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Equal pay – still an issue in the Czech Republic

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Abstract:

The Czech Republic has a high gender pay gap of 22%. While the local legislation has implemented the EU directives on non-discrimination and contains the equal pay principle, a low level of pay transparency makes it difficult for victims of discrimination to raise a claim.

1. Relevant country context

With the unadjusted gender pay gap of 22%¹, the Czech Republic stands on the second position in the EU among countries with the highest equal pay issues. Unequal pay represents both a social and a legal issue. This chapter explains the historical background as well as the legislative environment which may both have contributed to this situation.

1.1 Historical and societal background

The communist regime in 1948 – 1989 had a strong influence on the position of women in the labour market. On one hand, the regime took active measures to support the entry of women at the labour market (full employment rules, increase of qualification, establishing crèches and kindergartens). On the other hand, childcare and household chores were presented and perceived exclusively as women's tasks.² Women were expected to split their capacity between work and caring after their family, and therefore their conditions at the labour market were worse³, and strong horizontal gender segregation was formed. The income of women often did not represent a significant income for the family, which further supported gendered segregation of work where a man earns for the family and a woman is responsible for child care and household.⁴

After 1989, a free market economy was created in the Czech Republic. This changed the conditions in the market. The gendered segregation, however, remains

¹ Eurostat, February 2019, Gender pay gap statistics, available at:

<https://ec.europa.eu/eurostat/statistics-explained/pdfscache/6776.pdf>, accessed 6 May 2019.

² A. Křížková, K. Pospíšilová, H. Maříková, R. Marková Volejníčková (2018): Rozdíly v odměňování žen a mužů v ČR. Pracoviště, zaměstnání, stejná práce a rozklad faktorů, available at: https://www.mpsv.cz/files/clanky/35208/Studie_c.2_pro_web.pdf, accessed 6 May 2019

³ E.g. in 1962, the gender pay gap was equal to 36% (A. Křížková, K. Pospíšilová, H. Maříková, R. Marková Volejníčková (2017). Aktuální rozdíly v odměňování žen a mužů v ČR. Hlubková analýza statistik a mezinárodní srovnání. Praha: Ministerstvo práce a sociálních věcí.

⁴ A. Křížková, M. Penner, T. Petersen: Genderové nerovnosti v odměňování na stejné pracovní pozici: sociální vyloučení žen. Gender, rovné příležitosti, výzkum, 8(2), 55– 67.

in place and with increasing differences between salaries in certain sectors and positions, it is often even growing.⁵ Despite announced support of women's rights by local governments, little measures have been taken to combat the problem in the long term perspective.

There appears to be a number of reasons that contribute to the large gender pay gap.⁶ Motherhood often represents an obstacle in a woman's career (which can also be documented by a steady increase in the unadjusted gender pay gap in the category of individuals in their 30s)⁷. A specific of the Czech Republic is a relatively long parental leave, which is in the vast majority of cases taken by a mother only, and can last until the 3rd anniversary of the child and during which many women do not work at all. Even though female employees have a guaranteed right to return to their position after the parental leave, this may not always happen in practice (e.g. if the employer claims that the role had been made redundant). Even though the unemployment rate is currently very low, female employees may be impacted by a loss of a number of years in a critical stage of their career, and may find themselves in less senior and worse paid positions.

With low transparency of wages at the labour market and non-existent disputes on equal pay, many employers still have the perception that salary is a matter of negotiations and don't apply consistent wage policies. A recent study revealed an alarming finding that gendered differences between wages for the same work at the same employer are as high as 11%.⁸

1.2 Legislation

Section 110 of the local Labour Code⁹ (Act No. 262/2006 Coll., as amended) anchors the principle of equal wage for the same work, respectively for the work of equal value. In this context, the provision defines criteria which can be used by the employer to decide what is the same work, respectively work of equal value. Therefore, wage disparities can be based on such criteria only. The defined criteria include training and practical experience, skills, complexity of work, demands on organisational and managerial skills, degree of liability for damage, occupational health and safety, physical and mental intricacy of work, negative effects of some

⁵ A. Křížková, K. Pospíšilová, H. Maříková, R. Marková Volejníčková (2018): Rozdíly v odměňování žen a mužů v ČR. Pracoviště, zaměstnání, stejná práce a rozklad faktorů, available at: https://www.mpsv.cz/files/clanky/35208/Studie_c.2_pro_web.pdf, accessed 6 May 2019

⁶ J. Tomšej: Can legislation help to close gender pay gaps?, Studies on Labour Law and Social Policy 1/2019, available at: <http://www.ejournals.eu/sppips/Tom-26-Zeszyt-1-2019/art/13823/>, accessed 6 May 2019

⁷ E.g. in 1962, the gender pay gap was equal to 36% (A. Křížková, K. Pospíšilová, H. Maříková, R. Marková Volejníčková (2017). Aktuální rozdíly v odměňování žen a mužů v ČR. Hloubková analýza statistik a mezinárodní srovnání. Praha: Ministerstvo práce a sociálních věcí.

⁸ A. Křížková, K. Pospíšilová, H. Maříková, R. Marková Volejníčková (2018): Rozdíly v odměňování žen a mužů v ČR. Pracoviště, zaměstnání, stejná práce a rozklad faktorů, available at: https://www.mpsv.cz/files/clanky/35208/Studie_c.2_pro_web.pdf, accessed 6 May 2019

⁹ Act No. 262/2006 Coll., as amended.

work, tiresomeness of patterns of working time, performance criteria, quality and quantity of work.¹⁰

In the public sector, wages must be determined in accordance with principles laid down in the Labour Code, where a basic salary is determined based on transparent rules using objective criteria such as education, seniority of job and length of service. The law, however, leaves some room for individual adjustments of the total package (e.g. granting individual employees with individual premiums) which can in practice be discriminatory.

