Equal Opportunities for Women and Men in Bulgaria
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Executive summary for Bulgaria

INTRODUCTION

In its Regular Report on Bulgaria’s progress towards accession, the EU noted with concern that much of the *acquis communautaire* in the field of equal treatment for women and men has yet to be transposed and that the process until now has not been a speedy one. Despite positive developments that have occurred in the Labour Code, the draft Act on Equal Opportunities for Women and Men, which was a complex undertaking aimed at resolving issues related to gender equality in Bulgaria and which would have ensured compliance with EU Directives, was rejected in April 2002.

The draft Act on Equal Opportunities for Women and Men, which was put forth in June 2000 under the aegis of the Ministry of Labour and Social Policy, provided *inter alia* guarantees for non-discrimination in the fields of employment, political participation and participation in decision-making, education and gender stereotypes, and establishes a national mechanism for equal opportunities, the institution of the Ombudsperson on Equal Opportunities. It was rejected alongside arguments that comprehensive anti-discrimination legislation, which would include the best provisions of the draft Act on Equal Opportunities, would be elaborated. However, NGOs and experts in the field of gender equality are critical of such an approach, fearing that this would preclude the possibility of creating effective gender equality mechanisms, as well as risk marginalising gender issues and further delay the implementation of equal treatment and the Directives. Such arguments are strengthened by the fact that European law itself distinguishes between sex-based and other forms of discrimination.

Two areas in which Bulgaria cannot boast compliance with the EU Directives include part-time work and the burden of proof in cases of sex discrimination, although both topics are dealt with under the draft Act on Equal Opportunities. One particular sphere in which discrimination against women is most apparent is that of remuneration: the latest available data from a private survey carried out in the public sector in 1997, when Bulgaria had one of the largest gender pay gaps among the Eastern European countries, showed that women only earned 69 percent of men’s pay.¹

The adoption of a comprehensive Act on Equal Opportunities and the monitoring and implementation mechanisms for which such an Act would provide is a condition *sine qua non* for the full transposition of the *acquis communautaire*, as well as the most effective means of ensuring that equal opportunities and equal treatment are social and equal.

¹ UNICEF (1999).
political goals that will become a de facto reality in Bulgaria. The government’s genuine commitment to gender equality may therefore remain in question as long as such an Act is not adopted, and there is no training of representatives of the institutions or awareness campaigns to educate the general public on the need for, and value of, an expansive strategy on equal opportunities.

**SUMMARY OF KEY POINTS**

**Defining principles**

Bulgarian legislation does not define ‘discrimination on the grounds of sex’. The notion of indirect discrimination was introduced with the latest amendments to the Labour Code, but it is framed broadly and does not refer explicitly to sex-based discrimination. The principle of equal pay for women and men was introduced with the amendments to the Labour Code, which came into force on 31 March 2001. There is no explicit prohibition of sexual harassment in the workplace in Bulgarian legislation, although there was clear progress in this direction with the ratification of the European Social Charter, the recent changes of the Labour Code, and the research work of NGOs and official research institutes.

**Protective measures**

Bulgarian legislation provides special protection for women, especially pregnant women and mothers, and adheres to a significant extent to the requirements of the Directive in this regard. Until very recently, Section 310 of the Labour Code contained the absolute prohibition for an employer to send a pregnant woman or a woman with a child under the age of three on a business trip. The Labour Code still contains an absolute prohibition for night work not only pregnant women, but also for women workers or employees with children up to the age of three. The Labour Code prohibits overtime work for pregnant employees and mothers with children up to the age of six, as well as mothers raising handicapped children irrespective of the latter’s age, except with their own consent. The right to time off for antenatal examinations is not explicitly provided for by law, but female workers are entitled under the Labour Code to paid leave for urgent medical examinations or tests. There are no protective measures envisaged in Bulgarian law against dismissals effected in reaction to complaints based on the principle of equal treatment.
Burden of proof

Bulgarian legislation does not comply with Directive 97/80/EC concerning the reversal of the burden of proof, as the general rule of evidence in accordance with Section 127(1) of the Code of Civil Procedural provides that “Each party must establish the circumstances that form the basis of her/his claims or objections [...]”. This is also a general principle in Bulgarian legislation and the reversal of the burden of proof in cases of the non-application of the principle of equal treatment would therefore be an exception that should be established by special legal provisions.

Part-time workers

The legal definition of part-time work in Bulgaria is based on the term ‘statutory working time’, which has important legal consequences. There is no discrimination concerning part-time workers, and if the working time is at least one half of the legally established working hours for the day there are no different legal consequences related to the length of service and hence the right to social security. Bulgarian legislation does not provide any possibility for a part-time worker to request a transfer to full-time work or vice versa if such a position is available, and any transfer is subject to a written agreement between the worker and the employer. Since the beginning of the transition process, flexible and part-time work have been increasingly seen as factors contributing to the reduction of unemployment, and employers are encouraged to employ unemployed persons in part-time work.

Self-employed workers

There is no explicit definition of self-employed workers in Bulgarian legislation. At the same time, there are no directly discriminatory rules contrary to the principle of equal treatment in the existing legal framework, and the Commercial Act and other commercial legal regulations are gender neutral. Unmarried couples are not discriminated against in law or in practice regarding the formation of companies. The main forms of self-employment in which women are engaged are in trade, services, manufacturing, transport, and communications. There are no measures to enable all persons who consider themselves wronged by the failure to apply the principle of equal treatment in self-employed activities to pursue their claims by judicial process, possibly after recourse to other competent authorities.
Parental leave

Bulgarian legislation is in full compliance with the international standards related to maternity leave, but there is no specific definition of the term parental leave. According to the National Programme for the Adoption of the Acquis (NPAA), this will be introduced with the drafting (undertaken jointly with social partners) of the amendment to the Labour Code in 2004. Existing provisions, although they do not provide for parental leave in line with the Directive, do give fathers the opportunity to participate in childcare, depending on the decisions of individual families. Despite this however, the recently adopted Act on Employment Promotion (in force as of 1 January 2002) foresees incentives for employers who hire single mothers and mothers with children up to three years, with no mention of fathers who could be in the same position. The potential risk of such provisions is that prejudices will be reinforced rather than challenged, and fathers will be even more reluctant to take advantage of the right to childcare leave. Currently, the father may only take childcare leave if the mother has relinquished her right to leave and given her permission. It is common practice for grandparents to take advantage of this leave instead of the father though, for economic reasons.

Social security schemes

Women in Bulgaria currently have a lower pension age than men, but a consensus is beginning to emerge in favour of a common pension age. Unfortunately though, this issue is not expected to be formally addressed before 2009. Indirect discrimination results from measures which, although often defined without reference to gender, in practice do affect women and men differently because of the nature of their occupational activity, marital status or family situation. Certain conditions, such as long periods of qualification, also penalise women. There is no discrimination on the basis of gender, either directly or indirectly, by reference in particular to marital or family status, especially as regards the scope of schemes and conditions of access to them or the obligation to contribute and calculation of contributions. The progressive implementation of the principle of equal treatment in matters of social security, although not part of the official policy on gender equality, will hopefully be considered with the adoption of the draft Act on Equal Opportunities for Women and Men.
RECOMMENDATIONS RELATED TO EACH SPECIFIC DIRECTIVE


- The Labour Inspection should develop its expertise to be able to identify cases of sex-based discrimination.
- Provisions should be adopted to ensure compliance with the scope of the Directive and specifically with Articles 2, 6 and 7. To that end, it is recommended that the new Act on Civil Servants, as a special code for this category of workers, should include the principle of equal pay for women and men.
- Comprehensive gender equality legislation should be adopted.
- Effective mechanisms for monitoring and implementing the principle of equal pay need to be provided for in law and implemented in practice.


- Legal guarantees for access to vocational and further training and special measures ensuring such training for women during and after maternity leave should be provided.
- Clear legal provisions on the principle of affirmative action in women’s access to employment should be developed.
- Sexual harassment should be prohibited as a form of gender discrimination, and punishment should be stipulated beyond the penal law.

Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding

- Research studies should be conducted to determine how the laws are applied and identify legal and/or practical shortcomings.
- Research should be carried out to determine whether the enforcement of health and safety regulations for the workplace is adequate.
- Absolute prohibitions on overtime work for pregnant women and mothers with children between the ages of three and six, etc. should be reconsidered.

- The notion of indirect discrimination on grounds of sex should be explicitly defined.
- The principle of the reversal of the burden of proof should be included in Bulgarian legislation, and a broad public awareness campaign on this principle should be carried out, as well as trainings for lawyers, the judiciary, and government officials, to ensure the practical implementation.
- Officers and the judiciary should be trained to identify direct and indirect discrimination and to apply the principle of equal treatment, to study examples from the practice of other European countries more advanced in this field, and to create the conditions for developing theory in this field.


- Employers should consult the representatives of the workers concerned on the introduction or extension of part-time work on a broad scale and on the protective and promotional measures that may be appropriate.
- The role of trade unions should be emphasised, since they could negotiate workers’ right to the transfer from full-time to part-time work (and vice versa), which is particularly important for women, in collective labour contracts. However, strict control must be exercised with regard to the actual hours of work to avoid a decrease in pay in the event of overtime work.
- Opportunities for the application of flexible work schemes and the respective protection of part-time workers should be extended through labour legislation.


- Further developments in the legislation are needed to ensure a clear-cut, transparent system with a view to the harmonisation of Directives covering the self-employed. To this end, a legal definition should be adopted to provide the criteria for defining self-employed persons as a specific group with a flexible status.
The prohibition of discrimination and the principle of equal treatment should be included in relevant legislation, such as the Code for Obligatory Social Insurance and the Act on Employment Promotion.

The category of ‘contributing family member’ should be extended, and self-employed workers should be encouraged – including by positive action of the government – to register contributing family members, since this is a precondition for legally insured status and eligibility for provisions.

More detailed statistics and research in the field of the application of the directive should be carried out.

**Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP, and the ETUC**

- Social policy, including legislation, should be developed to improve the quality of women’s contribution to the labour market, including equal treatment for women and men, equal pay, flexible conditions for hiring employees, financial and other incentives for employers to support the reconciling of family and professional life.
- Parental leave should be provided for on a non-transferable basis.
- Amendments to the Constitution, Labour Code and the Code for Obligatory Social Insurance are required in order to transpose the Directive 96/34/EC.
- Legal provisions on parental leave and affirmative action should be introduced, as should incentives for men to take paternal leave. The Act on Employment Promotion should be amended to forego the need for the mother’s permission in cases of paternal leave.
- Data and research on the roles of men and women in the family should be collected on a regular basis, including research on the taking of parental leave.
- Special provisions should be introduced to protect workers against dismissal on the grounds of applying for or taking parental leave.
- Measures should be taken to encourage public debate on the issue of individual parental leave in order to raise social awareness on gender issues.


- Legislation should be adopted to bring the provisions on occupational schemes in line with EU standards.
The Directive should be taken into account when setting up insurance funds and companies and transposed into the internal regulations of the insurance companies.

Since the Government envisages introducing amendments in the Code for Obligatory Social Insurance and the Act on Voluntary Social Insurance, it would be appropriate to take into account Directive 96/97/EC and to introduce explicitly gender-neutral rates.

Pension payments should be analysed to reveal the true gender impact of so-called ‘occupational schemes’ in the Bulgarian social security system.
Country reports: Bulgaria

INTRODUCTION

According to the 2001 Regular Report on Bulgaria’s Progress Towards Accession, “much of the acquis in the field of equal treatment for women and men remains to be transposed […] and no progress has been made in adopting detailed and effective anti-discrimination legislation. Further efforts are needed to ensure alignment with the acquis on anti-discrimination based on Article 13 of the EC Treaty […].” The general assessment of the Government itself does not differ much from that of the European Commission, aware that formal compliance with EU standards, especially in the field of employment, is not sufficient, and there are no implementation mechanisms or consistent legal practice on the issue of gender equality. As a result, legislation, where it does exist, is ineffective.

