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THE COMPARATIVE ANALYSIS OF WOMEN'S STATUS IN LABOR RELATIONS IN MODERN SLOVAKIA AND THE CZECH REPUBLIC

Juraj Hamuľák¹, Lenka Freel², Denisa Nevická³

Abstract

In this article, the authors deal with the issue of the women's status in labor relations both in the Czech Republic and Slovakia. The authors examined the regulation of the position of women in labor law regulations and compared their results, trying to answer the main question – In which state is it better to work for women after the break-up of Czechoslovakia? Methods of analysis, comparison and synthesis were used. By examining scientific texts and legislation, were the authors able to articulate comprehensive conclusions, not only from the labor law perspective, but also taking into consideration antidiscrimination regulations. The authors reached a conclusion that labor regulations in the Czech Republic are slightly more favorable for women than in the Slovak Republic.

Keywords

Women, Employer, Employee, Labor Relations, Dependant Work

I. Introduction

Contemporary society places high demands on women compared to the past. A woman is required to perform a variety of roles, especially professional, social but also family ones. The balance between the private and working life of a woman is therefore a key factor in enabling a modern woman to reconcile work and family responsibilities. However, their reconciliation is often problematic and is the subject of various debates. In our opinion, the most difficult period is when a woman in the position of an employee has to combine childcare with labor duties. It is therefore the task of the company policy as well as of labor law to strive to ensure that the participation of a woman in the work process does not cause negative fulfillment of her maternal role and family status. We believe, that it

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is necessary to regard a woman not only as a subject of labor law but also as a subject of family life of her own choice, and to enable her to combine her labor obligations with family responsibilities, regardless of whether she chooses a standard or non-standard family model.

Based on the above stated, we consider it essential to open a discussion on the topic of the position of women in labor relations in post-communist countries. We are convinced that the analysis and subsequent comparison of the position of women in labor relations in the Slovak Republic and the Czech Republic will point to many problems and provide guidance for the future of improving the position of women. The main contribution will be the analysis of individual labor law institutes, their comparison and recommendations and improvement of the legal regulation *de lege ferenda*.

II. The Status of Women in Labor Relations in Former Czechoslovakia

The position of women in labor relations was not historically natural. The role of women in society has always been seen as the role of the mother, the caregiver and the person responsible for the household. The lack of manpower in factories in Czechoslovakia in the 1950s forced the socialist society's lawmakers to move men from agricultural and light industrial work to heavy industry, causing labor shortages in these sectors. The absence of workers was compensated precisely by the deployment of women in agriculture and light industry, which shaped the beginnings of women's inclusion in a wider range of labor relations in the socialist regime.⁴

It can be stated that the 1950s of socialism in Czechoslovakia were in the spirit of enabling women to engage in work, politics or education. The 1948 Constitution guaranteed not only equality of participation in work for the Socialist Republic, but also equal pay for equal work for men and women. Unlike women in Western European countries, women in socialist Czechoslovakia were guaranteed direct access to work. Despite the formal arrangements and labor law acts, it can be stated that in practice there was no equal access to work for women and men. Women were mainly engaged in light and auxiliary work and, in addition to their labor duties, were fully responsible for the care of the household and the family without any advantage (Hanáková, Havelková, Oates-Indruchová, 2015). Under the influence of social, political and economic changes, the 1948 Constitution also enacted the regulation of the working conditions of pregnant women and mothers during their employment. The legislation contained provisions on nursing breaks or accompanying a child to a nursery or kindergarten (Chynský, 1960). On the constitutional level, very important was the provision of § 26 section 3 of the 1948 Constitution: "*Women are entitled to special arrangements for working conditions with regard to pregnancy, maternity and childcare.*" The above provision was followed by the general formulation of § 29 section 4: "*protection of life and health at work is ensured in particular by state supervision and regulations on workplace safety measures.*"

⁴ Institute for the Study of Totalitarian Regimes (2008–2015).

