

THE WORK-LIFE BALANCE IN THE EU – HAS SLOVAKIA BECOME A SECOND SWEDEN?

Denisa Homola Nevická,* Juraj Hamulák**

Abstract: *In the presented article, we deal with the issue of work-life balance after the transposition of DIRECTIVE (EU) 2019/1158 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 June 2019 on work-life balance for parents and carers into the Slovak legal order. In their publishing activities, the authors have been dealing with gender equality and the impact of European legal measures on the legal order of the Slovak Republic. The aforementioned directive was inspired by the Swedish parental leave system as well as the gender-equal approach to employees, but it must be noted that its adoption into the Slovak legal system was not without problems and the result is less than ideal. Through an analysis of the current law and comparison, the authors come up with their own considerations that would contribute to increasing the level of gender equality in the Slovak Republic and raise the status of working parents to at least the level of the European average.*

Keywords: *work-life balance, parental leave, gender equality, pay gap*

1. INTRODUCTION

The work-life balance of male and female employees is not at the same level across the member states of the European Union. The level of remuneration is also different. While the average level of gender equality at the workplace in the European Union reached 71.7 points in 2022, it reaches 83.0 points in Sweden and only 66.5 points in Slovakia.¹ Differences in remuneration reach the European average of 13%, in Sweden only 10% and in Slovakia 17.8%.² The mentioned differences can be described as profound, especially considering the fact that Sweden, like Slovakia, are countries of the European Union, which are subject to the same primary and secondary sources of European law. The DIRECTIVE (EU) 2019/1158 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 June 2019 on work-life balance for parents and carers (hereinafter referred to as the “directive”). The member countries had the obligation to transpose it by August 2022 at the latest. The mere fact that the Slovak Ministry of Labour, Social Affairs and Family, which was in charge of the task, identified the directive as moderately important indicates the importance that is attributed to gender equality in the workplace in the Slovak Republic. Further in the article, the authors analyze how the directive was transposed into the Slovak legal system and compare the individual instruments to support gender equality with the Swedish legislation.

* Mgr. Denisa Homola Nevická, Ph.D., The Comenius University in Bratislava, The Faculty of Law Bratislava, Slovak Republic. ORCID 0000-0002-0365-0776.

** Associate Professor, JUDr. Juraj Hamulák, Ph.D., The Faculty of Law, The Comenius University in Bratislava, Bratislava, Slovak Republic. ORCID: 0000-0002-2630-8121.

¹ In: *European Institute for Gender Equality* [online]. [2023-02-16]. Available at: <<https://eige.europa.eu/gender-equality-index/2022/country>>.

² In: *European Commission* [online]. [2023-02-16]. Available at: <https://ec.europa.eu/info/policies/justice-and-fundamental-rights/gender-equality/equal-pay/gender-pay-gap-situation-eu_en>.

2. WORK - LIFE BALANCE IN SLOVAK REPUBLIC

The directive was supposed to be transposed into the Slovak legal system by August 2022 at the latest. However, the Slovak Parliament on amendments to Act No. 311/2001 Coll. the Labor Code as amended (hereinafter referred to as the “Labor Code”) based on the directive voted at the October session of the Parliament. The adopted amendment to the Labor Code, which also transposes the directive, did not take effect until November 1, 2022, i.e. 3 months later, as the directive states. It must also be noted that the public debate took place only minimally, and the Ministry of Labour, Social Affairs and Family had the biggest reservations about the use of the term gender and not about other aspects of the content in the comments to the directive. According to the authors of the article, the adopted amendment to the Labor Code can be characterized as weak and superficial.

Paternity leave was incorporated into the Slovak legal system in a relatively non-standard way. Until now, the Labor Code regulated the right for the child’s father to take parental leave according to § 166 par. 1 in the range of 28 weeks and receive maternity benefits after the child’s mother finishes taking maternity leave. The directive was transposed into the Labor Code in such a way that the father’s entitlement to the parental leave in question was divided. Within 6 weeks of the child’s birth, the father can use up 2 weeks of the total entitlement of 28 weeks and receive the maternity benefit at the same time as the child’s mother. Therefore, both parents stay at home with the child for 14 days, the father on paternity leave, the mother on maternity leave, and both receive the maternity benefit. Subsequently, the child’s father returns to work and can use up the remaining 26 weeks only after the mother ends her maternity leave and stops receiving the maternity benefit. Therefore, fathers do not have the right to paternity leave in the true sense of the word. The MPs only allowed the fathers of the children to take 2 weeks of the existing entitlement up to 6 weeks after the birth of the child and receive the maternity benefit at the same time as the mother and called it paternity leave. At the same time, the protection of fathers was extended, with regard to the right to a protective period, especially with regard to the impossibility of the employer to terminate the employment relationship with the employee at the time of taking paternity leave and 6 weeks before starting it. Just like mothers, the employer has the obligation to assign fathers to their original job after the end of paternity leave in accordance with § 157 of the Labor Code. However, the anti-discrimination legislation remained unchanged, so the protection of working fathers taking care of children is still not sufficient.