Outstanding issues were meant to be transposed through the draft Act on Equal Opportunities for Women and Men, which was submitted to the 39th National Assembly, and in the legislation to be adopted in the medium term.

Based on the negotiation positions, the Bulgarian government adopted a strategy for the acceleration of the negotiations for accession in 2001. As priorities under Chapter 13, it provides for the rapid adoption of comprehensive and effective anti-discriminatory legislation and of legislation in the area of equal treatment of women and men, as well as the establishment of a National Council of Equal Opportunities of Women and Men and the appointment of an Ombudsperson.

Although formal compliance is stated with respect to Directives 75/117/EEC and 76/207/EEC, an analysis shows that recent changes to the Labour Code and the new Act on Employment Promotion are not sufficient for the real implementation of EU standards de jure and de facto.


Despite government efforts, no substantial progress was achieved during the preparation of this report and fields such as part-time work and the burden of proof in cases of sex discrimination are areas of full non-compliance. Although there are no provisions in Bulgarian legislation which contradict the principle of equality of treatment of women and men in social security, there are no specific provisions promoting the principle either. Furthermore, the requirements of Directive 86/378/EEC related to occupational pension schemes have yet to be fully transposed.

Due to the specific nature of social security and to the specific subject of Council Directives 86/613/EEC and 86/378/EEC, according to Negotiation Document No. CONF-BG 54/01, it was considered preferable as a first step to establish the institutional framework on gender equality and legal protection in the fields of occupation and employment, education and training, political life and governance and the removal of negative stereotypes for the respective roles of women and men, whereas equal treatment in the field of social security, independent economic activity and agriculture should be dealt with by the newly established institutions and in a more detailed way in other pieces of legislation.

The Bulgarian government shared the opinion of the European Commission that the leave envisaged in Section 164 and 165 of the Labour Code is different from parental leave in the sense of the Directive, which has not been fully transposed.

At the policy level, it must be noted that the implementation of Directives 86/613/EEC and 96/34/EC is fundamental to the National Employment Strategy’s aim to realise the principle of equal treatment of women and men.

As a result of the above, the adoption of the draft Act on Equal Opportunities for Women and Men was, and still is, crucial for ensuring compliance with the Directives under review. The Act was drafted in June 2000, as part of the implementation of the government’s legislative program, under the aegis of the Ministry of Labour and Social Policy. It represents a complex approach towards resolving gender equality issues in Bulgaria and creates guarantees for non-discrimination in the fields of employment, political participation and participation in decision-making, in the field of education and gender stereotypes, provides guarantees for implementation, and establishes a national mechanism for Equal Opportunities, the institution of the Ombudsperson on Equal Opportunities, etc. The draft Act transposes many of the Council Directives...
under review and was approved by the Council of Ministers at the end of March 2001 for submission to the National Assembly.

After being rejected once by the Parliamentary Commission on Human Rights and Religious Denominations, this body revised its decision and at the end of January 2002 the draft Act was finally sent before Parliament for the first reading. Concurrently, the government made a decision affecting the implementation process with the drafting of a new general Anti-Discrimination Act, according to which gender equality is to be included among other forms of discrimination (religion or belief, disability, age and sexual orientation). The advantages of such a solution are being discussed, but NGOs and experts in the field of gender equality have focused on the disadvantages, such as the impossibility of creating effective gender equality mechanisms, the risk of marginalising gender issues, and the further delay of the implementation of equal treatment and the Directives. The fact that the issue of equal opportunities for women and men is dealt with separately from other grounds of discrimination in European law provides a strong argument in favour of separate regulation.

At the same time, instead of adopting the draft Act the government tried to use different laws to regulate the matter of equal opportunities together with other forms of discrimination, thus taking concepts from the draft Act and reproducing them in the amendments of the Labour Code enacted at the end of March 2001 and in the Act on Employment Promotion in force since January 2002.

The Bulgarian Parliament actually rejected the draft Act on EOWM, which was only supported by the opposition, on 3 April 2002, with the leading political party arguing that a comprehensive Anti-Discrimination Act would be elaborated and would encompass the ‘best provisions’ from the draft Act on Equal Opportunities.

Regrettably, dialogue with civil society representatives, which began when the Act on Equal Opportunities was elaborated, broke down after the failure to establish the National Council for Equal Opportunities. In addition, the Government failed to organise a large public campaign or inform the public about the important change in its negotiation position (Document No. CONF-BG 8/02).

Although positive trends can be identified, these legislative measures cannot replace a comprehensive Act on equal opportunities or the mechanisms for which it provides, the adoption of which is a condition sine qua non for the transposition of the acquis in the fields of employment and social security.
1. **The Principle of Equal Pay for Work of Equal Value**


1.1 National legal framework concerning the principle of equal pay for work of equal value: General provisions

The principle of equal pay for women and men was introduced for the first time with the amendments to the Labour Code in 2001, thereby establishing the legal grounds on which to bring a claim of discrimination in this field. There are no discriminatory provisions in Bulgarian legislation that are contrary to the principle of equal pay for men and women and Bulgaria complies fully with Article 3 of Directive 75/117/EEC.

Until 1992, a general clause existed in the Labour Code providing for equal pay for work of equal value, but it was subsequently abolished as incompatible with the principles of a market economy and reminiscent of socialism and socialist labour. As a result, women were put at a greater disadvantage during transition, since the gender gap is particularly evident in the field of remuneration. The only provisions that could be applied for protection against discrimination in this field were, and still are, the general anti-discrimination clauses in Article 6 of the Constitution and Section 8(3) of the Labour Code, which prohibit, *inter alia*, discrimination based on sex. The Constitutional principle of equality is directly applicable and takes precedence over any contradictory provisions.

The Labour Code

The newly amended Section 243 provides that women and men have the right to equal pay for the same work or work of equal value, and this principle is valid for all the payments related to labour relations. While the amendment represents clear progress, it is not as broad as the legal wording of Directive 75/117/EEC, either in scope or in its specification of the remuneration. The anti-discrimination clause contained in Section 8(3) has been broadened to prohibit both direct and indirect discrimination on the basis of sex, which is defined in Article 67 of the Transitional and Conclusive Provisions.
The Act on Civil Servants
The 2000 Act on Civil Servants does not regulate the principle of equal pay for women and men, although as a special ‘code’ for this category of workers it should include the principle.

The Draft Act on Equal Opportunities for Women and Men
The draft Act on Equal Opportunities for Women and Men (hereinafter the AEOWM) provides for the principle of equal pay for equal work or work of equal value in Article 21(1) and contains the main elements envisaged by Directive 75/117/EEC. It also envisages the application of the principle to public servants.

Relevant international provisions
Under Article 5(4) of the Constitution, international instruments signed and ratified by Bulgaria form part of the domestic legislation.

The ILO Convention 100 on Equal Remuneration is part of the domestic legislation and provides that the principle of equal pay for men and women should be expressly declared in the national legislation and enforced in each and every system of remuneration established and recognised by law.

In 2000, Bulgaria ratified the Revised European Social Charter, Article 4(3) of which obliges the government to recognise the right of women and men to equal pay and turns to the domestic legislation for the recognition, concrete guarantees and implementation of this principle of equal opportunities.

These international documents do, however, require the explicit transposition of the principle into the national legislation and this has only been done very recently through the latest amendments to the Labour Code.

1.2 Implementation of the principle of equal pay for work of equal value: Legal foundations and institutional structures

The legal provisions on protection from sex-based discrimination in employment relations do not differentiate between the public and private sectors, but daily practice and research reveal considerable differences between the two. In particular, the economic constraints of the private sector lead women to suffer inequalities in employment conditions, including in relation to pay.

See also Section 2.1 below.
Section 399 of the Labour Code charges the Labour Inspection with the overall control of the implementation of labour law in both sectors. Under Ordinance No. 92 of 2000 of the Council of Ministers, the Labour Inspection has the status of an Executive Agency under the Minister of Labour and Social Policy. According to Article 4 of the Regulations on the Structure of the Labour Inspection, its control functions primarily cover the safe and healthy working conditions and the implementation of labour relations. To this end, the Inspection can give information and advice where necessary to employers and workers, and cooperates with other institutions, employers’ organisations, workers’ organisations and with NGOs, and can undertake scheduled or unscheduled inspections (at the discretion of the Minister of Labour and Social Policy and upon signals or complaints from the workers or in connection with media publications).

Under Section 402(2) of the Labour Code, trade unions are also granted the right to exercise the control functions of the Labour Inspection, and Section 406 provides that trade unions can refer a case involving a violation of the labour legislation to the Labour Inspection and request the respective compulsory administrative sanctions.

The draft AEOWM provides a control mechanism for cases of discrimination in labour relations, including the principle of equal pay for men and women. Articles 57 and further envisage the Labour Inspection as the main body with control functions, and the authority to impose fines on persons and entities for violating the law. In addition, under Part 3 of the draft, the independent ombudsperson will play an active role in this process.

There have been no complaints concerning the principle of non-discrimination in remuneration between women and men, and the Labour Inspection has not been particularly active in identifying such discrimination in either sector, and is known primarily for its inspections with respect to work safety. Instead of focusing on inequalities, the inspections related to pay focus more on identifying cases involving the employer’s evasion of social security contribution payments.

The State Administration Commission at the Council of Ministers issues rulings in cases involving the violation of the rights of civil servants, but the system of control is unclear and relies too much on the executive power.

1.3 **Job classification**

There is no unified classification system used for determining pay in the public or private sectors. However, the rules applicable to state-owned and budget-subsidised enterprises are quite clear and the law does not create the conditions for sex-based inequality with regard to remuneration.
There is a salary scale for every job position and its size depends on a set of criteria, including both personal and professional characteristics. The level of remuneration for a specific position is still determined by the employer and is based on the job description. Salaries are updated on the basis of regular personal performance evaluations and an increase depends on the extent to which the above-mentioned set of criteria have been met and will be raised by an amount within the range of the adjustment scale envisaged for that position.

The Act on Civil Servants and the Act on Public Administration determine the size of civil servants’ pay, and Ordinance 35 of 2000 of the Council of Ministers establishes strict criteria for hiring a person and determining their pay. The Regulation on the application of a uniform catalogue of administrative positions determines the amount of the basic remuneration for each position and the respective allowances and benefits, which are linked to the job grade and type of the administration, and are also strictly defined in this Regulation. This system allows for the staff's promotion and gradual career growth, accompanied by an appropriate salary increase. The process is linked to demonstrated individual qualities, which are assessed by an evaluation committee, and makes no provision for discretionary practices.

The salary formation rules are not binding for the private sector, where the rules of free negotiation apply.

1.4 Available legal procedures in cases involving the violation of the principle of equal pay for work of equal value

Workers who consider themselves discriminated against in terms of remuneration have the right to initiate court proceedings according to Chapter 18 of the Labour Code. There are no special measures protecting an employee from dismissal in reaction to court proceedings as required by Article 5 of Directive 75/117/EEC. However, such a provision is envisaged in Article 30 of the AEOWM.

Workers do no benefit from any free legal aid, and such a system is lacking in Bulgaria. However, Article 35(1) of the Act on Attorneys-at-Law gives lawyers the possibility to take the case pro bono if the worker is financially disadvantaged. This does not constitute real legal aid provided by the state though, and is simply a possibility.

