

Republic of North Macedonia
COMMISSION FOR PREVENTION AND PROTECTION AGAINST DISCRIMINATION

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Starting from the constitutional guarantee safeguarding the right to work and social security, the constitutional guarantee of the special protection of motherhood, children and the family, as well as the special protection of women at work, pursuant to national legislation and the international regulations of the United Nations, the International Labour Organization and the European Union Acquis, and having regard to the established factual situation in cases related to discrimination on the grounds of pregnancy, childbirth and motherhood in employment relations, the Commission for Prevention and Protection Against Discrimination, pursuant to Article 28 of the Law on Prevention and Protection Against Discrimination, hereby issues the following:

GENERAL RECOMMENDATION

on the protection from discrimination against women on grounds of pregnancy,
childbirth and motherhood in employment relations

The Commission for Prevention and Protection against Discrimination hereby recommends that **employers in the public and private sector** ensure consistent application of the legal protection of women workers during pregnancy, childbirth and motherhood, and to refrain from practices that lead to their unequal or less favourable treatment during pregnancy, childbirth and motherhood in the exercise of rights arising from their employment status.

To date, the Commission for Prevention and Protection against Discrimination has, **in several cases, established direct intersectional discrimination on the grounds of sex and gender in relation to pregnancy, childbirth and motherhood in the field of work and employment relations.**

Namely, practice has shown that women workers, especially those employed under fixed-term employment contracts, are placed in a less favourable position in relation to other workers, both male and female. This is primarily due to the setup of the legal framework

regulating the fixed-term employment contracts, pursuant to which there is no normative, and consequently no practical, limitation on their use by employers. According to the Labour Relations Law, fixed-term employment contracts are determined by objective conditions, and not by the existence of objective reasons for their conclusion. The way they are regulated by the Labour Relations Law, these contracts, that is, their duration, is connected to the coming of a specific date, the occurrence of a specific event, or the completion of a specific task, without specifying the circumstances or reasons as to when such contracts should or could be concluded. Thus, in practice, the Law has established such contracts as the rule, and not as the exception. Consequently, employers do not have a practical limitation as to what type of employment relationship they wish to establish, that is, what type of employment contract they would conclude with workers, and among fixed-term employment contracts, the most prevalent by far are those linked to the expiry of a certain period, that is, the coming of a specific date. Despite the fact that the employment relationship is a contractual relationship, it should nevertheless be borne in mind that, in essence, it is a subordinated relationship, in which the worker is in a subordinate economic position in relation to the employer, and therefore economic reasons are most often those which influence the worker's choice and decision to conclude, that is, to agree to, a fixed-term employment contract.

Workers, and in particular women workers who have “willingly” concluded a fixed-term employment contract, are placed in an uncertain position when it comes to the planning of family life and are in a less favourable position with regard to the possibilities of exercising their rights arising from pregnancy, childbirth and motherhood.

Hence, in situations when a female worker gets pregnant, employers, after the expiry of the fixed-term employment contract, tend not to renew the employment contract with her, that is, tend not to offer the female worker signing an annex to the contract, even in situations where circumstances are clear and indicative to a continuation, that is, the renewal of the employment relationship, or where there had previously been a practice of concluding successive annexes to the fixed-term contract, while at the same time the business need for a worker in that specific position has not ceased.

In such conditions, the will and conduct of employers not to enter or re-enter an employment relationship with the female worker, are based exclusively on the circumstances connected with pregnancy, childbirth and motherhood, and such conduct, in the view of the Commission, constitutes direct or intersectional discrimination on the grounds of sex and gender, in connection with pregnancy, childbirth and motherhood.

On the other hand, the remaining protection mechanisms fail to recognize the factual conduct of the employer as a discriminatory act, that is, as discrimination during employment and access to work, failing to offer appropriate protection for this category of women workers. This also includes the failure to recognize judicial protection under the Law on Prevention and Protection against Discrimination, that is, a discrimination lawsuit, as a possibility.

The Analysis of Women's Participation in the Labour Market also speaks to the context:

“Discrimination against women in the work process is manifested in several spheres, among which is the use of protective measures connected with the woman's reproductive characteristics. Great many women working under fixed-term contracts face difficulties when informing the employer that they are pregnant, following which their contracts are not renewed and their employment relationship terminates upon the expiry of the existing contract. It frequently happens that the contract is not renewed under the pretext that there is no need for that position, although the employer hires another person for the same position immediately or after a short period of time. The consequences for women are multiple; further to the stress they experience during pregnancy, coupled by the termination of their source of income, they lose their right to pecuniary compensation during absence from work on grounds of pregnancy and maternity, which significantly affects and jeopardises their livelihood.”¹

In relation to such findings, the Commission, in its actions and decision-making, gives particular consideration to the standards established by the international instruments related to the protection of equality, the right to work, and the special protection of maternity and pregnancy, more specifically:

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Maternity Protection Convention of the International Labour Organization, the Convention on Equal Opportunities and Equal Treatment for Workers with Family Responsibilities of the International Labour Organization, as well as the European Social Charter, safeguarding the special protection of maternity and equal opportunities for women in the labour market,² the European Social Charter, the Convention on Human Rights of the Council of Europe, and the case-law of the European Court of Human Rights³.

