternity.

According to Article 127 COSI persons born after 31 December 1959 are obliged to contribute to the obligatory supplementary social insurance if they are insured according to the state social insurance system. As a matter of principle, according to Article 124 this insurance is realised through contributions in a universal pension fund by an individual contract with a pension insurance company. Since the end of 2014 the persons in question can choose to contribute to supplementary social insurance through the state insurance pension fund. Persons already contributing through private companies can

discontinue their contract and transfer their supplementary insurance to the state insurance fund.

Legislation on the specific procedure for transferring from a privately managed insurance fund to the state pension fund was adopted in 2015. Transfer of the insurance back from the state fund to the universal privately managed pension fund will also be possible under certain conditions.

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

Yes. The material scope and risks covered were mentioned above in Article 2 COSI.

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

Yes, the main exclusion invoked by Bulgarian legislation is the difference in the pensionable age of men and women. Currently, according to Article 68 COSI, women acquire the right to a social insurance pension upon attaining the age of 60 years and 10 months and men at 63 years and 10 months, provided there are insured periods of 35 years and 2 months for women and 38 years and 2 months for men. Starting on 31 December 2016 up until 31 December 2029 the pensionable age for women will increase by two months every calendar year and from 1 January 2030 by three months per year until the age of 65 is reached. For men the scheme is as follows: from 31 December 2016 until 31 December 2017 the pensionable age for men will increase by two months, and from 1 January 2018 by one month per calendar year until the age of 65 is reached. As for the compulsory insurance periods for old age pension entitlement, from 31 December 2016 it will increase by two months for both men and women, until 37 years is reached for women and 40 years for men. These provisions entered into force on 1 January 2016. In the expert's opinion, the gender difference in the compulsory insurance periods is justified, among others, by the risk for women of longer period for interruption of their professional and career development due to their care obligations, and by increased risk of long-term unemployment compared to men.

Different pensionable ages for men and women for the moment are justified in Bulgaria due to the hardships of the transition and the heavy burden on a generation of working people during this period. The transition period for working people in Bulgaria was marked by numerous and fragmented changes in legislation, insecure and exploitative conditions of employment and also the risks of informal work and work without social security coverage. These characteristics of employment, are even more valid for female employment during this period. Furthermore, the hardship of transition impacted on the worsened health status and disabilities, of women especially. This is a burden on people living in transition which is above the average exhaustion of the working force, and above the average burden in Western countries. The initial increase in the pensionable age for women since the transition (this age used to be 55 years) is already very abrupt for the generation who lived under the difficult transition period.

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

Yes. This practice which contradicts Council Directive 79/7 on the principle of equal treatment of men and women in social security was reported to the EU Commission by the Bulgarian Gender Research Foundation and it is an issue of concern also for the Commission in the pending EU Pilot 6013/14/JUST. In parallel, this practice has been systematically challenged and brought before the Supreme Administrative Court during

the last three years by a group of Bulgarian women born after December 1959. These arguments have also been raised in case C-318/13 (*Korkein hallinto-oikeus v. Finland*). All procedures are still pending at the time of writing.

Our opinion is that the changes in the second Bulgarian pillar allowing a choice between contributing to the statutory social security system or to the private pension funds mentioned above were maybe provoked, among other things by the problem of the use of gender-sensitive actuarial factors by the private pension funds, and the fact that they have been challenged by women and the CSO before the courts and the European Commission.

Our opinion is that the step mentioned above is an attempt to cover a number of problems in the functioning of this second pillar and of the insurance system as a whole. As to the issue of the use of gender-sensitive actuarial factors by the private insurance companies which are part of the supplementary mandatory social security scheme, this is still ongoing practice, although the court cases are pending, as well as the EU pilot study. We think that even if there is a choice for insured persons as to where to contribute for this pillar, private insurance companies should not be allowed to use such actuarial factors anyway.

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

The fundamental differences and difficulties are rooted in the different three-pillar system in Bulgaria. As explained above, the second Bulgarian pillar is part of the statutory social security system. We do not have professional pension schemes of the type recognized as belonging to second EU pillar. So it is initially impossible for the Bulgarian legislation to be in compliance with the EU standards in this field.