Under Section 359 of the Labour Code, workers must not pay a court fee in cases of labour litigation. This is the only provision so far that assists the worker, but it has been questioned by the Association of Foreign Investors in Bulgaria (BIBA), who believe this clause puts the employer and the worker in unequal positions.
Some trade unions, such as the Podkrepa Labour Confederation, have undertaken initiatives to provide free legal aid, but their practice so far has not been related to gender issues. Research shows that lawyers’ fees often constitute a barrier for workers to claim their rights.

1.5 Means of informing employees of their right to equal pay for work of equal value

As there are no explicit provisions concerning the principle of equal pay for men and women, no special mechanisms exist for informing the workers. The existing guarantees on non-discrimination are not brought to their attention, and they are expected to know their rights and not rely on the state (ignoratia legis neminem excusat). The perception emerged during the transition period that people tend to make too high demands on the state, which is reminiscent of socialist times.

As a result, the right of workers to be informed of her/his rights by the state and the employer, as developed in European standards, is a totally new concept that needs to be discussed, explained and disassociated from the past.

The AEOWM contains this principle though, and Article 28 specifically obliges the employer to publicise the Act.

1.6 Out of court alternatives

There are no provisions yet in the Bulgarian legal system for settling individual labour disputes related to equal pay out of court. With the recent amendments to the law regulating collective labour disputes, as of 31 March 2001, if no agreement between the representatives of the employee and the employer is reached, each party has the right to look to mediation and/or the voluntary arbitration of unions and employers’ organisations, and/or the newly established National Institute for Conciliation and Arbitration. The Institute is a legal entity under the Minister of Labour and Social Policy and has the status of an executive agency.

1.7 Role of trade unions

Under the Labour Code, trade unions have a large competence in the protection of labour rights, in equality matters included in the tripartite cooperation, in the process of collective bargaining and in court proceedings in cases of labour disputes. At the
request of the workers, trade unions can represent them in court proceedings and undertake certain legal actions if they have an explicit mandate. This right of trade unions is also stipulated in Section 20(2) of the Code of Civil Procedure, and Article 63 of the AEOWM explicitly mentions this function with regard to disputes involving violations of this Act.

There are no provisions in the Labour Code to render void provisions of collective agreements that contradict the principle of equal pay. Articles 15(3) and 15(4) of the AEOWM, however, do provide for this possibility and would ensure Bulgaria’s compliance with Article 4 of Directive 75/117/EEC.

Collective agreements play a very important role in the regulation of labour relations in Bulgaria, but they do not contain provisions concerning equal pay and anti-discrimination yet. These will hopefully be introduced and gradually developed with the implementation of the new amendments to the Labour Code and with the adoption of the AEOWM.

In its ‘Black Book’ of the violations of labour and syndicate rights, the Confederation of the Independent Trade Unions in Bulgaria does not mention any instances of discrimination with regard to pay.

1.8 Women’s factual situation with regard to the principle of equal pay for work of equal value

According to a recent national representative survey on the issue of equality between the sexes (November 2000) conducted by the National Centre for the Study of Public Opinion, ‘equal pay’ was identified by 41 percent of female and 39 percent of male respondents as one of the main areas of discrimination against women. Still, it is difficult to assess the actual gender pay gap in Bulgaria because there are no official statistics. The programme and practice of the National Statistical Institute (NSI) do not include the collection of disaggregated data in this field, but Article 13 of the AEOWM delegates special responsibilities to the NSI in the area of gender equality statistics.

The latest available data is from a private survey carried out in the public sector in 1997, when Bulgaria had one of the largest gender pay gaps among Eastern European countries. The survey showed that women only earned 69 percent of men’s pay.\(^5\) The private sector, by contrast, is very difficult to control and monitor due to its large fluctuation and major economic constraints.

\(^5\) UNICEF (1999).
On the whole, the problem of equal pay is hidden due to the economic constraints of the transition period and because it is part of a series of major problems characteristic of this period, including unemployment, delayed payments, tax and social security evasion, etc.
2. EQUAL TREATMENT FOR WOMEN AND MEN AS REGARDS ACCESS TO EMPLOYMENT, VOCATIONAL TRAINING AND PROMOTION, AND WORKING CONDITIONS


2.1 National legal framework concerning the principle of equal treatment for women and men: General provisions

The principle of equal ‘rights’ for men and women and non-discrimination is incorporated in the legal framework, but giving priority to equality de jure and overestimating it is a tradition in Bulgaria. As a result, the declaration of equal rights between the sexes is mistaken for the principle of equal treatment for women and men, which is not in fact guaranteed in practice. This perception is inherited from socialist times and still dominates the philosophy of the legislature, institutions and the public.

It is worth noting though, that according to the study referred to in Section 1.8, for 55 percent of Bulgarian citizens, discrimination on the basis of sex means discrimination against women (57 percent of interviewed women and 53 percent of interviewed men held this view). For 58 percent of those interviewed, women and men in Bulgaria have equal rights, which are set forth in the Constitution. Although 83 percent of persons who stated that they read the Constitution believe that equality has been provided for in it, 48 percent of those interviewed support the idea of special legislation regulating equality between women and men.

The concepts of ‘affirmative action’ and ‘direct’ and ‘indirect’ discrimination are crucial to an understanding of the difference between the principle of equal rights and the principle of equal treatment. Both concepts are new to legal doctrine, the legislature, and legal and social practice in Bulgaria, and were only introduced for the first time through the draft AEOWM. Consequently, it will take some time before they are understood, accepted and implemented in practice.

Article 6 of the Bulgarian Constitution declares that women and men have equal rights, and also prohibits discrimination based on a series of grounds, including sex. No privileges or restrictions can be based on, inter alia, sex, or personal or social status. Article 46(2) stipulates that spouses have equal rights and equal obligations in matrimony and the family. According to Article 47(1), the upbringing of children until
they reach the age of majority is both the right and obligation of parents, who must be
assisted by the state. The principle of giving priority to the protection of women as
mothers is further developed in the labour legislation and has been perceived so far as a
major component in ensuring the equal treatment of men and women. However, there
are examples of the adverse effects of the protective clauses, which have been
detrimental to the rights of women in the labour market.

Equal rights for women and men are also guaranteed by international human rights
instruments, and the fact that the principle of equal treatment of women and men
must be explicitly expressed in domestic legislation, separately from the guarantee of
non-discrimination on other grounds, was one of main arguments for the need for a
specific Act on Equal Opportunities in Bulgaria.

The main international instrument in the field of equality of men and women is the
UN Convention on the Elimination of All Forms of Discrimination against Women
(CEDAW), ratified by Bulgaria and in force since 1982, but not yet promulgated.

The understanding and the adoption of the principle of affirmative action has been
very difficult for Bulgarian institutions and society, and the UN Committee for the
Elimination of Discrimination against Women in its Recommendations (18th session
of CEDAW) to the Bulgarian Government in 1998 explicitly noted that,
unfortunately, the Government had no understanding of the concept. This reluctance
to adopt affirmative action is due in part to the willingness to abandon reminiscences
of the socialist past, when women were encouraged to have an equal share in public life
and for this purpose were given, allegedly, too many rights and privileges. Rights and
privileges related to maternity are often identified with affirmative action by the
Bulgarian institutions.

The adoption of the AEOWM, which provides for the introduction of affirmative
action where necessary, would permit the full incorporation of the principle of equal
treatment of women and men into Bulgarian legislation. A Constitutional Court
Ruling No.14 of 1992 (Const. Case 19/92) on Article 6 of the Constitution stressed
the equality of all citizens before the law but also held that “[…] the restriction of
rights and rendering of privileges to certain social groups shall be admissible under the
Constitution whenever such privileges are justified in society.” The Constitutional
Court ruling could therefore serve as a good entry point for affirmative action.

6 For example, the Universal Declaration of Human Rights; the International Covenant on
Civil and Political Rights; the International Covenant on Economic, Social and Cultural
Rights (ICESCR).

7 The fact that this Convention has not been promulgated gives it special status with respect
to the domestic legislation. According to the Constitutional Court Ruling No.7 of 1992, it
is made part of Bulgarian legislation but does not supersede contradictory legislation.
Bulgaria has also ratified the ILO Convention 111 on Discrimination (Employment and Occupation, 1958), which defines discrimination in Article 1 as “[…] any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.” The Convention obliges the states to adopt national policies for promoting equality and non-discrimination in the field, including legislative measures for implementing such policies. The terms employment and occupation according to the Convention encompass access to employment, vocational training and equal working conditions. Thus, it is another instrument that refers to state policies and legislation in the field of equal treatment.

In 2000, Bulgaria ratified the Revised European Social Charter and is bound under Article 20 to recognise the right of equal opportunities and equal treatment of men and women in the field of employment and occupation (including access to employment, protection against dismissal, professional reintegration, professional orientation, improvement of qualifications, hiring conditions, working conditions, professional development and promotion), and to ensure its implementation by all necessary measures.

The Bulgarian legislation adopted so far refers to equal rights and non-discrimination on the basis of sex in Section 8(3) of the amended Labour Code, Article 2 of the Act on Unemployment Protection and Employment Promotion; Article 7(4) of the Act on Civil Servants of 1999 provides that appointments to civil servant posts must be free of any discrimination, privileges or limitations, notably based on sex or personal and social status. Section 4(2) of the Code of Civil Procedure provides that the court shall recognise the equal rights of parties and is obliged to apply the law equally with respect to everyone. Nevertheless, real mechanisms for the implementation of the rights guaranteed, and namely of the principle of equal treatment, are required and the lack of legal practice shows that such mechanisms still do not exist in Bulgaria. It also confirms that the principle of equal treatment is still not fully incorporated in the Bulgarian legal system.

The aim of the AEOWM is to provide the missing link between equal rights and equal treatment in Bulgarian law, bringing a new concept of equal treatment and equal opportunities, of affirmative action, and of direct and indirect discrimination (Article 3). The AEOWM is unique in that it encompasses the employment and occupation relations of persons with a labour contract and civil servants. It is also very progressive

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8 “Article 3(1) Direct and indirect discrimination based on sex is prohibited. (2) Sexual harassment shall be considered a form of discrimination. (3) The following shall not be considered discrimination: 1. Special measures provided for in law with regard to protection in cases of pregnancy, childbirth and breastfeeding; 2. Incentive measures provided for in law in regard to women or men; 3. Qualification requirements for activities in which sex is a determining factor.”
insofar as it prohibits employers from putting questions to the applicants, orally or in writing, related to their family or parental status or duties. Furthermore, Article 22(2) encourages the employer to create conditions for maintaining and improving the professional qualifications of employees on leave to raise a child. Article 26 stipulates that the employer shall encourage and facilitate women and men to reconcile professional and family or parental responsibilities.

The Act also provides the mechanisms for the implementation of this principle through a governmental institutional mechanism ensuring gender mainstreaming and supervision of the implementation of the Act, and the independent institution of the ombudsperson.

2.2 The concept of discrimination on grounds of sex:
Definition and legal sanctions

Discrimination on the grounds of sex is not defined in Bulgarian legislation, but the draft AEOWM, along with prohibiting discrimination based on sex and defining the measures that are not discriminatory, defines both direct and indirect discrimination in Article 1 of the Additional Provisions. Following the practice of some European countries more advanced in the field of equal opportunities, the AEOWM, without giving a strict definition of discrimination, will open a large field for legal practice and the practice of the ombudsperson.

In cases of sex-based discrimination, the victim has the opportunity to initiate court proceedings based on Section 8 of the Labour Code. According to Section 357, the term ‘labour litigation’ encompasses all disputes between the worker and employer concerning the commencement, implementation and termination of labour relations, including disputes concerning the implementation of collective agreements.

Persons who consider themselves discriminated against on the grounds of sex in the field of education and vocational training and retraining can invoke the general anti-discrimination provisions contained in the laws mentioned above.

9 “‘Direct discrimination’ shall mean the placement of a person into a disadvantaged or advantaged position on the grounds of his/her sex,” according to the Act on Equal Opportunities for Women and Men, Additional Provisions.