An adjustment beyond the scope of the directive, which ensures the possibility of taking paternity leave for prematurely born children or children with health problems, not within 6 weeks of birth, but within 6 weeks of discharge from hospital, can be described as positive.

In addition to paternity leave, the possibility of flexible work organization was also partially incorporated into the Labor Code. By clarifying the provisions of § 164 of the Labor Code, the employer is obliged to comply with the request of a pregnant woman, a woman or a man permanently caring for a child under the age of 15 for shorter working hours or another appropriate adjustment of the specified weekly working hour. However, the employer is only obliged to comply with their requests, if there are no serious operational reasons preventing it. If he does not comply with the request, he is obliged to justify it in

writing. Similarly, persons caring for a child under the age of 8 may request to adjust the place of work, but the employer is no longer obliged to comply with them, the employer is only obliged to justify the rejection of the request.

Other rights regulated in the directive have not been transposed into the legal order of the Slovak Republic, or their adjustment is still insufficient. The transposition of the directive improved the rights of persons with caring responsibilities only minimally. The employer's obligation to include them in their original job after the removal of an important personal obstacle at work was extended, and the obligation to comply with requests for appropriate adjustment of working hours or place of work, but only when caring for a fully dependent person. No other provisions regarding the improvement of the legal status of employees with caring responsibilities have been adopted. Furthermore, neither the obstacle to work vis major nor the possibility of claimable flexible organization of work, e. g. from home if work conditions allow it. It can therefore be concluded that the only significant change after the transposition of the directive is the introduction of paternity leave. As we have already stated, the aforementioned cannot be considered a change in the true sense of the word, as the already existing entitlement to parental leave for working fathers was lowered and rebranded.

The model for the directive was mainly Swedish legislation, which is characterized by a high degree of flexibility and progressiveness. According to Swedish Working Hour Act (1982:673) working hours in Sweden are generally determined to be 40 hours per week, while overtime is regulated to a maximum of 8 hours per week. Working time is mainly used in the form of so-called flextime, when the employee himself determines the beginning and end of working hours and must only be working during core office hours. According to Swedish Annual Leave Act (1977:480), every worker is entitled to 25 days of paid vacation regardless of age and type of employment.

Parental leave in Sweden provides a total of 480 days of parental leave to both parents, regardless of gender or marital status, of which at least 90 days belong to the mother and 90 days to the father or the other parent, which helps to make the family responsibilities more equal and up to international standards.³ During the first 390 days, the child's parents are entitled to almost 80% of their average daily wage. The condition for obtaining the right to paid parental leave is the duration of the employment relationship and the payment of contributions for at least 240 days before the birth of the child. Those who do not meet this condition are entitled to social benefits.⁴ Parents have the right to use up their leave until the child is 8 years old, and at the same time, until this age of the child, they have the right to ask the employer to reduce working hours by up to 25%, who is obliged to comply. Another advantage that the Swedish system provides to parents is 10 days of paid leave for the father after the birth of the child. Just like the parental allowance, the payment of the father's leave comes from parental insurance, which every employee

³ LANE, L. Conceptualizing Work-Life Balance in the Swedish Life Puzzle Debate – Is it just about time? In: ResearchGate [online]. January 2011 [2023-05-23]. Available at: <https://www.researchgate.net/publication/258353874_Conceptualizing_work-life_balance_in_the_Swedish_Life_Puzzle_debate_-_is_it_just_about_time>.

⁴ In: *Institute for Future Studies* [online]. [2022-10-09]. Available at: <<https://www.iffs.se/media/1118/20051201134956filu8yjilraac7u4fv7gumy.pdf>>.

must pay for, and the employer also contributes to.⁵ The measure just mentioned was one of the significant changes that were also incorporated into the Slovak legal order, even to a wider extent. However, it must be noted that Slovak fathers were not given paternity leave in the true sense of the word, but only distributed parental leave, to which they were already entitled.