An important stage in the development of the legal status of women is associated with the adoption of Constitutional Act no. 100/1960 Coll. – Constitution of the Czechoslovak Socialist Republic, Article 27 of which provided for special arrangements for working conditions during pregnancy and maternity. In accordance with Art. 27 The Constitution of the Czechoslovak Socialist Republic: *“Equal employment of women in family, work and public activities is ensured by special regulations of working conditions and special health care during pregnancy and maternity, also by the development of facilities and services enabling women to use all abilities for participation in society.”* Further regulations were based on the aforementioned constitutional law. By Act no. 58/1964 Coll. on increased care for pregnant women and mothers, women were given equal opportunities in family and public life. The maternity leave period was set to 22 weeks and after that women were guaranteed the right to an additional maternity leave until the child reaches one year of age. The employer was obliged to provide breastfeeding breaks with wage compensation. The law also prohibited the immediate termination of employment. This could only be terminated exceptionally, for example in case of gross violation of work discipline, organizational changes, and sentence of imprisonment for at least one year. The law also provided protection for women when being transferred or temporarily assigned to a place of work outside her previous activities. Since 1962, codification of labor law began preparation. In January 1963, the Central Council of Trade Unions presented the principles of the Labor Code of the Czechoslovak Socialist Republic. As regards the specific working conditions of women, the codified legislation was characterized, for example, by the prohibition of night work, which also applied to mothers of children under three years of age, a prohibition on business trips and transfers, which, in addition to pregnant women, also applied to women with a child under nine months and maternity leave was to be granted for 26 weeks.

In 1965, a comprehensive Socialist Labor Code was adopted, which, after its entry into force in 1966, guaranteed the legal equality of both sexes in labor relations. Working conditions of women and adolescents were regulated in the seventh head, considering the physiological conditions, the role of parenthood and motherhood. Employers were obliged to take care of the hygienic conditions of the workplaces and to set up crèches and kindergartens. Works that could not be performed by women, mandatory rest between two changes, or entitlement to maternity and parental leave were established. The period of paid maternity leave reached the duration of 26 weeks in 1968, since 1971 the maternity allowance for further childcare could be drawn up to the age of 3 of the child (Koldinská, 2010). It was a relatively modern social security system, which was provided exclusively to women, men were not entitled to it. However, it can be assumed that the primary role of the protective provisions of labor and social security regulations was to increase birth rates and employment, not to protect women (Koldinská, 2010).

Until 1989, labor law in the field of women's status had not undergone major changes. But how has the situation changed in the modern Czech Republic and Slovakia? In which country is the position of a woman in labor relations more favorable? The authors will try to answer these research questions in the following sections of the article.

III. The Status of Women in Labor Relations in the Czech Republic

The principle of equal treatment is an essential rule for in any democratic legislation with regard to the women's status (Jouza, 2017). Unlike the Slovak law no. 311/2001 Coll. – The Labor Code (hereinafter referred to as the “Slovak Labor Code” or “LC SR”), which lays down the basic principles of labor law in the introductory provisions (Barancová, 2014), in Czech Act no. 262/2006 Coll. – The Labor Code (hereinafter referred to as the “Czech Labor Code” or “LC CR”) are these principles not directly stated in the introductory provisions. We find them scattered in the individual heads of the Czech Labor Code. In Section 16 of the LC CR, are provision guaranteeing the principle of equal treatment, the prohibition of discrimination on grounds of sex and other demonstratively defined reasons enshrined, and at the same time this section refers to the Czech Anti-Discrimination Act. Unlike the Slovak Labor Code, the Czech Labor Code explicitly stipulates that discrimination on grounds of pregnancy, maternity, paternity or sexual identification is considered discrimination on grounds of sex. The Slovak Labor Code does not enshrine such rule, but this issue is regulated in Act No. 365/2004 Coll. – Anti-discrimination Act (hereinafter referred to as “Slovak ADA”). Both codes are based on the principle of equal treatment primarily based on the principles and decisions proclaimed by the Court of Justice of the European Union (see e.g. C-13/94 P in the S and Cornwall County Council), other European regulations and directives. Another basic legislation in the Czech Republic is Act No. 198/2009 Coll. – Anti-discrimination Act (hereinafter referred to as “Czech ADA”). The authors state that the legislation is almost identical to the Slovak one, as it is based primarily on European Union regulations and declares equality of both sexes as well as the admissibility and necessity of protecting women due to pregnancy and maternity. Therefore, both countries have fundamental antidiscrimination principles set at a comparable level, also with regard to the membership of both countries in the European Union. As in many European Union countries (Barancová, 2003), in the Czech Republic, the primary protection of a woman in labor relations is based on her biological status as a mother and a person who cares for the child. The Czech Labor Code does not stipulate that a woman is a materially weaker subject than a man in labor relations (Čermák, 2018). The provision regulating the right to equality of men and women in remuneration, thus emphasizing gender differences, is typical for many legal systems, but it is absent in the Czech Labor Code as well as in Czech ADA. This rule is regulated only in general as the right to equal remuneration for equal work or work of equal value. However, the Czech Labor Code regulates a large number of provisions that protect a woman more extensively than a comparable employee in case of maternity or pregnancy. Pursuant to Section 41 of the Czech Labor Code, the employer is obliged to transfer a woman who is pregnant, breastfeeding or who is within the ninth month of childbirth and performs work that she is not allowed to perform in accordance with legal regulations or medical opinion to a work suitable for her. The same obligation applies to such a woman working at night and requesting a transfer. In this case the employer must act at her request and cannot require a medical opinion. Another provision that provides protection for pregnant