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

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

Yes. The transposition was realised through amendments to the Protection against Discrimination Act (PADA), namely amendments by Articles 7 Paragraph 1 Point 19, and Article 37 Paragraphs 2 and 3, as well as Paragraph 1 Points 1 and 2 and 5 of the Additional Provisions to the Law. The amendments in Article 7 introduce an additional exception when differential treatment is not deemed discriminatory: in cases of the differential treatment of persons when taking measures aimed at initiatives exclusively and mainly promoting entrepreneurship among women in instances of their under-representation or for overcoming and compensating for disadvantages in their professional career. The provision in Article 37 Paragraph 2 prohibits any discrimination based on any of the grounds of Article 4 Paragraph 1 of the Law in the public or real (economic) sector, direct or indirect, in relation to conducting an economic activity, including the establishment, equipment or expansion of an economic activity or in relation to starting or expanding any other form of such activity. The new Paragraph 3 of Article 37 prohibits any harassment or sexual harassment within the framework of the activities mentioned above.

It is worth mentioning the already existing Article 26 of the PADA which provides for equal conditions for access to a profession or an activity, for opportunities to exercise the activity or profession and for development in this sphere. It covers the scope of the equal treatment principle enshrined in Article 4(1) of Directive 2010/41/EU: the establishment, equipment and extension of a business or the launching or expansion of any other form of self-employed activity, despite the different wording of the two provisions. The other provisions which were amended in view of compliance with the Directive are those in Article 4 of the Code on Social Insurance (COSI), which enhance the insurance rights of persons covered by the Directive.

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

Bulgarian law does not contain a legal definition of self-employed persons, only a definition of different groups of the self-employed for the purposes of social security law. In fact, in addition to the list of self-employed persons mentioned above with reference to the reports of trade unions, the COSI and related regulatory Acts mention different categories of such persons. For example, Article 4 of the COSI mentions the following categories: persons registered for performing freelance activities and crafts; persons exercising commercial activities, single owners of companies, owners or associates in trading companies; registered agricultural and tobacco producers; and the spouses of the categories of persons mentioned above when they participate in their activities with their consent.

In the Regulation on social insurance for self-employed persons, Bulgarian citizens working abroad and those involved in maritime activities, the group of freelancers is further specified and can non-exhaustively comprise those performing the following types of activities: based on preliminary registration, legally required notaries public, attorneys-at-law, accountants, licensed evaluators, experts at the courts and the prosecutor's office, medical experts, insurance agents; activities for which they are obliged to pay patent tax, without being single company owners; when the professional activity is conducted at their own risk and on their own account; scientists; experts in the field of culture and education; architects; economists; journalists; and other persons performing a freelance activity, when they are duly registered.

We would like to note that these provisions of the regulation already existed before the adoption of the new Directive and this regulatory Act was not amended for the purpose of harmonisation. In terms of rights as self-employed persons, all categories are treated equally, including freelancers, agricultural producers, small business operators, and others.

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

As mentioned above, self-employed workers are included in this category, as well as agricultural workers. The status of life partners is not explicitly regulated in this sphere or in any other sphere. In terms of social security, the COSI only mentions contributing spouses as subjects of insurance rights.

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

Article 4 has been correctly transposed in Bulgarian legislation, firstly through the existing provision in Article 26 of the PADA which provides for equal conditions for access to a profession or an activity, for opportunities to exercise the activity or profession and for development in this sphere. In addition, the equal treatment principle is ensured through the new provision in Article 37 Paragraph 2 PADA which prohibits any discrimination based on one of the grounds of Article 4 Paragraph 1 of the PADA in the public or real (economic) sector, direct or indirect, in relation to conducting an economic activity, including the establishment, equipment or expansion of an economic activity or to the undertaking or expansion of any other form of such activity.

We would like to note that the provision in Article 26 is broader and also covers the requirements of Article 14(1)(a) of Directive 2006/54/EC.

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

As mentioned above, the amendment in Article 7 Paragraph 1 Point 19 PADA introduces additional positive action aimed at initiatives exclusively and mainly promoting entrepreneurship among women in cases of their under-representation or for overcoming and compensating for disadvantages in their professional career.

No specific real positive action in the implementation of this provision has been taken.