10 “‘Indirect discrimination’ shall mean the application of apparently legal provisions in a manner that leads to the de facto placement of persons from one sex into a disadvantaged or advantaged position in comparison to the persons from the opposite sex,” according to the Act on Equal Opportunities for Women and Men, Additional Provisions.
Article 124 of the Act on Civil Servants provides that all disputes concerning the commencement, content and termination of their functions shall be referred to the court according to an administrative procedure after recourse to the relevant authority.

Persons who consider themselves discriminated against in the field of labour rights can address the controlling institutions, who can impose administrative injunctions and financial sanctions on an employer who violates the labour legislation (Chapter 19 of the Labour Code).

In case of violations of the rights guaranteed under Article 20(4) of the Social Charter, Article D of the Charter provides the procedure of collective complaints whereby organisations representing the workers can denounce the violations before a special control mechanism, the Committee of Experts. It is not an individual complaint mechanism and is still new to Bulgaria.

The draft AEOWM provides an effective complaint procedure for those who seek redress for the violation of the principle of equal treatment before the court, and a complaint procedure is available before the ombudsperson according to Article 62.

Related research
According to the report “The Impact of Privatisation on Women during the Economic Transition in Bulgaria” (1999) of the Bulgarian Gender Research Foundation (BGRF), interviews with judges, lawyers, legal counsel and experts working in the field of labour and social rights (a non-representative survey conducted in the framework of the research) revealed both the reluctance of women victims of discrimination to seek redress in court due to the slow and cumbersome procedure and the scepticism of representatives of the legal profession to initiate and pursue the equal treatment cause before an insensitive court with ineffective mechanisms.

Although nearly half of the persons interviewed confessed that they had come across cases of gender discrimination, not a single concrete case was mentioned. The question: “Do you think there are sufficiently effective mechanisms to protect women’s rights?” was answered negatively by all respondents. The respondents were also unanimous about the need for more information among the legal community on the principle of equal treatment and for changes in the legislation.

Furthermore, a recent interview by representatives BGRF with a judge from the Supreme Court of Cassation (Labour Division) showed that there has been no case law so far concerning the violation of the principle of equal treatment of men and women in the field of employment and occupation. The need for improved mechanisms for protection and for additional information and training of judges was also identified.
2.3 National legal framework concerning the principle of equal treatment as regards access to employment, vocational training and promotion, and working conditions

The guarantees listed above could be supplemented with the provision of Articles 11(1) (b) and (c) of CEDAW, according to which states must ensure the right to the same employment opportunities, including the application of the same criteria for selection in matters of employment, the right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeship, advanced vocational training and recurrent training.

In addition to the lack of real mechanisms for the application of the principle of equal treatment, some provisions are contrary to the guarantees declared. For example, Chapter 11 “Professional qualification” (amended in 1992) provides that this basic right of the worker shall be exercised only under the conditions of a contract with the employer. Therefore, in Bulgaria this right depends on the discretion of the employer.

Despite the new provisions of Sections 67 and 68 of the Labour Code, created to ensure stability in the duration of contracts, these measures are not effective enough to regulate the disadvantaged situation of women in the labour market.

There is no mention of the protection necessary in the recruitment procedure, where women face humiliating interviews and tests. Although labour rights are not regulated differently in the public and private sectors, women encounter much more severe problems in the private sector, where they are discriminated against in the selection procedure and are deprived of employment security. According to the National Statistical Institute, as of September 2000 half of all working women were still employed in the public sector. The switch from public to private is a difficult one for both men and women, and this is characteristic of transition, but women are particularly vulnerable. Furthermore, the state control of employment conditions has been weaker in the private sector during the transition period.

The proposed AEOWM envisages the implementation of the principle of equal treatment in the field of employment and occupation in a very detailed manner: Part 2

11 The following is a reflection of a woman interviewed in the course of the research of the BGRF: “[…] Women accept lower salaries. It seems that suddenly, after the privatisation, low qualification labour became the more valuable labour. Inexplicably, women turned out to be more suitable for low-qualified labour. Production in the privatised enterprises is feminised.” (Sofia, the private sector, higher education).
Chapter 2 covers a wide range of employment conditions and Chapter 4 deals with equal opportunities in education and training, where gender discrimination is subject to monitoring and sanctions.

Related research

Practice and research show that, in addition to the gender pay gap and sexual harassment, other violations of the principle of equal treatment include: discriminatory selection criteria, job advertisements, the terms of employment and problems faced by women after maternity leave and with small children, and limited access to jobs for women over 40. In addition, statistics show that by the end of 2000 women prevailed among the registered unemployed (according to the National Employment Office, they comprised 53 percent), among the long-term unemployed and in all age groups of unemployed persons, except in the age groups of below 24 and above 55 years.

Research further reveals that women are clearly and openly discriminated against in the selection procedure, and employers themselves confess that they apply different criteria in the selection procedure in general and specifically when women are involved. Although the general qualities they seek in an applicant include professional qualifications, education, professional experience, personal qualities, computer literacy, foreign language proficiency, etc., the criteria applied to women include education, ability to work overtime, ambition and future plans, family obligations, ability to travel, marital status, age and health conditions of the children, pregnancy and plans to have children, etc.

Research shows that women are among those most affected by the widespread practice of employers to propose short-term contracts, substitute unlimited term contracts with short-term contracts, or to thoroughly avoid labour contracts in order to evade tax and social security contributions. This is because women face more severe economic constraints, they are often heads of the family and are inclined to take any kind of job.

Another serious problem that has been identified relates to women’s status after maternity leave: they are discriminated against in the labour market because of the higher social price and benefits the employer must pay if they are appointed and the need for additional training and qualification after the leave.

Discriminatory job advertisements are another way in which the principle of equal treatment is violated, according to research conducted by the Media Research Group and Gender Project for Bulgaria Foundation in 1998. Additional data from the latter shows that this discrimination still continues in the press.

According to aforementioned study of the National Centre for the Study of Public Opinion, 35 percent of the men interviewed consider that women are discriminated against in terms of their choice and access to a job.
2.4 Protective measures with regard to women’s participation in the labour market

Women benefit from special protective measures in Bulgarian legislation that are justified by women’s biological specificity and motivated by concern about their reproductive functions. These measures correspond in principle to the requirements of international instruments, including ILO Conventions on Underground Work and Maximum Weights.

Chapter 15 Section 2 of the Labour Code is dedicated to the special protection of women at work, and Section 307 prohibits those hard and harmful work operations that can be detrimental to the health of women and their reproductive functions.

The activities prohibited (in addition to the work prohibited in relation to pregnancy and breastfeeding) are divided into two categories: the first category implies an absolute prohibition for all women, and the second only concerns women up to the age of 35. Although the prohibition of such work is absolute, there are still cases in practice where women work in harmful conditions. Trade unions collect information about the working conditions and have pointed to some cases of the violation of the prohibitions mentioned, especially in some privatised and feminised enterprises. (For example, the ‘Black Book’ of violations of the labour rights).

Section 308 of the Labour Code requires employers with 20 or more women workers to equip rooms for the their personal hygiene and for the relaxation of pregnant women, according to rules issued by the Minister of Health. This obligation is further developed in Regulation No.11 of 1987 of the Minister of Health.

It should be noted that some provisions of the Labour Code, instead of being protective, risk becoming detrimental and even discriminatory for women. For example, until very recently, Section 310 of the Labour Code contained the absolute prohibition for an employer to send a pregnant woman or a woman with a child under the age of three on a business trip.12

The provisions concerning night work for women were not revised or amended and Section 140(4)(2) of the Labour Code still contains an absolute prohibition for night work concerning not only pregnant women, but also women workers or employees

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12 With the recent amendment to the Labour Code, the provision of Section 310 reads: “1) An employer cannot send a pregnant woman on a business trip. 2) An employer cannot send a woman with a child under the age of three on a business trip except with her written consent.” The arguments in favour of women’s choice and chances for professional development prevailed and the legislature revised the absolute prohibition, signifying a further step towards harmonisation with Directive 76/207EEC. However, such an opportunity should also be available for women in early and normal pregnancy.
with children up to the age of three. As a result, women with small children cannot exercise their own choice and are deprived of chances for promotion and higher remuneration. They are also more unsuitable candidates in the process of hiring for certain jobs and positions.

2.5 Prohibition of dismissal

There are no protective measures in Bulgaria against dismissals effected in reaction to complaints based on the principle of equal treatment. However, according to Article 30 of the draft AEOWM, the employer may not undertake any disciplinary measures towards an employee in reaction to a complaint about the violation of his/her rights under Chapter 2 (“Equal opportunities in the field of employment and occupation”).

2.6 Women’s and men’s jobs

There are no additional guarantees in Bulgarian legislation to prevent the classification of jobs as specifically women’s jobs and men’s jobs, and only the general guarantees for non-discrimination on the basis of sex are valid here. There are no restrictions against women occupying any specific positions except where ‘sex’ is a determining factor for the fulfilment of activities; for example, in cases where the completion of military service is a precondition for occupying the position. Article 3(3) of the draft AEOWM states that qualification requirements for activities for which sex is a determining factor shall not be considered as discrimination.

There are no jobs that are clearly prohibited for women or for men, except those connected with protecting women’s biological specificity and reproductive functions. For example, according to ILO Convention 45 on Underground Work it is forbidden to hire women for underground work in the mines. The prohibition is absolute concerning physical work in the mines. The above mentioned Ministry of Labour and Social Policy Regulation No.7 of 1993 extends the list of the jobs forbidden for women and, in addition to physical work in the mines, includes jobs in industries dealing with non-ferrous metals, lead, and other harmful substances and materials, for example, are forbidden and closed for women.

2.7 Legal status of sexual harassment

Sexual harassment in the workplace is not explicitly prohibited in Bulgarian legislation, although there was clear progress in this direction with the ratification of the Revised
European Social Charter, the recent amendments to the Labour Code, the draft AEOWM, and the research work of NGOs and official research institutes.

The State’s obligation to protect workers and employees from sexual harassment is envisaged in such international instruments as the International Covenant on Economic, Social and Cultural Rights (ICESCR) and CEDAW. This obligation has been transposed in Bulgaria through the amendments to the Labour Code and introduced in an additional paragraph: Section 127(2). Although progressive, the provision is general and requires further development to take into account the gender component of sexual harassment and the principle of equal treatment of men and women. In addition, there is currently no explicit prohibition of sexual harassment as a violation of dignity at work in the Labour Code or in any other law. Furthermore, since the Labour Code does not apply to civil servants, they are not protected with a special provision for respect of dignity at work.

Except for cases of rape, the only other provision for protection in severe cases of sexual harassment is envisaged in Section 153 of the Penal Code, whereby a person who takes advantage of his superior position to force a female subordinate to have sexual intercourse with him faces possible imprisonment of up to three years. As such circumstances are very difficult to prove, there is no relevant practice under this article of the Penal Code.

The draft AEOWM contains a special provision prohibiting sexual harassment and obliges employers to prevent and prosecute sexual harassment in the workplace (Article 27). The Act extends protection against sexual harassment to include schools and universities, and is defined in the Additional Provisions.

Research shows that sexual harassment in the workplace is widespread, and has been exacerbated in the period of transition and transformation of property.