women, women on maternity leave or women and men on parental leave is the Section 53 of the Czech Labor Code. Such employees are subject to a ban on dismissal as they are in protective period (Náhlíková Kaletová, 2018). This prohibition does not apply neither in the Czech Republic nor in Slovakia when an employee is dismissed due to winding up of a legal entity of an employer. Similarly, the prohibition of dismissal does not apply to termination of employment during a probationary period, termination of employment by agreement, or termination of employment for a definite period of time after the expiry of that period (Poruban, 2013). Pursuant to the Section 55 of the Czech Labor Code an employer cannot immediately terminate an employment relationship with a pregnant employee, an employee on maternity leave or parental leave. As is clear from the provisions at issue, termination of employment with a pregnant woman or a woman who cares for a small child is legally almost impossible in the Czech Republic. At the same time, the employer is obliged to inform such employees about the possible risks that their work poses to their biological condition and to take measures to prevent these risks.

The Labor Code of the Czech Republic stipulates that the employer is obliged to create conditions for pregnant women, mothers by the end of the ninth month after giving birth and breastfeeding women, which will be suitable for their rest. This is a very specific provision of Section 103 of the Czech Labor Code, which is not common in similar legal regulations (Barancová, 2003) and places great demands on the employer, especially with regard to work carried out in offices accessible to the employer's clients or outdoors. The second, third and fourth part of the fourth head of the Czech Labor Code is devoted to the regulation of working conditions of female employees. This is a fairly complex regulation which enshrines the fundamental rights of workers, in particular with regard to their biological status. Female employees are prohibited from engaging in positions that endanger their motherhood. The authors must state that, as in the Slovak Republic, this provision appears to be problematic with regard to the provisions on pre-contractual relations, which explicitly prohibit employers from obtaining information on pregnancy from future employees.

Should an employer have to transfer a woman to another job based on her pregnancy or maternity, she is legally entitled to a salary no lower than on the previous position. If it is not possible to transfer her, she will stay at home and will be entitled to a social security benefit. Posting of pregnant workers or employees who are permanently taking care of a child younger than 8 years on a business trip is possible only with their consent, as well as their transfer. This applies equally to lone employees who are constantly caring for children under the age of 15. When assigning workers to work posts, the employer must consider their legitimate maternity interests. With regard to the organization of working time, if a pregnant worker or an employee who permanently cares for a child under 15 years of age requests shorter working time or any other appropriate working time adjustment, the employer is obliged to comply with it, unless serious operational reasons prevent him from complying. As in the Slovak Republic, the concept of serious operational reasons is not regulated. Serious operational reasons are defined only by case law, e.g. the judgment

of the Czech Supreme Court no. 612/2006, where the Supreme Court of the Czech Republic states that “. . . the decisive factor is, first of all, how important and significant an interference with the employer’s operations would be if the worker(s) were allowed the required shorter working time or other appropriate working time adjustment as compared to her (their) standard working condition for a set weekly working time. Only in the event that the proper operation of the employer is prevented, impaired or seriously jeopardized, can it be inferred that it precludes the employer’s serious operational reasons . . .”, “. . . On the other hand, serious operational reasons within the meaning of Section 156 part 1. and section 270 part 1. and 2. cannot be seen in the situation, that if the employer complies with the request of an employee it will create a precedent that other employees could benefit from. In fact, all workers caring for a child under 15 years of age and all pregnant workers are entitled to shorter working hours or to any other appropriate arrangements for weekly working time . . .”. In addition to appropriate working time arrangements, pregnant workers are prohibited from doing overtime and employees who are caring for a child younger than 1 year may only work overtime with their consent. After giving birth, workers are also entitled to a nursing break. Two half-hour breaks until the child reaches one year of age, followed by one half-hour break for each child for 3 months more. Such a break is counted as working time and includes wage compensation for the woman. The Labor Code of the Czech Republic provides relatively extensive protection to pregnant and breastfeeding workers, workers after childbirth or workers who are constantly taking care of children up to the age of 15 years. From a substantive aspect, the employee is always considered to be a weaker subject of the employment relationship. However, a woman’s biological status as a mother even more emphasizes this weaker position (Náhlíková Kaletová 2018). We would like to add, that the Czech Labor Code puts female workers into weaker position than male workers only in case of pregnancy and motherhood, never for the sex itself (Barancová, 2003). The authors would like to state that the analysis of individual provisions itself shows that there are significant differences between the Czech and Slovak legislation.