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

Yes. According to Article 4 Paragraph 3 of the COSI, the coverage for disability due to general illness, for old age and death is mandatory for the following categories of persons: 1. persons registered as freelancers or craftspersons; 2. persons exercising trade activities, company owners, and associates in a trading company; 3. registered agricultural and tobacco producers. These persons can insure themselves voluntarily for the risks of general illness and maternity.

Article 4 Paragraph 9 of the COSI, amended in view of harmonisation with Directive 2010/41/EU, regulates voluntary insurance for spouses of the self-employed persons mentioned above. As a matter of principle, the spouses of the persons mentioned in

Points 1 and 4 (persons registered as freelancers or craftspersons; and registered agricultural and tobacco producers), when with their consent they participate in the activities of these persons, they can be registered voluntarily for disability due to general illness, old age and death, as well as for general illness and maternity, if they are not already insured on other grounds.

The insurance contributions for the spouses of the persons mentioned in Point 1 of Article 4(3) of the COSI are based on the minimum insurance income for self-employed persons, defined by the Law on the Budget of the State Social Security Scheme, and the contributions for the spouses of registered agricultural and tobacco producers are based on the minimum insurance income for agricultural producers, defined explicitly in the same Law.

The concrete procedure for the insurance of self-employed persons is regulated by the Regulation on social insurance for self-employed persons, Bulgarian citizens working abroad and those involved in maritime activities

Voluntary social security pension schemes exist according to the COSI (Part III of the Code) and they are open to everyone who is in a position to pay the contributions. The insurance in companies and funds for supplementary voluntary insurance is individual. This insurance gives the right to an individual pension for age or disability, a survivor's pension, etc.

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

Yes. The protection of pregnancy and maternity regarding self-employed persons and assisting spouses/life partners is in compliance with the requirements of the Directive both in terms of opportunities and minimum coverage. In fact the self-employed women in these categories who are insured for general illness and maternity, according to the conditions mentioned above, have the right to maternity benefits which amount to 90 % of their average gross remuneration. The condition for the self-employed is to have paid contributions for these risks for at least 24 months preceding the month when the temporary inability to work occurs.

No system of existing services supplying temporary replacements or existing national social services is available also for the self-employed and their contributing partners.

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

Yes. Although an occupational social security scheme is part of another pillar according to Bulgarian law, different from the second pillar referred to in the Recast Directive, voluntary social security pension schemes exist according to the COSI (Part III of the Code) and they are open to everyone who is in a position to pay the contributions. The insurance in companies and funds for supplementary voluntary insurance is individual. This insurance gives the right to an individual pension for age or disability, a survivor's pension, etc.

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

As mentioned above, these provisions, especially with regard to self-employed persons, are not applicable to the Bulgarian situation. As mentioned above in the section on

compliance with the requirements of Directive 2006/54 concerning occupational social security schemes, these types of occupational social security schemes which are typical for the older Member States are not typical for Bulgarian legislation. So no compliance and exceptions relating to this type of scheme can be found.

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

Yes, as was mentioned above through Article 26 PADA.

9. Goods and services (Directive 2004/113)

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

Yes. Article 37 of PADA prohibits any refusal to supply goods or services and to supply lower quality goods or services, or their supply under less favourable conditions, based on the discrimination grounds defined in the law.

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

The material scope of the national law has broader material scope than the one specified in Article 3 of the Directive. No sphere is explicitly excluded so the law also applies to the content of the media and advertisements, and to education. Article 35 PADA requires the application of methods aimed at the elimination of gender stereotyping in education and training. Educational institutions are obliged to include gender equality education.

The case law of the Commission for Protection from Discrimination has explicitly confirmed the application of the equal treatment principle also in the field of the media and advertisements.