The lack of public awareness and of legal and administrative measures to combat the phenomenon was identified by the research of Minnesota Advocates for Human Rights in their 1999 report entitled “Sex Discrimination and Sexual Harassment in the Workplace in Bulgaria,” and by the 1999 BGRF report entitled “The Impact of

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13 “Article 27(1) Sexual harassment in the workplace by the employer or other employee is prohibited. (2) An employer who received a complaint from an employee who considers himself harassed sexually by another employee shall carry out an investigation and undertake measures for its prevention. (3) The employer must not put in a disadvantaged position or take disciplinary measures against an employee as a result of his actions to oppose or complain of sexual harassment. (4) An employee who has testified or is supposed to testify for sexual harassment is entitled to the same protection.” Draft Act on Equal Opportunities for Women and Men.
Privatisation on Women during the Economic Transition in Bulgaria.” The following excerpts can be provided:

- “[…] in the private sector this [sexual harassment] takes place in about 90 percent of the firms”;

- “I can only say that I […] changed 12 employers until I found someone who did not make a hint like this at all. Since the age of 16, when I started to work, this was one of the main reasons that made me give up and jump from one job to another […]”.

According to the two nationally representative surveys of the National Centre for the Study of Public Opinion (conducted in September 2000 and February 2001 respectively), approximately 81 percent of respondents perceive discrimination as physical harassment and more than half of the interviewees would like to see the state take more severe measures and sanctions against sexual harassment.
3. **Protection of Pregnant Women from the Inherent Risk of Certain Activities and Related Employment Rights**

Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding

3.1 **Legal and Conceptual Framework**

Bulgarian legislation envisages the special protection of women, especially pregnant women and mothers, and meets the requirements of Directive 92/85/EEC to a significant extent. The Labour Code provides a number of privileges for women in relation to preserving their health and that of their children, some of which (such as paid maternity leave) also aim at stimulating the birth rate.

There are a number of legal regulations related to the protection of pregnant women or nursing mothers, the most important of which are contained in the Labour Code, the Act on Health and Safety, and Regulation No. 7 of 1993 of the Ministry of Labour and Social Policy and Ministry of Health on work that is heavy or hazardous to women’s health and maternal functions, etc.

However, Bulgarian legislation does not contain any legal definitions corresponding to Article 2 of the Directive; for example, for employers to be informed by workers of their specific situation (pregnancy, birth, breastfeeding).

3.2 **Assessing the Risk to the Safety or Health of a Pregnant Worker and Employer’s Obligations**

Section 275 of the Labour Code obliges the employer to ensure safe and healthy working conditions in order to eliminate any danger to the life and health of the employee. Under the Act on Health and Safety at Work, the employer is obliged to assess the health and safety risks, taking into consideration the working processes and equipment, premises, working places, organization of work, use of raw materials and other external factors. Moreover, the employer must envisage appropriate measures in accordance with the assessment to protect workers and employees.
The employer, jointly with the health authorities, shall annually designate positions and jobs suitable for pregnant women and nursing mothers, and under the Act on Health and Safety at Work shall provide workers or their representatives with the necessary information about the risks related to their safety and health, as well as the measures undertaken for the elimination, reduction or monitoring of such risks.

Data on the safe and healthy conditions of work must be established annually in accordance with individual indices and through a procedure to be determined by the Ministry of Labour and Social Welfare and the Ministry of Health. Employers are obliged to record occupational injuries and general and professional illnesses in a manner to be determined by the Minister of Labour and Social Welfare and by the Chairman of the National Statistics Institute.

The Labour Code stipulates a number of fines to be imposed on an employer who violates the regulations for the provision of a safe and healthy work environment, and the amount depends on the violation, whether it is repeated, whether the employer failed to meet his obligations or implement a mandatory instruction from the controlling bodies or unlawfully obstructed their work.

Bulgarian legislation fully corresponds with the meaning of Article 5 of Directive 92/85/EEC, and is also in line with CEDAW and the ILO Convention 183 on Maternity Protection (2000).

Transfer to suitable work

A pregnant woman or nursing mother employed in a job unsuitable for her condition shall be reassigned to another appropriate job or to the same job with alleviated conditions upon the prescription of the health authorities, which is mandatory for the pregnant or nursing woman and for the employer.

If the remuneration in the new position is lower than the previous work, she is entitled to the difference in cash compensation. The conditions for the above protection are given in detail in the Ordinance on the Reassignment, according to which the cash compensation should be paid for the period between the date of reassignment and the date of the beginning of the paid maternity leave.

According to the Labour Code, pregnant or breastfeeding women working in unhealthy conditions are entitled to reduced working hours, while keeping their basic monthly salaries. Regardless of the working conditions, mothers with children up to six years of age are entitled to work at home.

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16 Compulsory Social Security Act, Article 11, Article 48.
Overtime work is not permitted for pregnant employees, mothers with children under three years of age, mothers with children between three and six years of age, or mothers raising handicapped children irrespective of the latter’s age, except with their own consent. In addition, the employer may not send pregnant women and mothers of children under three years of age on business travel.

### 3.3 Cases in which exposure is prohibited for pregnant workers and workers who are breastfeeding

According to Section 307 of the Labour Code, work that is heavy or hazardous to health and maternal functions is prohibited for women. The list annexed to Regulation No.7 of 1993 specifies that heavy or hazardous work prohibited for women and contains three sections: the first section includes work that is prohibited irrespective of the women workers’ age; the second section includes work prohibited for women under the age of 35 years; and the third section relates to work not permitted for women who are pregnant or breastfeeding.

Bulgarian legislation provides greater protection to women than required by the Directive and employers do not have the discretion to decide on the level of risk and possible effect on the pregnancy, which is also the case with bans of work with hidden sources of ionised irradiation, work with particular chemical agents, work related to vibration, noise, super-sound, radio frequency waves, electrical magnetic fields over the permissible maximum of the hygiene norms, etc.

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18 “Article 3. Work prohibited for pregnant or breastfeeding women: Work involving the liberation of toxic chemical substances in concentrations over the acceptable hygiene norms; vibration, noise, super-sound, radio frequency waves, electrical magnetic fields over the permissible maximum hygiene norms; production and other types of work where the temperature is over the permissible hygiene norms; work linked with physical overburden exceeding the admissible norms of 2.4 kcal/min and work related to lifting and carrying loads exceeding 5 kgs, work with hidden sources of ionised irradiation; work related to inducers of infections, fungi and parasitic diseases.”
A number of other relevant laws and regulations provide for the protection of health and safety at work, some of which deal in particular with the protection of women workers (pregnant workers and breastfeeding women).19

3.4 Night work

The Labour Code defines night work as work performed between 10.00 p.m. and 6.00 a.m. In the course of night work the employer is obliged to provide employees with hot food, refreshments and other facilities. Night work is prohibited for specified categories of workers, including pregnant employees, mothers with children under three years of age; and mothers of children aged between three and six years of age, as well as mothers raising handicapped children irrespective of the latter’s age, except with their own consent.

3.5 Maternity leave

Bulgarian legislation fully complies with international standards related to maternity leave, and Bulgaria has ratified ILO Convention No.3 on Maternity Protection. The Labour Code grants certain rights to women related to maternity leave and the relevant texts fully correspond with the Directive. In addition, Bulgaria has a modern Compulsory Social Security Code (CSSC), which regulates the provision of social security compensations in case of maternity leave.

Pregnant women and mothers are among the categories of employees who are entitled to an extended annual paid leave.

19 Act on Protection against the Negative Effect of Chemical Agents, Substances and Products; Regulation No.7 of 1999 of the Ministry of Labour and Social Policy and Ministry of Health on the Minimum Safety and Health Requirements at the Workplace and the use of Work Equipment; Regulation No.25 of 1999; Regulation No.0-35 of 1974 on Work with Radioactive Substances and Other Sources of Ionised Emissions; Regulation No.3 of 1987 on Compulsory Preliminary and Periodical Medical Examinations of Workers; Regulation No.16 of 1999 on Physiological Norms and Rules for Manual Work with Heavy Loads; Regulation No.41 of 1995 on Unified Rules for the Provision of Health Working Conditions; Regulation No.8 of 1996 on the Hygienic Requirements in Working Places for Work with Screen Equipment.
The Labour Code provides for the following types of leave:

- leave for pregnancy, birth and adoption;
- paid leave for raising a young child;
- unpaid leave for raising a young child;
- leave for breastfeeding and feeding a young child;

Under the Compulsory Social Security Code, social security compensation in case of leave for pregnancy and birth amount to 90 percent of the salary, and no less than the legally specified minimal salary. During paid leave for raising a young child mothers receive monthly cash compensation amounting to the legally specified minimal salary. In addition, according to the Decree of Birth Promotion, women are entitled to benefits for each child that is born.

**Antenatal examinations**

The right to time off for antenatal examinations is not explicitly provided for by law. Nevertheless, female workers are entitled under Section 162 of the Labour Code to paid leave for urgent medical examinations or tests. This provision fully covers the right under Article 9 of the Directive. Such leave is subject to permission by the medical authorities, and for the duration of the leave the employee shall be paid a cash compensation under the Compulsory Social Security Code.

### 3.6 Prohibition of dismissal and employment rights

The provisions of the Bulgarian Labour Code preventing the dismissal of pregnant workers or workers who have given birth from the beginning of pregnancy to the end of maternity leave do not provide complete protection for female workers. Nevertheless, they comply with Article 10 of the Directive as such a dismissal is allowed only in exceptional cases and with the prior consent of the competent authority. Employers are permitted to dismiss employees who are pregnant or have children under three years of age under the following circumstances: partial closing down of the enterprise or staff cuts; reduction of the volume of work; if an employee lacks the qualities for efficient work performance; if the requirements for the job have changed and the employee no longer qualifies; in case of disciplinary dismissal.

The recent amendments to the Labour Code will provide for the full protection of women during leave for pregnancy and birth, but will not cover cases where it is impossible to implement the contract of employment due to objective reasons.
Because some of the cases in which dismissal is permitted are open to interpretation, employees can be put in an unfavourable position.

Protection against dismissal is also extended to workers who are socially and economically disadvantaged; for example, workers with family, material or health problems if qualifications and performance are equal; workers with an unemployed spouse; and workers who are sole family providers, given there are equal qualifications.

Proceedings in labour cases are free of charge for employees, and employees are entitled to contest the legal grounds for dismissal before the employer or in a court and can demand: recognition that the dismissal was unlawful and its repeal; reinstatement to the previous position; compensation for the period of unemployment due to dismissal; revision of the grounds for dismissal entered in the employee’s service record or other documents. At his or her own initiative an employer may revoke the dismissal before the employee takes the action to court.

Due to the considerable social effect of labour disputes resulting from dismissals, the law stipulates relatively short terms in which such disputes must be resolved by the courts: within three months following the receipt of the claim by the regional court and within one month following the receipt of the appeal by the district court. If the court orders the reinstatement of the employee to his or her previous position s/he may assume the position provided s/he reports to work within two weeks of receiving the reinstatement notice, unless this term is exceeded for valid reasons.
4. THE BURDEN OF PROOF IN CASES OF DISCRIMINATION BASED ON SEX


4.1 Legal framework concerning indirect discrimination: specific legal means to implement the principle of equal treatment for women and men

Bulgarian legislation does not yet fully comply with this Directive, but the relevant concepts have been incorporated in the draft AEOWM.

Although the notion of indirect discrimination was introduced with the latest amendments to the Labour Code, there is no notion of indirect discrimination based only on sex in Bulgarian legislation, as required by Directive 97/80/EC. The definition in Bulgaria must be made more specific for those cases where the indirect effect is appropriate and necessary and can be justified by objective factors unrelated to sex and therefore does not constitute discrimination.

4.2 The burden of proof procedure in litigation concerning the violation of the principle of equal treatment for women and men and rules of evidence

As mentioned previously, there are no specific legal means for real protection in cases of the violation of the principle of equal treatment for women and men in terms of working conditions, including vocational training. For this reason, there is no relevant practice related to the implementation of Section 8 of the Labour Code with respect to discrimination on the grounds of sex.