IV. The Status of Women in Labor Relations in the Slovak Republic

Act no. 460/1992 Coll. The Constitution of the Slovak Republic, as amended by constitutional acts (hereinafter referred to as “the Constitution”) includes, in its fifth section, Article 38, between economic, social and cultural rights, the inclusion of enhanced health protection at work and the specific working conditions of women, young people and the disabled. Article 38 of the Constitution regulates the so-called positive discrimination, i.e. it grants women, adolescents, and persons with disabilities the right to increased and special protection or assistance at work, in preparation for the profession. These groups of persons have these rights vis-à-vis the State, which is obliged to secure them (Čič, 1997). The rights referred to in this Article may be claimed only within the limits of the laws implementing those provisions; the article 38 section 3 of the Constitution stipulates that law shall provide the details of these rights. Laws governing the rights defined in Article 38 include,

in particular, Law No. 311/2001 Coll. Labor Code, as amended (hereinafter referred to as the "Labor Code"), Act No. 5/2004 Coll. on Employment Services as amended and others. In addition to the Constitution as the fundamental and highest-ranking state law, we find the Labor Code containing equal treatment and non-discrimination, in particular in Article 6 of the Basic Principles of the Labor Code, which states that *"women and men have the right to equal treatment in terms of access to employment, remuneration and promotion, vocational training and working conditions. Pregnant women, mothers up to the end of the ninth month after childbirth and breastfeeding women are provided with working conditions that protect their biological status in connection with pregnancy, childbirth, after-birth care and their special relationship with the child after birth. Women and men are provided with working conditions that enable them to perform a social function in the upbringing and care of children."* However, the principle of equal treatment between men and women does not apply, for example, to relations relative to special protection in pregnancy and maternity (Jakubka, 2007). However, according to the judgment of the Court of Justice in Kalanke, *"provisions enabling the protection of women as regards to pregnancy and maternity are not so much exceptions to the principle of non-discrimination on grounds of sex, rather than provisions which ensure the effectiveness of the principle of equality. It is only apparent discrimination by allowing or ordering different treatment to benefit or protect women for the purpose of achieving true equality in the material sense, not a formal equality that contradicts the requirement of equality as such."* (Bobek, Boučková, Kuhn, 2007).

The ECJ's judgment in Hill and Stapleton states that *"the protection of women in the context of family life is a principle recognized by the laws of the Member States and the European Community as a natural complement to the principle of equality between men and women."* (Bobek, Boučková, Kuhn, 2007). Based on the foregoing, the prohibition of discrimination may therefore be infringed, on the one hand, by the fact that the employer disadvantages women because they are women or based on another biased assessment, which disadvantages women. In accordance with the article 13 of the Labor Code, the employer is obliged to treat employees in employment relations in accordance with the principle of equal treatment stipulated in the area of labor relations by special Act no. 362/2004 Coll. on equal treatment in certain areas and on protection against discrimination and amending certain laws (the Anti-Discrimination Act), which provides that discrimination on grounds of pregnancy, maternity, paternity or sexual identification is considered to be discrimination on grounds of sex.

The right to equality between men and women in remuneration is regulated by a special provision of article 119a of the Labor Code governing wages for equal work and for work of equal value. In accordance with the law, wage conditions must be agreed without any discrimination on grounds of sex. Women, men and workers of the same sex have the right to equal pay for equal work or work of equal value. This shall apply to any work-related benefit as well as to work-related or employment-related benefits. Equal work or work of equal value shall be considered to be work of equal or comparable complexity, responsibility and labor, carried out under the same or comparable working conditions and attaining the same or comparable performance and employment results for

the same employer based on the Slovak Labor Code, Article 119a Section 2. The evaluation of employees must be based on the same criteria for men and women without any discrimination on grounds of sex.