Nevertheless, some extreme cases of sexist advertisements brought before this equality body were not properly dealt with by this institution. The outcomes were as follows: either the equality body deferred the case to other institutions (e.g. the Council for Electronic Media), or it suggested that the cases are rather for the self-regulatory body on advertisements (established by businesses in 2010). Thus the institution dealing with discrimination refused to examine the cases through discrimination lenses. The only case where the equality body issued a decision was the case against *Peshtera anisette* where the outcome was negative for the women complainants.¹³ The arguments that it is rather a moral issue and that no discrimination was proved was upheld until the court of last instance - the Panel of five judges of the Supreme Administrative Court.¹⁴

As a matter of fact, in September 2008, 13 women brought a complaint of sex discrimination against a series of advertisements by *Peshtera anise aperitif*, together with the producer the joint stock company 'Vinprom Peshtera.' They were entitled 'Passion in Crystals' and 'The Season of Watermelons' and were notoriously famous for their television, printed media and billboard versions. The ads displayed the '*chalga*' (a Bulgarian music genre often referred to as pop-folk) singer Galena wearing a skimpy bathing suit patterned with watermelon motifs over her breasts. The ads are aimed at encouraging men to drink anise aperitif with watermelon. The woman and her body are directly connected with the accessibility and pleasure gained from alcohol, summer and a slice of watermelon.

This case was brought against the producer, the advertisement agency, the media and all who were related to the dissemination of the advertisement before the Commission for Protection against Discrimination also with the support of the Bulgarian Gender Research Foundation. The procedure for adjourning the first hearing was unusually lengthy and contradictory and it took ten months for the Commission to start considering the case. The complainants were not provided with timely information by the Commission and some of them were even unofficially advised to abandon this impossible cause and to drop the case. No support was provided to the women despite the explicit

¹³ Judgment No. 201 from 15 September 2010 on case file 217/2008.

¹⁴ Judgment 3616 from 13 March 2012 on case file 12183/2011.

provision for this in the law.¹⁵ The complainants were obliged – by the members of the panel of the CPD, ex officio, and without any request from the respondents – to explain repeatedly and one by one how they felt when they saw these ads and why they felt discriminated against. Despite the explicit message in the ads, the explanations by the women and four detailed experts' opinions, most of them in favour of the claim, at the end of 2010 the Commission found that no evidence of prima facie discrimination was available, and subsequently there was no sex discrimination in this case. It has to be noted that one of the expert opinions solicited by the Commission was by a sexologist, as if there was something wrong with the perceptions and sexual lives of the women who complained. This decision, subsequently appealed by the women, was confirmed by the Supreme Administrative Court with a decision in June 2011.¹⁶ The court confirmed the decision of the Commission and added that there was no empirical evidence that the ads affected the majority of women in Bulgaria and that the 13 women cannot be representative of women in Bulgaria. They were maybe too sensitive to the ads. The court said that the reference to international instruments, and namely to CEDAW, was not relevant for the court, as only the government but not the judiciary was bound by the international human rights instruments. We note that in this case the court refused to take into account not only international norms but any norms regulating discrimination and human rights by saying that it is a problem which lies outside the scope of the law, a moral problem, raised through a subjective opinion.

Upon appeal, a final judgement on this case was issued by the special panel of the Supreme Administrative Court on 13 March 2012. It held that *prima facie* sex discrimination could not be proved. As to the gender stereotypes, the Court refused to deal with them as a source of such discrimination with the 'historic' argument: '*...It has been a just and lawful assumption by the Commission that these are issues from the area of esthetics, ethics, psychology and social science, and namely of a type of sub-culture, which issues have a philosophical dimension, which are characteristic of the state of society at the given historical moment and cannot, and could not, be solved within the limited factual frame of a concrete legal case.*'

It is important to note at this stage that experts and women's NGOs are convinced that the decisions of the equality body and, respectively, the court, which are in fact in favour of the corporate sector, are also due to the fact that the media and advertising sectors are excluded from the scope of the Directive. So no obligations and sanctions derive for the government and private actors in this sphere. This situation has been particularly harmful for Bulgarian women as gender stereotypes and the role of women primarily as sex objects were broadly reinforced and disseminated on a very large scale.¹⁷

This first case on sex discrimination in advertisements, although unsuccessful, influenced the further practice of the equality body concerning its arguments and the Commission also took positive decisions condemning discrimination not in advertisements but in relation to the content of the media. For example, at the end of 2014, the Commission issued a decision against a journalist for a sexist expression in an Internet article.¹⁸

As condemning an individual journalist is much easier for the Commission, we think that the reactions of the equality body are not balanced as it would not have applied the

¹⁵ According to Article 47 paragraph 9 of the Anti-Discrimination Act, the Commission provides independent support to victims of discrimination in the process of filing complaints against discrimination.