In addition to the above measures, in Sweden, parents with a baby carriage are entitled to free public transport, the right to 120 days of annual care for a sick child up to the age of 12 paid up to 80% of their average daily wage. In addition, all children with Swedish citizenship are guaranteed a place in a free kindergarten and primary school, which provide them with free lunches. Health care is free for children and youth up to the age of 20, including dental care.^{6, 7} The high level of gender equality in Sweden is also supported by other legislation, especially The Swedish Discrimination Act 2009, while any discrimination in the workplace has been illegal since 1980. In addition to the above, the Swedish Equality Ombudsman also operates in Sweden.⁸ These measures undoubtedly contribute to Sweden's long-term leading position in the Gender Equality Index by EIGE.

3. DID SLOVAKIA BECOME NEW SWEDEN?

The authors dare to state that the answer to the presented research question based on the performed analysis is clearly negative. The Slovak Republic has not come close to Sweden in terms of its legislation, mainly due to the absence of partial measures that would help working parents combine their private and working lives and thus contribute to a higher degree of gender equality not only in the workplace but also in society. The balance between work and family (private) life is one of the key factors for work performance sustainability.⁹ The authors are of the opinion that, in addition to the adopted changes, it is still necessary to carry out further legislative interventions in the Slovak legislation in order to eliminate the alarming statistics of gender (in)equality in the workplace and differences in remuneration. According to the authors, the following measures could *de lege ferenda* contribute to a higher level of gender equality in working life, especially for persons with parental responsibilities.

In Slovakia, only an employee who informs the employer about breastfeeding in writing is considered a breastfeeding employee. Pursuant to Council directive no. 92/85/EEC on the introduction of measures to support the improvement of safety and health protection at work for pregnant workers and workers shortly after giving birth or breastfeeding workers, it is sufficient for the employee to inform the employer about breastfeeding verbally or implicitly, it does not have to be written information. If the child is bottle-fed, the

⁵ HAMULÁK, J., NEVICKÁ, D. The Swedish model of parental leave - a way to achieve equality? In: Helena Baranová (ed.). *Európsky pilier sociálnych práv a spoločnosť 5.0. 1st edition*. Praha: Leges, 2018, pp. 248–258.

⁶ In: *Sweden/Sverige* [online]. [2023-02-11]. Available at: <<https://sweden.se/society/>>.

⁷ HAMULÁK, J., NEVICKÁ, D. The Swedish model of parental leave - a way to achieve equality? In: Helena Baranová (ed.). *Európsky pilier sociálnych práv a spoločnosť 5.0. 1st edition*. pp. 248–258.

⁸ In: *Sweden/Sverige* [online]. [2023-10-09]. Available at: <<https://sweden.se/life/equality/gender-equality>>.

⁹ GREENHAUS, J., COLLINS, K., SHAW, J. The relation between work-family balance and quality of life. *Journal of Vocational Behavior*. 2003, Vol. 63, No. 3, pp. 510–531.

child's father should also be entitled to a breastfeeding break (see decision in case C – 104/09 Pedro Manuel Roca Alvarez v Sesa Start Espana ETT SA). Based on the above, in the opinion of the authors, it would be expedient to introduce a breastfeeding break for fathers as well, and at the same time to simplify the reporting obligation of employees.

Despite the transposition of the directive, the *vis majeure* obstacle to work due to the care of a child or a dependent person is still missing in the Slovak legal order. The new legislations should include an obstacle to work without compensation or with compensation, with the employee making up the missed time later. This formulation would be about enabling the combination of parental and caregiving duties without undue burden on the employer in the form of wage compensation.

The concept of “care” for a child, which is a condition for entitlement to maternity benefits, is not clear-cut. The law does not regulate whether it should be all-day personal care, partial personal care or whether it can also be care by a third party. It would be appropriate to adjust the entitlement to maternity leave so that the mother/father can, in addition to caring for the child, also perform work, e. g. part-time. This will contribute to an easier return to the work process after maternity/parental leave. Work alongside the parental allowance is possible without any conditions. Currently, individual branches of the social insurance company interpret the concept of care differently, they assess both the scope of work that the mother/father performs in addition to the maternity benefit, but also the amount of income, which has no legal support. It is also unsustainable for each working mother/father to be decided on an individual basis in addition to receiving the maternity benefit, as this results in different decisions in similar cases.¹⁰

Currently, discrimination on grounds of gender in accordance with Act no. 365/2004 Coll. considers only discrimination due to pregnancy or maternity. It would be appropriate to expand these discriminatory reasons along the lines of e. g. the Czech Republic on paternity (in view of the adjustment of paternity leave in the Labor Code after the transposition of the directive). The introduction of flexible parental leave and drawing parental allowance is closely related to the aforementioned, which would allow the entitled person to decide whether to draw parental allowance for a legally specified period or use up parental allowance more quickly. Shorter receipt of the parental allowance means an increase in the monthly allowance, which would contribute to the possibility of the person taking care of the child more intensively and, consequently, a possible earlier return to work. The measure will thus contribute to reconciling family and work life, especially for mothers, who will not experience such a significant reduction in finances compared to receiving maternity benefits, if they decide to use the accelerated drawing of the parental allowance.