The Labor Code contains many provisions that give women more protection in the case of pregnancy and maternity than is provided to a comparable employee. First, it is necessary to characterize who is considered a pregnant employee. Pursuant to article 40 section 6 of the Labor Code, a pregnant employee is to be considered an employee who informed her employer in writing of her condition and submitted a medical certificate. In the opinion of the authors, this is a strict legal provision, since the written information and the presentation of a medical certificate are a precondition for a woman to enjoy special protection in labor relations as a pregnant employee.

Pursuant to article 164 section of the Labor Code, which has a general character, the employer is obliged to consider the needs of pregnant women and women and men taking care of children when assigning employees to work changes. This means that, in accordance with the above-mentioned needs, the employer is obliged to take into account the possible necessity of adjusting the working time of the categories of employees mentioned, provided that if a pregnant woman and a woman or man who cares for a child under 15 years of age apply for shorter working hours or any other appropriate adjustment of the specified weekly working time, the employer shall be obliged to comply with their request unless serious operational reasons prevent this. The assessment of the seriousness of the operational reasons depends on the extent, organization, content and schedule of work, the employer's operational conditions, as well as on the substitution of the employee. In connection with the regulation of working time, the Labor Code also contains a provision regulating possible overtime work and work emergency in particular, pursuant to article 164 section 3, the special categories of employees mentioned above, may work overtime only with their consent, and work emergency can only be agreed with them. However, overtime is not prohibited for special categories of employees, as it is in the Czech Republic.

Pursuant to article 170 of the Labor Code, the employer is obliged to provide a mother who is breastfeeding her child additional, special breaks for breast-feeding. A mother who works for a specified weekly working time has two half-hour breaks for breastfeeding per shift for each child up to the end of the sixth month of the child's age and one half-hour break for breastfeeding for the next six months. If a mother is working part-time, but at least half of her specified weekly working time, she is entitled only to one half-hour break for breastfeeding for each child until the end of the sixth month of the child's age. Breastfeeding breaks are included in the woman's working time and are provided with wage compensation in the amount of average earnings.

According to article 55 section 2 subsection b) the Labor Code, the employer is obliged to transfer an employee to another job if a pregnant woman, mothers until the ninth month after childbirth and nursing woman carry out work in which these women may not be employed or which, according to a medical opinion, endanger their pregnancy or maternity mission. This obligation arises in accordance with article 55 section 2 subsection (f) of the Labor Code to the employer even if a pregnant woman, a mother by the end of the ninth month after giving birth and a nursing woman working at night requests

a transfer to day work. If a woman achieves lower paid earnings than at her previous position, she is provided to compensate for this difference with a compensatory benefit in pregnancy and maternity according to a special regulation, namely according to Act no. 461/2003 Coll. on social insurance, as amended. If the employer does not transfer a pregnant woman to another job, the employee has the right to refuse further work. This is an obstacle to work on the side of the employer pursuant to article 142 of the Labor Code, in which the employee is entitled to wage compensation equal to the average earnings (Freel, Kováčiková, 2013). The employee could also immediately terminate her employment in accordance with article 69 section 1 subsection a), because, according to the medical report, she would not be able to continue working without serious danger to her health and the employer has not reassigned her to other work suitable for her within 15 days of the date of submission of this report (Burda, Capíková, Nováková, 2018).

The specificity of pregnancy and maternity arrangements should also be sought when employment is terminated. According to article 72 section 1 of the Labor Code, both employer and employee may terminate employment for any reason or without giving a reason, however, the employment relationship may only be terminated during the probationary period with a pregnant woman, a mother by the end of the ninth month after childbirth and a breastfeeding woman in writing, in exceptional cases not related to her pregnancy or maternity, and must be duly substantiated in writing otherwise such a termination would be considered as invalid. The specificity of the adjustment in relation to pregnant women and mothers who are in the position of employee is also included in the immediate termination of employment. In accordance with article 68 section 3 of the Labor Code an employer may not immediately terminate an employment relationship with a pregnant employee, a female employee on maternity leave or a female employee and employee on parental leave, however, an employer may, with the exception of an employee on maternity leave and an employee on parental leave, terminate their employment by giving notice if they have been lawfully convicted of an intentional crime or have seriously violated a discipline. With regard to termination of employment by the employer, the employer may not give notice to the employee during the protection period. Pursuant to article 64 section 1 subsection (d) the protection period is the time when the employee is pregnant, when the employee is on maternity leave, parental leave or when a lone employee cares for a child under three years of age.