¹⁶ Judgment No. 12450/2010.

¹⁷ Important research in this field is the following study: *Gender Stereotyping - a pervasive and overlooked source of Discrimination against Women in Bulgaria-* (2012), Special Alternative Report to the 4th, 5th, 6th and 7th governmental report for the 52nd session of CEDAW Committee /9-27 July. Available at <http://eige.europa.eu/rdc/library/resource/dedupmrq19579621> and also at http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/BGRF_for_the_session_en.pdf.

¹⁸ Judgment of the Commission for Protection from Discrimination from 18 December 2014 - www.kzd-nondiscrimination.com/.

same standard to a corporate actor whose discriminatory acts are detrimental to citizens.

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

No.

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

Since the end of 2007, Article 7 paragraph 1 p. 18 of the Anti-Discrimination law allows differential treatment in the provision of goods and services in accordance with EU law – when the provision of goods and services exclusively or primarily to members of one sex is justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

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

Yes. Article 246 paragraph 3 of the COSI ensures that sex will not be used as an actuarial factor in the calculation of pension benefits in the third pillar - the supplementary voluntary social insurance scheme.

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

The *Test-Achats* ruling resulted in amendments related to the use of sex as an actuarial factor in the field of insurance and in the area of supplementary voluntary pension insurance. The provisions of the two codes were changed, respectively the Insurance Code (Article 65a) and the Social Insurance Code (Article 246 paragraph 3). The use of sex as an actuarial factor was prohibited for all contracts concluded after 20 December 2012. For contracts concluded up to 20 December 2012, the insurers may continue to include such factors if they use reliable and regularly updated statistical information, which is publicly available, and from which the determining importance of gender is obvious.

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

No.

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

No.

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

10.1 Has your country ratified the Istanbul Convention?

No. The decision for signing of the Istanbul Convention was adopted on 16 April 2016 and in the decision of the Council of Ministers it is said that it is done " in view of forthcoming ratification ".

There is strong civil society pressure to ratify the Convention (IC).¹⁹ There is no specific debate in Parliament for an imminent step in that direction, though. Among the reasons advanced by the government for non- ratification are the lack of full compliance of the legislation with the IC and also financial reasons as the State realizes that ratification will have budgetary implications. The main problematic fields are: the concept of rape in Bulgarian law which is not in compliance with the main standards of the CoE and is not based on the concept of a lack of consent; the notion of rape in Bulgarian law is an act against the sexual integrity of women only; the majority of criminal acts of domestic violence are prosecuted as crimes of a private nature and a complaint from the victim is required; there is no criminalization of acts like stalking; there is no system in place for continuous support to be provided to active and relevant NGOs working in the field; there is no explicit legislation on gender equality, and no special policy encompassing all forms of VAW and GBV; no effective mechanism of integrated policies against VAW and DV, and others. Reviews of the legislation were carried out by the government, by experts of the CoE and by civil society organizations. The independent reviews showed the need for amendments in the criminal law, in civil legislation and policies. As a matter of fact, since 2011 the CSOs have been exerting pressure on the government to work on the needed amendments and have offered their cooperation in order to achieve compliance much earlier.

¹⁹ <http://bgrf.org/articles/bulgaria-signs-istanbul-convention-on-preventing-violence-against-women-506>
<http://www.alliancedv.org/articles/ратифицирането-на-истанбулската-конвенция-ще-защити-правата-и-на-децата-жертви-на-насилие-398>.
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11. Enforcement and compliance aspects (horizontal provisions of all directives)

11.1 Victimisation

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

Yes. Victimisation is considered to be discrimination, according to Article 5 of the Anti-Discrimination Law. Persons who have or are supposed to have instigated an action against discrimination, or those who intend to instigate such an action, are explicitly protected against discrimination. Persons related to such persons are also protected. Persons who have refused to discriminate are also protected from victimisation. This is according to the definition provided in the Additional provisions of the law - Paragraph 1 p. 3.