There are no ‘out of court’ procedures for ensuring the application of the principle of equal treatment, and since mediation and conciliation are relatively new concepts in Bulgaria, only a small number NGOs are trying to introduce them in other areas, although it has been suggested to officially introduce mediation at the level of labour relations.

Bulgarian legislation does not comply with Directive 97/80/EC concerning the reversal of the burden of proof, as the general rule of evidence in accordance with Section
127(1) of the Code of Civil Procedure provides that each party must establish the circumstances that form the basis of her/his claims or objections.

The only provision that can be applied to the advantage of the plaintiff is Section 128(2) of the Code of Civil Procedure, which provides that: “In view of the circumstances of the case, the court could accept facts as proved (corroborated) if the party [respondent] created obstacles to the collection of evidence admitted by the court.” Still, the respondent is not obliged to prove the non-violation of the principle of equal treatment.

Article 32 of the draft AEOWM envisages the reversal of the burden of proof for several cases of discrimination based on sex in employment and occupation.
5. NON-DISCRIMINATION AGAINST PART-TIME WORKERS

Council Directive 97/81/EC of 15 December 1997 concerning the framework agreement on part-time work concluded by UNICE, CEEP and the ETUC

5.1 National legal framework and employment conditions concerning part-time workers

Provisions regulating part-time work are contained in the Bulgarian Labour Code and in the Act on the Protection against Unemployment and Employment Promotion. There are no provisions containing the term 'comparable full-time worker', although a comparison between part-time and full-time workers could be made on the basis of job descriptions, which are mandatory for every working place. The legal definition of part-time work in Bulgaria is based on the term 'statutory working time', which has important legal consequences.

When assessing the status of part-time workers, a distinction must be made between 'part-time work' and 'work at reduced working hours': While part-time work is agreed voluntarily between parties to an employment contract, employment at reduced working hours is introduced only in cases explicitly stipulated by law, for example for youths under 18 years of age and for work in unhealthy conditions or under special conditions. The introduction of reduced working hours favours workers as it aims to protect their health and is obligatory for employers. The concept of 'reduced working hours' also falls within the wide scope of the EU definition.

Proposals for the introduction of reduced working hours may be submitted by employers or representative branch employees' organizations to the Ministry of Labour and Social Policy and Ministry of Health Care. Once the reduced working hours are introduced, workers keep their basic monthly salaries.

The latest amendments to the Labour Code reintroduce the concept of a 'Working Contract for up to Five Days a Month', and this type of employment contract is well-known in Bulgaria. Under such a contract a person works for one employer for no

20 Labour Code, Section 138, Part-time: “Parties to an employment contract may negotiate work for a part of the statutory working hours (part-time work). In this case they shall specify the duration and allocation of the working hours.”

21 Act on the Protection against Unemployment and Employment Promotion, Additional Provisions, Article 1(2), definition of "a person working part-time: any person party to a labour contract working fewer than statutory working hours for the respective job or profession."
more than five working days or 40 hours a month in total, whether continuously or in broken succession. Major legal consequences for the worker are related to the length of service (the time worked is not included), and to the compulsory social security (the worker is only entitled to insurance accidents during work and professional illness).

Employment conditions for workers with employment contracts for reduced working hours are the same as those conditions for workers employed for the full statutory hours.

There is no discrimination concerning part-time workers, and if the working time is at least one half of the legally established working hours for the day there are no different legal consequences related to the length of service and hence the right to social security.

**Determination of the amount of remuneration**

According to the Labour Code, the amount of remuneration in any employment contract shall be determined in accordance with the duration of work or the results of work. Workers employed under the conditions of Section 137 of the Labour Code (reduced working hours) receive remuneration as for a full working day.

**Social security and health insurance**

Workers employed for more than five working days or 40 hours per calendar week shall be insured against all social risks. Health insurance contributions must be made on the basis of monthly remuneration, and the amount of the due contribution is set in accordance with a legally defined ratio.

**Length of service**

One day’s length of service shall be recognised whenever an employee has worked for at least one half of the legally established working hours for that day under one or several employment relationships. The same principle is valid for social security relationships.

**Paid leave**

Bulgarian legislation provides that part-time employees are entitled to annual paid leave proportional to the time acknowledged as the length of service. Workers and employees working under unhealthy conditions or doing work under special conditions are entitled to an extended annual paid leave if their working hours are no less than half of the statutory working hours.

In general, there are no differences concerning the treatment of part-time workers in the public and private sectors, and remuneration in the public sector is calculated in accordance with various Council of Ministers Decrees.

Bulgarian legislation does not provide the possibility for a part-time worker to request a transfer to full-time work or vice versa if such a position is available, and any transfer is
subject to a written agreement between the worker and the employer. Moreover, part-time work is merely a possibility for employees, and if the employer does not want such a type of labour contract, the employee has no legal means to convince him/her to conclude one.

Flexible working hours may be established in enterprises where the organisation of work allows it, and the details shall be specified by the employer. Depending on the nature of work and the labour organisation, the working day may be divided into two or three parts. For some categories of employees, due to the special nature of their work, the Ministry of Labour and Social Policy may establish open-ended working hours and such employees shall, if necessary, perform their duties even after regular working hours. Overtime on working days shall be compensated by additional annual paid leave; and work on legal holidays shall be compensated by increased remuneration for overtime work.

Since the beginning of the transition process, flexible and part-time work has been increasingly seen as contributing to the reduction of unemployment, and employers are encouraged to employ unemployed persons in part-time work.22

The benefits for unemployed persons who worked part-time is proportional to the working time agreed.23 If an unemployed person began work as a part-time worker, he/she is entitled to receive 50 percent of the unemployment benefit if the salary is below the minimum statutory salary of the country.

In November 2000, the National Employment Office began a new active labour market measure entitled ‘Flexible forms of employment’, which is pursuant to the provisions of the Act on the Protection against Unemployment and Employment Protection and aims to prevent unemployed persons from becoming unemployed long-term. In December, 422 persons participated in this programme (65 percent more than in the previous month), including 270 women.

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22 Act on the Protection against Unemployment and Employment Promotion, Article 61: “For every unemployed person hired under a contract for part-time work for a period of at least 3 months the employer is entitled to receive from the Professional Qualification and Unemployment Fund sums amounting to up to 50% of the minimum salary plus contributions due for the Social Security Fund and Professional Qualification and Unemployment Fund for every unemployed person hired.”

23 Act on the Protection against Unemployment and Employment Promotion, Article 69.
6. The Principle of Equal Treatment to Self-Employed Workers and Their Assisting Spouses


6.1 National legal framework on self-employment: General provisions

Self-employment, which has not been excessively regulated, was a relatively stable phenomenon in Bulgaria prior to the political changes in the country, and has remained so. The new group to have emerged in the economy as self-employed persons include sole entrepreneurs, and owners or partners in commercial companies. Their status is regulated by the Commercial Act.

Definition of self-employed workers

There is no explicit definition of self-employed workers in Bulgarian legislation. For the purposes of social security, however, Section 4 of the Code for Obligatory Social Insurance (hereinafter COSI) lists the groups that are defined as self-employed. The social insurance regulations covering self-insured persons contain a definition of persons exercising freelance professions and/or trades, but no definition of a contributing family member. The jobs and occupations that can be practiced by self-insured persons include sole proprietors or partners in commercial companies; agricultural producers; and persons active in freelance professions or trades.

Laws and regulations related to the directive

The legal instruments related to self-employed workers and their assisting spouses are the COSI, the Regulation on Social Insurance of Self-Insured Persons and Bulgarians Employed Abroad, the Decree on Birth Promotion, 24 and the Social Assistance Act. There are no rules that run counter to the principle of equal treatment or which are directly discriminatory in the existing legal framework.

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24 Replaced by the new Family Assistance Act of 2002.
**Acceptance of the directive**

There is no available information on public awareness, due to the lack of research conducted on this matter. However, because opinion polls show that public awareness in EU accession-related questions is only moderate, it can be assumed that public awareness of specific questions will be low due to the technical character of these instruments.

A greater proportion of self-employed women than men are viewed as ‘forced’ entrepreneurs, due to external circumstances. The ILO report indicates that whereas self-employed women are more likely than their male counterparts to be highly educated, they tend to believe they lack the skills needed to become entrepreneurs. Women also tend to view entrepreneurship as an inappropriate role for them, thus highlighting the importance of raising awareness among young women regarding the benefits, opportunities and challenges of the private sector and of entrepreneurship in general.

### 6.2 Social rights of spouses of self-employed workers

Section 13(1) of the COSI provides that persons insured for disability due to general ill-health, old age and death shall have the right to:

- pension for disability on grounds of general ill-health;
- pension for insured practice and old age;
- financial support for injury-related auxiliary or technical help.

Section 13(2) provides that upon the death of the insured person, the husband (or wife), children and parents shall have the right to lump sum assistance amounting to the full extent of two minimum salaries and to one survivor’s pension.

**Right to survivor’s pension**

According to Section 80(1) of the COSI, it is possible for personal pensions to be transferred into survivor’s pensions, except those pensions covered by Sections 87, 89, 90, 91 and 92 (pensions not related to labour/employment activity). Under Section 80(2), the children, surviving spouse and the parents shall have the right to a survivor’s pension.

**Determining the survivor’s pension**

Section 81(1) of the COSI provides that the survivor’s pension shall be determined as a percentage of the personal pension due to the deceased insured person as follows:

- for one survivor, 50 percent;
• for two survivors, 75 percent;
• for three and more survivors, 100 percent.

Addition to the pension of a widow/widower
According to Section 84 of the COSI, the pensioner shall have the right to an additional 20 percent of the pension or sum of pensions of the deceased spouse. The addition cannot be received together with a survivor’s pension from the same source.

Formation of companies by unmarried persons
The Commercial Act of 1991 and other commercial legal regulations are gender neutral, and there are no legal or practical differences concerning the formation of companies by unmarried persons. None of the provisions are contrary to the Directive under review. Most female-owned companies are registered as having sole proprietors, followed by limited liability companies and partnerships.

The rights of self-employed workers whose operational activity is interrupted owing to pregnancy or motherhood
According to the COSI, self-employed women who voluntarily insured themselves against all social risks, excluding industrial injury and occupational illness and unemployment, shall enjoy the rights stemming therefrom.

Benefit for raising a small child
According to Section 53(1) of the COSI, after the elapse of the term of eligibility for maternity benefits during additional paid leave for raising a small child, the mother (or adoptive mother) shall be paid a monthly benefit in an amount determined by the Act on the Budget of the State Public Insurance. If the additional paid leave for raising a small child is claimed by the father (or adoptive father) or legal guardian, this shall be paid as a monthly benefit in an amount determined by the same law.

Spouses and self-employed women who have not insured themselves voluntarily are covered by the general system of social benefits. Voluntary social insurance pension schemes have only recently been introduced and they are open to everyone in a position to pay the contributions.

6.3 Related research and statistics

The main forms of self-employment in which women are engaged include in trade, services, manufacturing, transport, and communications.
Research on women in agriculture

According to the Labour Force Survey of November 1999, 252,800 persons were employed in agriculture, forestry and fishing, of whom 33.6 percent were women. The only research available on this subject is the report *Bulgarian Rural Women Today*,25 which deals with the sociological aspects of the equality/inequality of rural women in Bulgaria, with the gender aspects of the division of labour in Bulgarian agriculture and with the values and ethnic differentiation in Bulgarian villages. The research, however, does not deal with social security rights.

Past and recent trends in self-employment

Fewer women than men occupy managerial positions in private businesses, the area in which they could expect higher wages. It may be that women do not feel confident enough to take on the risks and obstacles associated with organising and managing a private business, despite their generally high level of education. Other factors affecting their decision include: the difficult economic situation and general lack of business experience in the country, legislative difficulties, criminality, the effects of a shadow economy, lower prices of imported goods as a result of smuggling, etc. Furthermore, women with families face difficulties coping with the longer than average working hours required to manage a private business.