V. Comparative Analysis and Reflection *de Lege Ferenda*

The authors reached many conclusions in the legal analysis of the women's status in labor relations in the Czech Republic and Slovakia. First of all, it is necessary to emphasize that the Czech legislation on the women's status appears to be conceptually more neutral. The gender differences between male and female workers are not emphasized to a significant extent, which the authors consider favorable. This can be read in particular from the Czech ADA, which lacks an equal pay regulation categorized as male and female workers but is regulated in Sec. 5 of the Czech ADA as equal treatment in the remuneration of employees. This is also confirmed by the Section 110 of the Czech Labor Code, where the right to

equal pay for equal work or work of equal value for all employees is explicitly established. Unlike the Czech legislation in the Slovak Labor Code in Sec. 119a is enshrined the right to equal pay for equal work or work of equal value to men and women as well as employees of the same sex. The authors are of the opinion that the conceptually more neutral Czech legislation, which guarantees the same wage for the equal work or work of equal value to “all” employees is much more appropriately formulated in the 21st century. Despite the fact that we do not yet encounter the possibility of sexual self-identification in the legal conditions of Central Europe, in western countries such as the Kingdom of Sweden this possibility is already regulated by legislation and in addition to the pronouns “he” and “she” a neutral pronoun “hen” can be used when describing a person. We believe that, in addition to those who choose to identify themselves, the concept of more neutral legislation is also of great importance for working women. The legislator should try to eliminate the differences and not underline them. The remuneration of an employee is not defined by employee’s sex but by the value and quality of work, as shown by modern legislation, for example in Iceland, where it is a crime to remunerate differently on the basis of sex only.

Significant differences can also be observed in the approach of Czech and Slovak lawmakers to employees caring for a child or pregnant employees. The Slovak Labor Code explicitly defines a pregnant employee as an employee who informed the employer in writing of her pregnancy and provided a medical certificate. This provision limits the protection of pregnant workers to those, who notified the employer in writing. Employees who do not report their pregnancy to the employer in writing and do not provide a medical certificate are not legally regarded as pregnant. The Czech legislation is less strict, as it does not define a pregnant employee simply by informing her employer in writing and substantiating this with a doctor’s confirmation. A woman in the Czech Republic does not have to notify her employer until she is on maternity leave; she has to do so only if the work threatens her pregnancy or if she wants to use the protective tools that the Czech Labor Code provides to pregnant workers. The authors would like to state that the legislation of the Czech Republic is more favorable, because it interferes less with the personal sphere of the employee and leaves it to her decision whether and when to inform the employer. Moreover, due to the absence of a legal definition of a pregnant employee, it can be considered that if the pregnancy becomes apparent, the employer should ensure protection of a female employee in accordance with the Czech Labor Code Code, which is not so legally simple in Slovakia.

Another notable difference is that the Czech legislation provides female employees with the opportunity to rest in the workplace, of course only if the employee is pregnant, breastfeeding or until the end of the 9th month after giving birth. It is not specified in the Czech Labor Code how such an adaptation of the workplace space to a rest area should look, but enactment of such measure itself means extra protection for female employees in special conditions. The Slovak legislation does not impose such an obligation on the employer. The authors believe that the approach to rest for pregnant and breastfeeding female employees should be similar to the provision of reasonable accommodation for disabled employees, proportionately according to the employer’s objective possibilities.

However, this adjustment is considered positive, as it enables a woman to combine work with pregnancy and maternity significantly easier and it can serve as a motivating factor for returning to work or staying at work.

The employer's regulatory rights are considerably limited in the Czech Republic when sending a protected group of female employees on a business trip or when requiring overtime. In the Slovak Republic, there is no legal prohibition on sending a pregnant employee on a business trip, and it is possible to agree with her on overtime work. The Czech legislation significantly affects the employer's superiority when the Labor Code of the Czech Republic imposes an obligation on him to seek consent from a pregnant employee when posting on a business trip. At the same time, there is a total ban on overtime for pregnant workers. The authors are of the opinion that such strict obligatory legislation is not the best solution. Every pregnant female employee can undergo a medical examination and if the doctor determines that traveling is not appropriate for her, the employer cannot send her on business trips. However, unless the doctor issues such a restriction, there is no reason, according to the authors opinions, to require the employer to obtain re-approval during pregnancy despite the general consent of the female employee to posting on business. We would also like to say that a total ban on overtime work for pregnant workers significantly affects not only the rights of the employer but also the rights of the female employee. Similarly, to a business trip, unless overtime work interferes with her health, the authors do not see a reason why she could not decide to do overtime work herself. Moreover, overtime work is also more financially valued and can be a motivating factor in the selection of certain types of work. We consider the Slovak legislation to be more appropriate and favorable for combining work and personal duties, namely that overtime work may be performed by a pregnant employee with her consent.