11.2 Burden of proof

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

Yes, currently the provision on the burden of proof corresponds with EU standards, including the case law. Until recently, Article 9 of the PADA was not in full compliance. Until March 2015, in the procedure for protection against discrimination persons who considered themselves to be victims of discrimination had to *prove* (instead of merely to *establish*) facts from which it may be presumed that there has been discrimination (Article 9). Then the burden of proof falls upon the respondent and he/she has to prove that there has been no breach of the principle of equal treatment. Based on the practice regarding cases of discrimination on the ground of sex from before the amendment, as in the above-mentioned case against the 'Peshtera' company (case file 217/2008), it can be concluded that the lack of full compliance in the definition of the burden of proof posed very high requirements, especially for women who claimed sex discrimination.

11.3 Remedies and Sanctions

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

Upon finding a discriminatory act, the Commission has the power to impose coercive administrative measures and penal administrative sanctions. Coercive administrative measures are imposed according to Article 76 of the PADA and include: obligatory orders to employers or other staff to discontinue the breaches of the law and the discrimination practices, as well as impeding the enforcement of unlawful decisions and orders of the employer that might lead to discrimination. Penal administrative sanctions are regulated in Articles 78-82 of the law and amount to fines and pecuniary sanctions for legal entities for identified acts of discrimination and breaches of the Anti-Discrimination Law - the basic sanctions ranging from BGN 250 (around EUR 130) to BGN 2000 (around EUR 1000 EURO). Increased sanctions are provided for repeated acts of discrimination, and also for non-compliance with the decisions of the Equality body.

The decisions of the Commission can be appealed before the Supreme Administrative Court.

Discrimination cases can be brought before the Commission or before the courts but compensation can only be ordered by the civil courts when an act of discrimination is identified - Article 71 paragraph 1 p. 3 of PADA. The procedure for awarding

compensation is based on tort law provisions and principles - Article 45 et seq. of the Law on contracts and obligations. There is no practice under the law for allocating compensation in cases of discrimination, especially discrimination based on sex. This fact alone is a barrier for victims seeking compensation. The other reason is that in Bulgarian legal practice the amount of compensation for moral damages, which in most cases is involved in discrimination cases, is very low. We think that the issue of compensation is still a challenge for both lawyers and the courts in the effective application of the anti-discrimination legislation. If compensation is awarded then enforcement is another issue but in this field both public enforcement and private bailiffs can be used.

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

In my opinion, the general level of compensation, as well as compensation awarded for discrimination, is still very low in Bulgaria and is not proportionate to the damage suffered by the persons whose rights have been violated. As mentioned above, in practice there is no case law on compensation awarded for sex discrimination. The sanctions imposed by the Commission are in many cases effective and proportionate but there are problems with their enforcement and their dissuasive effect.

11.4 Access to courts

11.4.1 In your opinion, is the access to courts safeguarded for alleged victims of sex discrimination? Please explain and discuss particular difficulties and barriers victims of sex discrimination have encountered. Refer to relevant legislation and case law.

All persons whose rights have been violated have access to the courts (with the application of the Civil Procedural Code - CPC) or to the Commission for Protection from Discrimination (with the application of the special procedure under the special law, the Administrative Procedural Code and the CPC). Compensation can only be awarded by the courts. Article 71 of the PADA stipulates that each person whose rights have been violated under this law or other laws on equal treatment has the right to instigate a claim before the district court in order to: identify the violation; order the defendant to discontinue the breach and to restore the situation, as well as to refrain from violations in the future; award compensation for damages.

Difficulties in access may be present in cases where the person discriminated against first resorts to the Commission to confirm the act of discrimination and, in such cases, despite the right to refer to the courts for compensation, often this is not sought or the procedure encounters obstacles. The main obstacle is that in some instances the court does not recognize the decision of the equality body as a basis for claiming compensation. The other obstacles are those advanced above as general obstacles when seeking compensation for damages due to acts of discrimination.

11.4.2 In your opinion, is the access to courts safeguarded for anti-discrimination/gender equality interest groups or other legal entities? Please explain and refer to relevant legislation and case law.

A positive element in the court procedure is the possibility for trade unions and civil society organisations to join the procedure as interested parties or to initiate a discrimination case on behalf of a person who has been discriminated against. When the rights of many individuals are violated, the organisations mentioned can initiate the discrimination procedure before the court. These rights are regulated in Article 71 paragraphs 2 and 3 of PADA.