¹ Analysis of Women's Participation in the Labour Market, Ministry of Labour and Social Policy, OSCE Mission to Skopje, p. 43

² Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), United Nations, 1979; ILO Convention No. 183 – Maternity Protection Convention, International Labour Organization; European Social Charter (Revised), Council of Europe.

³ *Napotnik v. Romania* (Application no. 33139/13 from 20.10.2020)

Further to the international instruments that have been ratified or transposed into the national legislation and are part of the internal legal order, the special protection of women workers during pregnancy, childbirth and motherhood is also provided for in the national legislation:

Article 9 of the **Constitution of the Republic of North Macedonia** safeguards the right to equality on the basis of sex, the right to work, the free decision to create a family, and the special protection of motherhood and children. The Republic shall ensure special care and protection of the family, while every person has the right to freely decide on having children. Article 42 of the Constitution provides for the special protection of motherhood, children, and minors, and guarantees the right to work. Pregnancy as a personal status is not explicitly mentioned in the Constitution of the Republic of North Macedonia; however, it is incorporated within the principle of equality, the right to freely decide on the creation of a family, and the right to work, which is equally guaranteed to all. These constitutional guarantees form the basis for ensuring equal treatment and special protection of women during pregnancy and motherhood.

The Labour Relations Law, Article 6 thereof, establishes a general prohibition of discrimination, which among other grounds includes sex, family status, and other personal circumstances. **Protection against discrimination of a female worker on the grounds of pregnancy, childbirth, and parenthood is expressly provided for in Article 9-b of the Law, which stipulates that:**

*“All forms of discrimination against a female worker on the grounds of pregnancy, childbirth and parenthood are prohibited, **regardless of the duration and type of employment relationship established in accordance with law.***

*The prohibition of discrimination from paragraph (1) of this Article **applies to access to employment, working conditions, and all rights arising from the employment relationship, as well as the termination of the employment contract of female workers who are in a state of pregnancy or who exercise rights arising from childbirth and parenthood.***”

The Labour Relations Law provides for **special protection of women workers during pregnancy, childbirth, and parenthood**, and this is covered by Articles 163 to 170 (with the exception of Article 167).

It is important to make note **Article 166, paragraph 3 of the Labour Relations Law, which provides that:** *“Upon the expiry of parental leave, the employee has the*

right to return to the same workplace or, if that is not possible, to an equivalent workplace in accordance with the conditions of the employment contract.”

Direct discrimination, pursuant to Article 8, paragraph 1 of the Law on Prevention and Protection against Discrimination, “exists when a person or a group is treated, has been treated, or would be treated less favourably than another person or group in a factual or possibly comparable or similar situation, on a discriminatory ground”.

Intersectional discrimination, pursuant to Article 4, paragraph 1, point 13 of the Law on Prevention and Protection against Discrimination, “is any discrimination on two or more discriminatory grounds that are simultaneously and inextricably linked”.

Pursuant to Article 13 of the Law on Prevention and Protection against Discrimination, intersectional discrimination is considered a more severe form of discrimination.

The Commission for Prevention and Protection against Discrimination recommends that the **Assembly of the Republic of North Macedonia** consider the possibility of improving the legal framework in the field of labour relations, with the aim of strengthening the legal protection of women workers during pregnancy, childbirth, and motherhood.

In order to prevent future abuse, violations of rights and discrimination, within its competences, the Commission has the right to promote and propose the harmonisation of national legislation, regulations and practices with international and regional human rights instruments (Article 21, paragraph 1, line 9), and in this regard the Commission points to the need for a systemic rearrangement of the **Labour Relations Law**,⁴ that is, the part which regulates the fixed-term contracts, in order to ensure efficient protection from discrimination during pregnancy, childbirth, and motherhood, through:

- regulating the fixed-term employment contracts in the Labour Relations Law in such a way that they would be provided for as an exception, and not as a rule, whereby their use would be limited to specific situations or objectively justified reasons.
- introducing a mandatory obligation for the employer that within a specified deadline before the expiry of a fixed-term employment contract, the employer notifies the employee in writing of its intention, that is, to offer him/her the signing of an annex to the contract along with an appropriate deadline for the employee to respond, or

⁴ Law on Labour Relations – consolidated version (Official Gazette no. 167/15)

if the employer does not wish to extend the contract, to provide an explanation of the reasons for such a decision.

- further strengthening of the safeguards in the Labour Relations Law, with the aim of ensuring the effective reinstating of women workers to the same or equivalent workplace after the end of maternity or parental leave;
- further refinement of the provisions relating to legal mechanisms for the protection of women workers in cases of discrimination on the grounds of pregnancy, childbirth and parenthood, and their strengthening;
- in such cases, actions should be taken primarily in accordance with the Law on Prevention and Protection against Discrimination.

In this context, further alignment is needed of the national legislation with the **European Union law**, in particular with Directive (EU) 2019/1158 on work-life balance for parents and carers, which provides measures to promote equal opportunities for women and men in the labour market, strengthening of rights related to parenthood, and preventing discrimination in relation to the exercise of parental rights.

Such improvement of the legal framework would contribute to more effective protection against discrimination on the grounds of pregnancy, childbirth and motherhood, and to ensuring equal opportunities for women in the labour market.

Pursuant to the Law on Prevention and Protection against Discrimination, the Commission has the legal competence to monitor the implementation of the general recommendations which it issues upon its own initiative.

Skopje

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Commission for the Prevention and Protection Against Discrimination

President

Dushan Tomsikj