In the author's point of view the regulation of the position of women in labor relations should consider not only their biological functions during pregnancy and maternity, but also the status of women as employees. Labor law regulations should be flexible enough to allow women to reconcile working responsibilities with parental responsibilities and do not force them to choose (Nováková, 2015). At the same time, the authors believe that in the 21st century it is necessary to emphasize the role of the other parent in caring for the child and to enable the partner to participate in a fairer division of tasks. This is also the aim of the newly adopted Directive no. 2019/1158 of the European Parliament and of the EU Council on the work-life balance of parents and care givers (hereinafter referred to as the "work life balance directive"). The work life balance directive introduces instruments such as 10 days post-natal leave for the father of the child or an equivalent second parent into the legal system. There is no such regulation currently in place in the Slovak Republic. It also introduces flexible forms of work organization for parents and care givers. These should relate to the flexibility of the place and time of work. With regard to the overall regulation in the field of the European Union, this is a very modern directive with great future impact on the Czech Republic or the Slovak Republic with regard to parental leave, flexibility, participation of the other parent in upbringing of a child or care givers rights (Hamulák, Nevická, 2018).

Member States have until the 02nd of August 2022 to comply with their laws. The authors are convinced that this is a step that will help women to further participate in working life and at the same time increase the involvement of the father or the other parent in the care of a child. The most important provision, according to the authors' opinions, is the flexibility of work, which has not been supported by law to this extent. As mentioned in the previous chapters of the article, individual legal systems have tools that women with parental responsibilities can use but these are usually not sufficient. Reducing working time alone does not mean for a woman – mother – employee that she will have provided childcare. If we also allow her flexibility in the place of work, the purpose will be fulfilled. At the same time, it is possible to assume that a greater number of fathers and second parents will be involved in childcare, which will increase women's participation in the labor market. This way, it will be possible to eliminate the gaps in work experience between male and female workers, often caused by parental responsibilities, as well as to eliminate prejudices against women's recruitment, since employers will have to take into account that children will be cared for more equally by both men and women.

At the end of 2019, the European Institute for Gender Equality presented a new survey on gender equality in the European Union society as well as in the workplace called European Gender Equality Index. Having collected a various number of data (Mesarčík, 2019), it considers 72.0 points as the European average of gender equality at the workplace. The Czech Republic achieved the result 67.0 points and the Slovak Republic 66.5 points. Both countries fall well below the European average. The survey also shows that in both countries while 30% of women are active in education and social work, only 7% are women work in technology, research, or engineering. These results only deepen and underline the need of more flexible work arrangement to combat ongoing difference of treatment in labor relations between men and women, especially when taking care of a child (Krippel, 2018).

De lege ferenda we further believe that the Slovak Republic should be inspired by the Czech legislation, especially with regard to greater conceptual neutrality and less interference with the rights of women – mother – employee. At the same time, the tools that the Czech Republic has already established as a place to rest in the workplace, or the holiday of a father after the birth of a child, significantly contribute to the possibility of female employees to activate themselves in the labor market and comply with European regulations. The legislator should aim to promote the employment of women as equal employees, who will not be short of experience only due to parental responsibilities. We consider it crucial to introduce flexibility not only in working time but also in the place of work so that female workers do not have to opt for part-time work with a simpler workload that will enable them to take care of their child. A modern labor market and labor legislation must allow for the reconciliation of parental and work responsibilities as well as the fair involvement of both parents of the child.

VI. Conclusion

Having analyzed and compared the legal regulations in the Slovak Republic and in the Czech Republic and considering the results of the European Gender Equality Index survey, the authors came to a clear conclusion. The labor market and labor regulations in the Czech Republic are slightly more favorable for women than in the Slovak Republic. As we have stated, both countries were the worst among evaluated countries in European Gender Equality Index in the field of women's participation in various sectors of the labor market. These are the areas where continuous education, travel, work experience and active professional life are key prerequisites. From the authors' point of view, this undesirable phenomenon is caused by the lack of flexibility in labor relations for women – mothers – employees. The role of the father in childcare is weakened by the insufficient labor law regulations, which only deepens the obstacles for mother's professional growth. The authors believe that they have produced valuable observations resulting from comparative analyzes that will contribute to more equal position of employees in the labor market.