Men comprise the majority of employers and self-employed persons, whereas women with higher and secondary education are better represented in the public sector. Men are also preferred within the private sector, making it more difficult for women to obtain well-paid employment and pay equal to men’s.

There are no statistics or research concerning self-employed married couples, but the consistent decline in the number of women in business associations suggests that the proportion of women running an enterprise with their spouses is not rising.

Research results on the status and rights of self-employed women

Unfortunately, no comprehensive survey or study has been published in this area, but the report issued by the InFocus Programme on Boosting Employment through Small Enterprise Development26 has concluded that women are less likely than men to consider going into business and that those who do are more likely to fail than men. Currently, only six percent of Bulgarian women manage or own their own company. Enterprises run by men are on a larger scale, both in terms of sales revenue and the labour force. Among enterprises run by women, the report described more individual enterprises and fewer business associations.

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6.4 Legal means of redress

There are no measures to enable all persons who consider themselves wronged by the failure to apply the principle of equal treatment in self-employed activities to pursue their claims by judicial process, possibly after recourse to other competent authorities. Nor are there any measures requiring the measures adopted pursuant to this Directive (together with the relevant provisions already in force) to the attention of bodies representing self-employed workers and vocational training centers.
7. THE FRAMEWORK ON PARENTAL LEAVE


7.1 National legal framework on parental leave: General provisions

The Bulgarian Constitution reflects traditional concepts of gender roles and does not contain the terms ‘paternal’ or ‘parental’ leave. The Labour Code and Act on Civil Service do not contain a specific definition of parental leave as distinct from maternity leave. According to the National Programme for the Adoption of the Acquis (NPAA), this will be introduced with the drafting (undertaken jointly with social partners) of an amendment to the Labour Code in 2004.

According to the draft AEOWM, an employer may not select a job applicant only on the basis of his/her gender. The employer may not ask questions, orally or in writing, related to family or parental status or duties, and may not refuse to employ a person for reasons related to pregnancy, maternity or raising a child.

During socialism, the state created favourable legal and economic conditions enabling women to combine different roles. For example, in the 1970s a right to long-term and well-paid maternity leave was introduced. In addition to the special protection of women, especially pregnant women and mothers, the Labour Code (1986) provided a number of privileges for fathers in order to facilitate them taking an active role in raising children. The Labour Code stipulated that with the mother’s consent, after the period of leave for pregnancy, childbirth or adoption had elapsed and in case the child is not placed in a child-care establishment, additional leave could be granted to the father (or adoptive father) for raising a first, second and third child until they reach two years of age, and up to six months for each subsequent child. After taking the leave allowed for raising a child up to two years of age, the mother (or adoptive mother) or father (or adoptive father), at their request, could be granted further unpaid leave until the child reaches three years of age. In addition, the State provides that if the mother (or adoptive mother) is a student or post-graduate student, parental leave for raising a child shall be granted to the father (or adoptive father), according to the Decree for Birth Promotion. The Labour Code (Section 160, amended in 2001) further provides that every employee is entitled to unpaid leave of one month per year to be counted as a period of service.

Although these provisions do not provide for parental leave in line with Directive 96/34/EC, they do give fathers the chance to participate in childcare. However, certain
recently adopted legislation goes against the concept of the Directive. For example, Article 53 of the Act on Employment Promotion (in force since 1 January 2002) grants advantages for employers who hire single mothers and mothers with children up to three years, with no mention of fathers who could be in the same position. This risks further reinforcing prejudices and making fathers even more reluctant to take advantage of the right to child-care leave.

Under current Bulgarian legislation, the father may only take childcare leave if the mother has relinquished her right to leave and given her permission. It is common practice for grandparents to take advantage of this leave instead of the father, for economic reasons. Another important factor in deciding who will take parental leave in the family is the inherited traditional stereotypes on the roles of women and men, which do not favour the father. Furthermore, there are very few cases where the woman has the higher salary and it is economically more effective for her to continue her job, and for him to take care of the children. There is a lack of affirmative action encouraging men to take parental leave, especially a lack of financial incentives. The government does not collect data on this issue.

**Conditions of access and detailed rules relating to parental leave applications**

A father has equal rights with the mother to be granted parental leave for raising a child or in case of illness (Sections 162, 164 and 165 of the Labour Code). The parents have the right to take sick leave in case of a temporary disability or urgent medical examinations or to care for a sick or quarantined child, and this right is granted with permission from the medical authorities.

The mother has the right to parental leave of two years for her first, second and third children and of six months for each subsequent child. An employer may not refuse the application for parental leave, regardless of whether it is taken immediately following maternity leave.

The mother (or adoptive mother) may relinquish her right to leave at any time in the form of a written declaration addressed to the enterprise in which she works. She may also end the agreement that another family member takes the parental leave and use it herself.

According to Bulgarian legislation, there are no circumstances in which an employer is entitled to postpone the granting of parental leave. Nevertheless, since 1998 there is a trend among foreign investors to claim that fathers’ leave should be subject to the discretion of the employer.
Legal protection against dismissal on the grounds of an application for, or taking of, parental leave

There is no specific protection in this field apart from the general protection against dismissal. There is no legal practice relating to such cases, because prior consent for the dismissal is required from the Labour Inspectorate in cases involving a pregnant woman or a woman with a child up to three years of age. Full protection is provided only for women on maternity leave, but exceptions may be made in cases of closure of an enterprise. The protection available is therefore short-term and does not cover the father on parental leave.

Legal entitlement to return to the same, equivalent or similar job

There are no legal guarantees that workers may return to the same, or an equivalent or similar job after parental leave. The proposed draft AEOWM provides such a guarantee though by introducing incentives for employers to support the mother or father during or after parental leave.

7.2 Social security during parental leave, especially related to healthcare

In principle, the social security rights acquired before parental leave are maintained, but many benefits must be reapplied for after the leave, since the conditions change after a certain period of time.

A six-month contribution is the general condition for eligibility benefits according to the COSI. Persons on parental leave are insured against all social risks, and have the right to financial remuneration.27

Healthcare

The amount of the contribution is defined according to the Health Insurance Act and the respective rights are regulated in the COSI. The national insurance institution pays benefits for sick leave on the basis of a sickness certified by a general practitioner.

Workers are entitled to leave for reasons of force majeure as follows:

- paid leave for raising a young child up to two years of age (Section 164 of the Labour Code);

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27 COSI, Section 11(1), Item 1e.
unpaid leave for raising a young child up to three years of age (Section 165 of the Labour Code);

leave in case of temporary disability:
  – 10 days per year per insured family member;
  – 60 days per year commonly for all family members;
  – for the duration of the illness or quarantine.

There are no differences based on who takes the leave, i.e., whether it is the mother, father, adoptive parent, or an older family member.

### 7.3 Parental leave and equal opportunities policy

The general aims of the Directive to set minimum requirements on parental (as distinct from maternity) leave and the importance of reconciling work and family life are accepted by the Government of Bulgaria.

After developing the draft Act on EOWM, the Ministry of Labour and Social Policy was entrusted with developing equal treatment policies, which resulted in the establishment of a National Employment Action Plan (NEAP) and National Employment Strategy (NES) according to the Act on Employment Promotion to plan programmes and measures for combining work activity with family life. Such measures include the creation, application and promotion family-oriented policies and holiday schemes for parents and other workers, incentives for employers to adopt flexible labour arrangements as well as for helping women return to work after a long break in employment.

In February 2002 the Council of Ministers approved the NEAP, which aims to offer professional training in 2002 for 50,000 unemployed persons, largely women seeking work after maternity or childcare leave, who require re-training to meet the new demands of the labour market. The training could also help such persons start their own businesses.

The draft Act on EOWM also offered equal opportunities for job training, and requires employers to create the conditions for maintaining and improving the professional qualifications of employees on leave for raising a child.

**Initiatives to encourage the introduction of new flexible ways of organising work**

The economic situation in Bulgaria has necessitated a legally approved possibility for additional or second employment, enabling parents to contribute more to the family budget. This measure is also aimed at curbing unemployment. The Act on the Protection against Unemployment and Employment Promotion enables unemployed
persons to work part-time and receive 50 percent of their unemployment benefit, at a
level less than or equal to the legally specified minimal salary. This provision was not
reproduced in the new Act on Employment Promotion, and despite the opportunities
provided for in the Labour Code, employers’ financial difficulties have hindered this
from working in practice.

7.4 Research on the reconciliation of family and work
responsibilities and on sharing responsibilities
between men and women

In the transition towards a market economy, Bulgarian family life has been
characterised on the one hand by the preservation of traditional values, and on the
other hand by a rapid adaptation to new conditions. A study by the National Centre
for the Study of Public Opinion from 1995 on the family and value systems among
Bulgarians showed that the material conditions of the family are regarded as crucial to
its stability (according to 88 percent of persons polled). Other factors, in order of
importance, included childcare (52 percent), harmony in the family (39 percent),
moral issues (24 percent), and religion (20 percent).

The 1992 national census28 showed that both spouses were employed in fewer than half
of all families, while in 2.5 percent of families both spouses were unemployed. Data from
the most recent census (2001) will be available towards the end of 2002, but preliminary
results show a trend toward an increase of spouses’ activities.29

In the 1970s and 1980s, the employment rate for women almost reached the
demographic maximum (i.e., in 1989, 84.7 percent of women of working age were
employed). However, although women were encouraged to participate in all areas of the
economy during socialism, this did not guarantee their equal status with men. Women
prevail in low-paid occupations, such as technical staff (75.5 percent), retail trade and
services (64.1 percent), clerks and administrative personnel (56.1 percent), and the
tendency to pay women less for their labour than men has persisted.30 Other areas where
women are traditionally employed include agriculture, textile work, clothing and
knitwear production, and the food and tobacco industries. In all these sectors the
payment is low and working conditions allow for little professional development. Much
of this work involves shift work, including night shifts, which place a particular strain on
family life. The feminisation of the education and healthcare workforce (over 75 percent

of whom are women) had led men to withdraw in response to the corresponding low income and at least two generations of young persons have hardly encountered a male teacher at school. Currently, there is a higher number of women working in the fields of manufacturing, wholesale and retail, hotels and restaurants, education, health and social work, and other community, social and personal service activities.\textsuperscript{31}

Despite their relatively low pay, Bulgarian women share the burden of providing financially for the family equally with men. Figures show that compared with other countries, Bulgarian women contribute proportionally among the most to the family budget. This reflects the general low level of pay for all employees in Bulgaria. A comparative evaluation shows that the relative share of unpaid labour carried out by women in the GDP of Bulgaria is among the highest in the world.\textsuperscript{32} Also compared with other countries, more Bulgarian women are engaged in professional and family duties.\textsuperscript{33}

The working hours of Bulgarian men, which equal the global average for male employees, are 14 hours less per week than that of Bulgarian women, who have among the longest working hours in the world, while men undertake only half the unpaid domestic labour that women carry out. Nearly half the women in Bulgaria (48 percent) believe that they carry an unfair burden of the housework. 88.6 percent of women and 85.1 percent of men surveyed believe that both men and women should contribute to the family budget. The contribution of the men to unpaid housework was considered insufficient not only by 72 percent of the women asked but also by 52.2 percent of the men. 83.3 percent of the women and 71.1 percent of the men believe that men should also play a greater role in the care and education of children.

The socio-economic transformation of family life in Bulgaria in the past ten years has led to the isolation of the father in intra-family relationships and the mother is traditionally expected to maintain the emotional balance of the family. The ability of the mother to make the family feel secure under conditions of external insecurity is crucial and the withdrawal of the father from family life has made this task difficult. Thus the economic crisis curbs the resources for personal self-fulfilment and development of family members, and has a negative impact on the quality of care for the next generation.