The above are just some of the measures that, in the opinion of the authors, would break down barriers for working parents, especially mothers, and contribute to their more equal position on the labor market. In the Slovak Republic, the employment rate of women is relatively low, especially women with parental responsibilities, namely with a child under

¹⁰ KRIPPEL, M. Podmienky nároku na materské otca. In: Andrea Koroncziová – Tibor Hlinka (eds.). *Milníky práva v stredoeurópskom priestore 2019, 1. vyd.* Bratislava: Právnická fakulta UK, 2019, pp. 323–334.

the age of 6, lower than 40%, while the employment rate of men with a child of the same age is, however, more than 83%. In the opinion of the authors, this also contributes to the huge difference in remuneration.

A new directive of the European Parliament and of the Council, which strengthens the application of the principle of equal pay for men and women for equal work or work of equal value through pay transparency and enforcement mechanisms (hereinafter referred to as the “Equal Pay Directive”) could also be a tool to eliminate this pay gap. The main objectives of the proposed directive on equal pay are to introduce pay transparency within organizations, to facilitate the application of key concepts related to equal pay, including the concepts of pay and work of equal value, and to strengthen mechanisms for enforcing pay equality. In the Slovak Republic, after the publication of the draft directive on equality in remuneration, a stormy discussion began regarding the possibility of motivating skilled employees with higher wages. We consider the above to be unjustified, since even after the adoption of the directive on equality in remuneration, employers will be able to reward employees who perform more professional work or work of a different value or other work tasks with higher wages and rewards than other employees in the same department. However, it will still be necessary to evaluate the justification of the difference in remuneration based on objective criteria and not on the basis of subjective evaluation or even gender.¹¹

In the opinion of the authors, a transparent remuneration policy regulated in an internal directive or collective agreement is the best option for complying with existing standards without exposing employers to a possible anti-discrimination lawsuit and ensuring fair remuneration. At the same time, gender-transparent and fair remuneration is another tool that, in addition to eliminating the pay gap, will contribute, in the opinion of the authors, to a higher balance between private and working life and a higher standard of living for male and female employees, which could ultimately bring Slovak realities one step closer to the Swedish one. The increased involvement of women in the labor process or their participation in leading positions in companies would have an expected contribution to the economy of up to 8% above the expected GDP growth rate (model example).¹²

CONCLUSION

The Slovak Republic is a young European state, which should follow the example of advanced Western democracies and move towards a high standard of living and equal conditions for all citizens and residents. However, the authors of the presented article must regretfully state that the balance between the private and working life of male and female employees, the level of gender equality in the workplace or the number of differences in remuneration are still at a very high level. In the opinion of the authors, the inappropriate transposition of the directive does not even eliminate these differences between Slovakia

¹¹ NEVICKÁ, D., LADIVEROVÁ, E. Is the right to equal pay for equal work or work of equal value distant reality or utopia? *The Lawyer Quarterly*. 2022, Vol. 12, No. 3, pp. 280–290.

¹² In: *McKinsey & Company* [online]. 22. 9. 2021 [2023-01-20]. Available at: <<https://www.mckinsey.com/featured-insights/europe/closing-the-gender-gap-in-central-and-eastern-europe>>.

and western European countries and will not bring Slovak living standards closer to the Swedish one's. The directive had the potential to contribute to the balance between private and working life and increase its level, but due to the fact that the legislators in the Slovak Republic argued more about the concept of gender than the measures themselves, the stated goal has not yet been fulfilled. The new remuneration directive could once again bring the Slovak Republic an imaginary step closer to Western democracies, but it is necessary to approach its transposition with a greater degree of attention and after a wider public discussion. At the same time, it is essential that the legislative bodies proceed from the real needs of working parents and the data provided by research institutions designated for this, and not just from the political preference of some political group. Amendments to the Labor Code for the area of working parents, apart from the transposition of the directive, cannot be called substantial and certainly not conducive to increasing the level of harmony between private, family and working life.