References

- Barancová, H. (2003). *European labor law*. Bratislava: Sprint, 186 pp. ISBN 80-89085-13-x.
- Barancová, H. (2014). *Bullying and mobbing in the workplace: legal problems*. Praha: Leges, 224 pp. ISBN 978-80-7502-036-9.
- Bobek, M., Boučková, P., Kuhn, Z. (2007). *Equality and Discrimination*. Edit. 1. Prague: C. H. Beck, 471 pp. ISBN 978-80-7179-584-1.
- Burda, E., Capíková, S., Nováková, M. (2018). Globalization and its socio-economic consequences [Electronic document]: 1st Edition. ISBN 978-80-8154-249-7. Žilina: The University in Žilina, s. 1252–1259 [online] https://globalization.uniza.sk/wp-content/uploads/2018/12/proceedings_globalization_2018_part_3.pdf.
- Čermák, J. (2018). The position of women in society with a focus on the Czech Republic. In *e-Polish.cz* [online]. © e-Polis.cz 2003–2018. Available from: <http://www.e-polis.cz/clanek/postaveni-zeny-ve-spolecnosti-se-zamerenim-na-ceskou-republiku.html>.
- Čič, M. (1997). *Commentary on the Constitution of the Slovak Republic*. Martin: Matica Slovenská, 598 pp. ISBN 80-7090-444-5.
- Freel, L., Kováčiková, J. (2013). *Constitutional Definition of Women's Special Working Conditions and Their Position on the Labor Market*. Wien: Paul Gerin. ISBN 978-3-200-03147-0.
- Hamulák, J., Nevická, D. (2018). Swedish model of parental leave – the way to equality? In *Proceedings of the International Scientific Conference "The Rule of Law – Between Science and Art" as a part of the International Scientific Congress Trnava Law Days, 20th–21st of September 2018*. Trnava: Faculty of Law, The University of Trnava, 2018. Bratislava: Wolters Kluwer.
- Hanáková, P., Havelková, H., Oates-Indruchová, L. et al. (2015). *Expropriated voice: Changes in gender culture of Czech society 1948–1989*. Praha: The Sociological Publishing House.

- Chyský, J. *Czechoslovak Labor Law*. (1960). Edit. 2. Praha: Orbis, 519 pp.
- Institute for the Study of Totalitarian Regimes (2008–2015). *Women in agriculture*. Retrieved November 26, 2019, from <https://www.ustrcr.cz/uvod/citanka-kolektivizace/spolecenska-transformace/zeny-v-zemedelstvi/>.
- Jakubka, J. (2009). *Labor Law Code*. Edit. 5. Olomouc: ANAG. ISBN 978-80-7263-491-0.
- Jouza, L. Respect for equality and non-discrimination in industrial relations. In *Epravo.cz* [online]. © EPRAVO.CZ 1999–2019. Available from <https://www.epravo.cz/top/articles/dodrzovani-rovnosti-a-zakaz-diskriminace-v-pracovnepravnich-vztazich-105394.html>.
- Koldínská, K. (2010). *Gender and social law: equality between men and women in the social-legal context*. Vyd. 1. Prague: C. H. Beck, 240 pp. ISBN 978-80-7400-343-1.
- Krippel, M. (2018). The Conditions of Father's Entitlement to Maternity Benefit. *Bratislava: CU the Faculty of Law*. 1st edit. Pg. 323–334. ISBN 978-80-7160-517-1.
- Mesarčík, M. (2019). Introduction to artificial intelligence and privacy. In *Computer law, AI, data privacy and technological trends*. The Danubius University in Sládkovičovo. 1st Edition. Pg. no. 136. Pg. 73–91. ISBN 978-80-7392-333-4.
- Náhlíková Kaletová, R. (2018). Protection period or when the employer is prohibited from giving notice to the employee. In *Legalprostor.cz* [online]. © ATLAS Consulting Ltd. s.r.o. Available from <https://www.pravniprostor.cz/clanky/pracovni-pravo/ochranna-doba-aneb-kdy-ma-zamestnavatel-zakaz-dat-zamestnanci-vypoved>.
- Nováková, M. (2015). Working Conditions of Female Teachers at University. In *Bratislava Legal Forum: Equality and inequality before the law in relation to weaker subjects of law*, pg. 204–208. ISBN 978-80-7160-411-2.
- Poruban, A. (2013). Indication of the reason for the termination of employment in the termination agreement. In *Newsletter for payroll accountants and HR officers*. Edit. 9, no. 10, p. 8–9, ISSN 1335-3772.