The high labour burden, both paid and unpaid, shouldered by Bulgarian women limits their opportunities for improving education and professionalism, and for fulfilling their own needs, all of which hinders their social development and competitive power in the labour market.

\textsuperscript{31} National Statistical Institute (2001: 50).
\textsuperscript{32} Kirova ed. (1995).
\textsuperscript{33} European Community (1992); ILO (1985).
Statistics and research on the number of women who return to work after giving birth and men who take parental leave

There is little social understanding of the importance of this topic, and no research on the number of women who return to work after giving birth and the number of men who stay at home to care for their children has been publicly funded. In families where both parents work, it is common for the mother to take parental leave, generally in its full amount. In families where one of the parents is unemployed, the father may care for the children, but figures on this phenomenon are lacking.

The data in the table below relates to only ten percent of registered cases but is indicative of the overall rate of parental leave taken by mothers and fathers. The data is gathered from the statistics available for the different major towns in Bulgaria for 1998.

Table 1. Pregnancy and maternity leave, and childcare leave in case of sickness

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<td></td>
<td>men</td>
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<td>57</td>
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<td>599</td>
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<td>3,495</td>
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<td>pregnancy</td>
<td>3</td>
<td>378</td>
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<td>1,722</td>
<td>604</td>
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<td>3</td>
<td>38</td>
<td>12.7</td>
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<td>maternity</td>
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<td>9,804</td>
<td>48.3</td>
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<tr>
<td>sick child care</td>
<td>65</td>
<td>427</td>
<td>411</td>
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</table>

Note: This is the only available data on the gender division of sick and childcare leave.
Demographic, social or cultural considerations affecting the reconciliation of professional and family responsibilities

Families without children whose members are of employment age enjoy better financial status, while those with three or more children face the worst economic situation. In 90 percent of families, the income of only one spouse is insufficient to provide normal living conditions for the family.34

Another obstacle to combining working and family commitments is the lack of flexible working arrangements that would help parents to contribute to the domestic budget albeit with a lower income. A small minority of the working population has been able to take part-time work and this number increased in 2001 compared with 1996, when only 8.7 percent of women were employed in this manner.35

A survey by the National Centre for the Study of Public Opinion, commissioned by the Ministry of Labour and Social Policy while developing the AEOWM, showed that a large proportion (40 percent) of persons polled believed that men seldom take parental leave because of the family traditions in Bulgaria. Only 17 percent blamed legislative problems. Another 17 percent of respondents believed that fatherhood was undervalued by society, and that it was more appropriate for women to take parental leave. Furthermore, more women than men believed that paternal leave went against tradition, since childcare and education were seen as primarily the mother’s activities, connected with her skills and natural procreative functions. It is also considered preferable for the parent with greater chances to find work, or better paid work, to do so.

34 MLSP and NSI (2001: 54).
8. THE PRINCIPLE OF EQUAL TREATMENT OF MEN AND WOMEN IN OCCUPATIONAL SOCIAL SECURITY SCHEMES


8.1 National legal framework on social security schemes: General provisions

A radical reform of the pension system in Bulgaria was introduced with the promulgation of the Code for Obligatory Social Insurance (COSI). Previously, the Act on Pensions of 1957 was in force with several major modifications introduced in 1975 and in ad hoc reactions to the changing economic environment after the political changes in 1989.

According to the Act on Pensions, the retirement age for men and women differed according to the category of job performed.36 Before the reforms in January 2000, the Bulgarian social insurance system was based on a defined benefit approach with universal coverage including employees from the private and public sectors, self-employed workers, members of cooperatives and professional associations. Insurance cover remained the same from 1990.

The COSI introduced a second pillar to the social insurance framework, which came into existence in 2001. The aim of the additional obligatory pension insurance is to ensure pension income and an opportunity for early retirement for those employed in categories I and II. The main principles of this second pillar are defined contributions pension schemes and individual accounts for each insured person and a fully funded system. The second pillar pension funds may also be established by employers, employer organizations, trade union structures, and pension insurance companies.

All individuals insured in the second pillar are entitled to a life pension for old age and a limited period pension for early retirement. In case of disability or death, the insured person has the right to withdraw the funds accrued in the individual account as a lump sum, and in case of death this right is acquired by the dependants of the insured person. The insured persons are also entitled to receive information, to lodge appeals and to notify the respective bodies of poor management of the fund in which they are

36 Category III workers perform 'normal' work from the point of health and safety. Category II workers perform jobs judged to be arduous and unhealthy. Category I jobs are the most difficult and detrimental to health.
insured. The level of the pension shall be determined on the basis of the accumulated sums in the individual file from the payments made and the incomes from their investment, minus the fees and the deductions provided for in the COSI, and depending on life-expectancy after retirement.

An analysis of the second pillar reveals that it is not fully comparable with the occupational social security schemes employed in EU countries, the main differences being the risks covered (old age and death) and the defined contributions versus the defined benefits in the EU Directive 86/378/EEC, as amended by 96/97, on occupational social security schemes and all social security risks mentioned therein. There is no published data on the impact of the reform of the social security system on the status of women in Bulgaria after 1999.

The COSI provides for obligatory social insurance, including the state public insurance covering general ill-health, occupational disease, industrial injury, maternity, unemployment, old age and death as well as the additional pension insurance.

The state public insurance concedes benefits and pensions upon:
- temporary inability to work;
- temporary reduced ability to work;
- disability;
- maternity;
- unemployment;
- old age;
- death.

The principles of the state public insurance are:
- obligatory and comprehensive insurance;
- solidarity of the insured persons;
- equality of the insured persons;
- social dialogue in the management of the insurance system;
- a fund organisation of the insurance payments.

Further provisions related to insured persons are contained in Articles 4(1) to (7) of the COSI.
**Direct and indirect gender-based discrimination in social security schemes**

The lower pension age for women constitutes formal discrimination against men, and while a consensus is beginning to emerge in favour of a common age, there is still much heated debate about what that age should be. This question is now to be addressed after 2009.

Indirect discrimination results from measures which, although often defined without reference to gender, in practice do affect women and men differently because of the nature of their occupational activity, marital status or family situation. Certain conditions, such as long periods of qualification, also penalize women. It remains to be seen in the long term whether the formally gender-equal qualifying conditions for pensions under the obligatory second pillar do not in fact constitute indirect discrimination against women. However, it is too early to offer an assessment at this stage.

There is no discrimination on the basis of gender, either directly or indirectly, by reference in particular to marital or family status, especially as regards:

- the scope of schemes and conditions of access;
- the obligation to contribute and calculation of contributions;
- the calculation of benefits, including supplementary benefits due in respect of a spouse or dependants, and the conditions governing the duration and retention of benefit entitlement.

There is a risk that the generation of women born before 1959 will not be able to comply with the pension conditions under the new COSI, as those women aged 50 who lose their employment have no chance of finding another job given the high national unemployment rate (official figures put unemployment at over 18 percent).

**Provisions contrary to the principle of equal treatment with regard to the social security scheme**

There are no provisions contrary to the principle of equal treatment, particularly in terms of:

- determining the persons who may participate in an occupational scheme;
- defining the compulsory or optional nature of participation in an occupational scheme;
- establishing different rules regarding the age of entry into the scheme, the minimum period of employment, or membership of the scheme required for obtaining the benefits thereof.
Consideration of the principle of equal treatment by scheme management bodies

The concept of an occupational scheme in the COSI differs from the prevailing pattern in EU countries. The present legislation preserves the difference in the years of insured employment and ages for men and women until 2009.

As mentioned above, according to the Act on Pensions, the retirement age for men and women differs according to the category of job performed (see Table 2.).

Table 2. Eligibility conditions for old-age pensions under the Act on Pensions in force since January 2000

<table>
<thead>
<tr>
<th>Category of job</th>
<th>I</th>
<th>II</th>
<th>III</th>
</tr>
</thead>
<tbody>
<tr>
<td>Years of employment</td>
<td>15</td>
<td>20</td>
<td>25 for men</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>20 for women</td>
</tr>
<tr>
<td>Retirement Age</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Men</td>
<td>52</td>
<td>57</td>
<td>60</td>
</tr>
<tr>
<td>Women</td>
<td>47</td>
<td>52</td>
<td>55</td>
</tr>
</tbody>
</table>

The COSI introduced new eligibility conditions for retirement, and Section 68(1) provides that the right to old age and insurance practice pension shall be acquired upon reaching 60 years and six months for men and 55 years and six months for women.

The previous Act on Pensions envisaged a special retirement scheme for teachers and other staff with the same status. To this end a special public Teachers’ Fund was set up providing resources for teachers’ early retirement. The new COSI preserves the more favourable retirement regime for teachers up to the end of 2009. Beyond this date, teachers will be covered by the general rule of Section 68. Up to and including 31 December 2009, teachers shall acquire the right to retirement pensions based on 30 years’ service for men and 25 years for women and having reached an age three years younger than the age stipulated under Section 68. The insurance installments for the Teachers’ Pension Fund is to be determined annually by the Act on the Budget of the Social Security Fund.

In 2000, 2,031 teachers (527 men and 1,504 women) were provided with early retirement pensions. The average number of months the retired teachers lacked in order to qualify for normal retirement pensions under category III was reported by the National Social Security Institute (NSSI) to be 29.6.

There is no provision for the suspension, retention or acquisition of rights during maternity or parental leave which are granted by law or agreement and are paid by the
employer. There are not different levels of benefit or worker contributions, except insofar as may be necessary; and no different standards apply only to workers of a specified gender.

The granting of benefits is not left to the discretion of the management bodies.

**Legal mechanisms to declare null and void any discrimination**

The present occupational schemes are defined by law and are not part of a collective agreement or individual contract. If regulations introduce texts that run contrary to the principle of equality, the person affected may take a case to the Supreme Administrative Court as the appropriate body. Should the Supreme Administrative Court repeal the regulations, its decision must be published in the State Gazette for the repeal to have force of law. Persons affected by this act may then turn to the competent authorities to demand new regulations in compliance with the principle of equality.

It is possible for persons who consider themselves wronged by the failure to apply the principle of equal treatment to sue in tort, but there have not been any cases so far.

**8.2 Legal means of redress**

*Protection against dismissal in the case of complaint of non-compliance with the principle of equal treatment*

Protection against dismissal in case of a complaint based on the principle of equal treatment is not specifically envisaged, but there is a general possibility to lodge an appeal in court against unjustified dismissal.

*Monitoring mechanisms*

The control mechanisms and the rights of control bodies in this area are set out in the COSI. The monitoring of the legislation on state public insurance, as well as the payment of insurance payments for health insurance and the additional obligatory pension insurance, shall be carried out by the control bodies of the NSSI.

These control bodies have the right, *inter alia*, to check the activities of all individuals and corporate bodies concerning state public insurance and the payment of health insurance and additional obligatory pension insurance and undertake measures to hold persons guilty of violating the law accountable.

According to Section 108(2) of the COSI, individuals and corporate bodies are obliged to present to the control bodies of NSSI when required to do so the documents, data, information, declarations, explanations and communications connected with the implementation of state public insurance, the payment of health insurance and of
additional obligatory pension insurance, and to offer all cooperation to fulfil their official obligations.

8.3 Implementation of the principle of equal treatment in matters of social security and equal opportunities strategies

Progressive implementation of the principle of equal treatment in matters of social security, although not part of official policy on gender equality, is considered through the draft AEOWM.

Perceived protection of women concerning maternity and social security

The protection of women in maternity is not considered to be an obstacle to the implementation of equal treatment in social security or a factor in the de facto discrimination against women. The draft AEOWM establishes an institutional mechanism for equal opportunities, which would also monitor gender equality in matters of social security.
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