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

There is no specific category of legal aid available to victims of gender discrimination. Legal aid is available based on the general eligibility criteria and the required means test under the Legal Aid Act.²⁰ The main principle is that legal aid in civil and administrative cases is provided based on documents presented by the interested party to the court that he/she has no means to cover the lawyer's fees. The court takes into account the following circumstances: the income of the person and her/his family; a declaration on the income status and property of the person; family status; health status; employment status; age; other circumstances (Article 23 paragraph 3)

11.5 Equality body

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

Yes, the Commission for Protection against Discrimination is such a body- www.kzd-nondiscrimination.com/.

The Commission for Protection from Discrimination was created in 2005 as an independent jurisdiction under the law, and its mandate covers all types of direct and indirect discrimination prohibited by law and by international instruments to which Bulgaria is a party. The Commission has broad competences, including initiating discrimination cases of its own initiative and assisting victims of discrimination in bringing a claim. The administrative procedure before the Commission is very flexible and easy to follow for the petitioners. The position and competences of the Commission are regulated in Chapter 3 of the Law on Protection from Discrimination - Article 40 et seq. More specifically, the competences of the Commission are provided in Article 47 of the law: the Commission establishes the violations, orders the prevention of or the discontinuing of violations and the restoration of the initial situation, issues coercive penalties, imposes sanctions, makes suggestions to national and local governmental bodies, provides independent support to victims of discrimination, gives opinions on drafts for normative acts, and carries out independent research and monitoring.

Besides the prohibition of discrimination based on sex, the ban encompasses the grounds of race, nationality, ethnicity, human genome, citizenship, origin, religion and belief, education, conviction, political affiliation, personal or social status, disability, age, sexual orientation, family status, property status, or any other ground defined by law or in an international treaty to which Bulgaria is a party - Article 4 paragraph 1 of the Anti-Discrimination Law.

The Commission is not a body that deals with the promotion, monitoring or analysis of equal treatment based on sex and therefore does not fulfil all the requirements for an equality body dealing with gender equality according to EU standards.

11.6 Social partners

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

The social partners are not provided with a special role concerning this issue in legislation. They do not specifically deal with gender equality. Although they have gender equality sections in their structures, participate in the consultative body on gender

²⁰ Bulgarian version available at <http://www.lex.bg/doc/2135511185>.

equality at the Council of Ministers and sometimes issue relevant research and statistics, the social partners do not play an important role in practice. Their role does not correspond to the requirements of the EU standards, and namely of the Recast Directive.

11.7 Collective agreements

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

Collective agreements in Bulgaria are not used as a means to implement EU gender equality law. Collective agreements that are binding for the respective sectors do not generally have gender equality elements and do not promote gender equality.

12. Overall assessment

The implementation of gender equality standards in Bulgaria is satisfactory and this is mainly due to the adoption of a comprehensive Anti-Discrimination Law and to the establishment of the Commission for Protection from Discrimination (KZD). However, parental leave provisions have to be made effective and the protection of mothers and fathers returning from childcare leave and parental leave should be strengthened, too. The mechanisms for ensuring equal pay and for addressing the gender pay gap should be put in place. The protection of self-employed persons and helping spouses must be explicitly and further regulated. The rule of the burden of proof in cases of discrimination based on sex should be applied in practice. The effectiveness and dissuasive effect of sanctions and the level of compensation in cases of discrimination remain serious issues. A special gender equality law should be adopted and the system of equality bodies in compliance with the EU standards is still to be developed. The role of the social partners for the enforcement of gender equality should be enhanced in such a law.

The Bulgarian social security system is not compatible with the EU social security model and the respective standards. The occupational social security schemes are part of the third pillar and are not yet sufficiently developed. The second pillar in Bulgaria belongs to the statutory social security scheme but when private insurance companies manage this second tier they use gender-related actuarial factors. Such discrimination in the second Bulgarian pillar should be eliminated in order to be in compliance with the principle of equal treatment in EU law.

It is to be regretted that during the last two or three years there has been no relevant case law of the Equality body on important issues related to the EU standards. We are of the opinion that this is also due to the lack of specific expertise in gender issues by the members of the Commission. There are no landmark court decisions on cases of discrimination based on sex either.

The Bulgarian government has not yet ratified the Istanbul Convention.

Annexes

Bibliography

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