In the private sector, the law only prescribes minimum levels of wages¹¹ but the wages of individual workers should be determined by employers. It could seem obvious that any wage policy of an employer must be based on an evaluation of objective criteria based on the nature of performed work, respectively on the predispositions to a proper fulfilment of employee's duties, and on employee's results. This is still not always the case in practice where an offer is often dependant on the candidate's expectations, negotiation skills and other factors.

There are no statutory rules about transparency. Many employers in practice apply provisions in employment contracts, according to which employees are prohibited from disclosing their salary to third parties. Experts say that wage transparency is one of the weaknesses of the Czech national legislation.¹²

Discrimination in remuneration represents an offense of an employer under the Labour Inspection Act.¹³ If discrimination is found in proceedings in front of the Labour Inspection Authority, a fine up to CZK 1,000,000 (approx.. 40,000 EUR) can be imposed. In 2017, the Labour Inspection Authority reviewed 345 complaints regarding discrimination. The exact number of complaints regarding equal pay is not publicly available but appears to be low as most of the complaints allegedly did not refer to any discrimination grounds. A breach of the equal pay principle was found in 14 cases in total. Besides reviewing complaints, random controls of 82 employers focusing on equal pay took place. During these controls, 42 cases were found where a breach of the equal pay rules happened.¹⁴

Victims of unequal pay can theoretically file a lawsuit against the employer in which they would argue with discrimination and raise one or all of the following claims: (a)

¹⁰ Sections 110 (3), (4) and (5) of the Labour Code.

¹¹ Government Decree no. 567/2006 Coll., on minimum salary and the lowest levels of guaranteed wages, as amended.

¹² K. Koldinská (2018): Country report. Gender Equality. Luxembourg: Publications Office of the European Union, available at: <https://www.equalitylaw.eu/downloads/4681-czech-republic-country-report-gender-equality-2018-pdf-1-5-mb>, accessed 6 May 2019.

¹³ Act No. 251/2005 Coll., as amended.

¹⁴ Labour Inspection Authority (2018): Roční souhrnná zpráva o výsledcích kontrolních akcí za rok 2017, available at: <http://www.suip.cz/files/suip-f8430a051a6eab838f616a95e862660e/rocní-souhrnna-zprava-o-vysledcich-kontrolnich-akci-za-rok-2017.pdf>, accessed 6 May 2019.

salary adjustment, (b) compensation of damages for the previous period¹⁵, and (c) compensation of non-material damage (apology, financial compensation etc.). The number of discrimination cases is however very low (less than 10 discrimination lawsuits being filed in a year). There are no statistics available targeting specifically equal pay disputes, and no information is available according to which courts would currently hear any such case.

2. Policy debate

Some development regarding equal pay issues could be seen in the recent period. Ministry of Labour and Social Affairs has been running a project “22% to equality” (in Czech *22% k rovnosti*), supported by the European Social Fund. The project is targeting the increase of gender equality in remuneration as its main goal. One of the existing achievements of the project is the increased attention paid to the issue by the Labour Inspection Authority.

In April 2019, the Ministry started working on a preparation of an action plan that should provide an overview of activities for each of the stakeholders for the upcoming period. In parallel, an analysis of legislation with a focus on potential improvement measures will be carried out.

In early 2019, the Czech Ombudsperson issued recommendations to increase transparency in remuneration. It recommends that the following points are stated in the legislation: (a) invalidity of provisions imposing a duty of confidentiality on employees regarding their salary, (b) obligation of employers to state salaries in job advertisements, (c) obligation of employers to provide employees with information on average wages of males and females carrying out the same work upon their request, (d) obligation of employers with a higher number of employees to announce gender pay gap reports in similar scope as in the UK and Ireland. The recommendations have not yet been reflected in any bill.

3. Good practice examples

There are not many good practice examples that would be widely known in practice. Most employers claim full compliance with non-discrimination and equal pay principles but reject any pay transparency (often arguing that some employees are not mature enough to accept differences based on seniority, performance etc).

Some good practice examples can, in particular, relate to pay transparency. This includes cases where wages of a vast majority of employees are transparently stated in internal policies or collective labour agreements, and where they are clearly stated in any job advertisements.

¹⁵ Under the civil law, a prescription period of 3 years applies. This means that employers may defend themselves against older claiming by objecting prescription.

4. Transferability aspects

There are currently no discussions regarding the introduction of an obligatory equal pay certification / equal pay standard in the Czech Republic. The enactment of such a measure is theoretically possible, however given the current state of affairs, such measure could be perceived as too radical by employer representatives and there is a rather low likelihood that it would be approved by the Parliament.

Promotion of voluntary measures of equal pay standards and certification could, however, be an option. The lawmaker could, for example, motivate employers to adhere to such standards and certifications using advantages in public tenders, discounted tax rates etc.

5. Conclusions and recommendations

Gender pay gap remains a significant issue in the Czech Republic.

While part of the difference seems to be caused by horizontal segmentation of the labour market and other wide-reaching issues that can hardly be rectified in a short timeframe, a significant proportion of the gap (allegedly 11%) stems from unequal treatment of male and female employees performing the same or comparable work.

In order to fight this, an increase of transparency seems to be important. From that point of view, the aforementioned recommendations of the Ombudsperson seem to follow the right direction, and it would be advisable for them to be enacted.

An increase of transparency can strengthen the position of a claimant in a discrimination lawsuit and as such is also a measure to improve the very low number of discrimination disputes as of today. Increased attention paid to the topic by trade unions and other social partners, as well as increased visibility of the topic among the employees may be other important measures.

Another area for improvement is parental leaves where measures should be taken to increase the attractiveness of part-time work / work from home as potential alternatives of long parental leave.