

## **198/2009 Coll.**

### **ACT**

**of 23 April 2008**

on equal treatment and on the legal means of protection against discrimination and on amendment to some laws (the Anti-Discrimination Act)

Parliament has passed this Act of the Czech Republic:

#### **PART ONE**

#### **ANTI-DISCRIMINATION ACT**

##### **TITLE I**

##### **GENERAL PROVISIONS**

##### **Section 1**

##### **Subject**

This Act transposes the relevant regulations of the European Communities<sup>1</sup> and, in relation to the Charter of Fundamental Rights and Basic Freedoms and the international agreements that are part of the legal order, defines more precisely the right to equal treatment and prohibition of discrimination with respect to

- a) the right to employment and access to employment
- b) access to an occupation, business or other self-employment,
- c) employment contract, service and other paid employment, including remuneration,

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<sup>1</sup> Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women.

Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security.

Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes.

Council Directive 96/97/EC of 20 December 1996 amending Directive 86/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes.

Council Directive 86/613/EEC of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood.

Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in access to and supply of goods and services.

Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

- d) membership of, and involvement in, trade unions, workers' councils or employers' associations, including the benefits such associations provide to their members,
- e) membership of, and involvement in, professional associations, including the benefits such legal persons governed by public law provide to their members,
- f) social security,
- g) the granting and provision of social advantages,
- h) access to and provision of healthcare,
- i) access to and provision of education,
- j) access to goods and services, including housing, to the extent as they are offered to the public, or in their supply,

(2) This Act does not apply to legal relationships connected with the stipulation of conditions relating to the entry and residence of third-country nationals or stateless persons in the territory of the Czech Republic.

(3) In the legal relationships subject to this Act, a natural person shall have the right to equal treatment and to non-discrimination.

## **Definitions**

### Section 2

(1) For the purposes of this Act, the right to equal treatment shall mean the right not to be discriminated against on the grounds laid down in this Act.

(2) Direct and indirect discrimination exist. Harassment, sexual harassment, victimisation, instruction to discriminate and inciting discrimination shall also be considered to be discrimination.

(3) Direct discrimination shall mean an act, including omission, where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on grounds of race, ethnic origin, nationality, sex, sexual orientation, age, disability, religion, belief or opinions.

(4) Discrimination on grounds of pregnancy, maternity and paternity and on grounds of sexual identification shall also be considered to be discrimination on grounds of sex.

(5) An act where a person is treated less favourably on alleged grounds under paragraph 3 above shall also constitute discrimination.

### Section 3

(1) Indirect discrimination shall mean an act or omission where a person is put at a disadvantage compared to other persons on any of the grounds specified in Section 2 (3) above on the basis of an apparently neutral provision, criterion or practice. Indirect discrimination shall not be taken to occur if such a provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

(2) Indirect discrimination on grounds of disability shall also mean refusal or failure to take appropriate measures to enable a person with a disability to have access to a certain employment, working activities, career progression or other promotion, to use employment advice, or participate in other vocational training, or to use services available to the public, unless such a measure represents an unreasonable burden.

(3) In determining whether any specific measure represents an unreasonable burden, regard shall be given to

- a) the degree of benefit which the person with a disability has from the implementation of the measure,
- b) the financial tenability of the measure for the natural or legal person intended to implement the measure,
- c) the availability of financial and other assistance for the implementation of the measure and
- d) the capacity of substitute measures to satisfy the needs of the person with the disability.

(4) A measure which a natural or legal person is obliged to take in accordance with special provisions shall not be considered to be an unreasonable burden.

#### Section 4

(1) Harassment shall mean any unwanted conduct associated with the grounds specified in Section 2 (3),

- a) taking place with the purpose or effect of diminishing the dignity of a person and creating an intimidating, hostile, degrading, humiliating or offensive environment, or
- b) which could be legitimately be perceived as a precondition for a decision affecting the exercise of rights and obligations following from legal relationships.

(2) Sexual harassment shall mean any conduct of a sexual nature under paragraph 1 above.

(3) Victimisation shall be any adverse treatment, sanction or disadvantage that has occurred as a result of exercise of the rights under this Act.

(4) Instruction to discriminate shall mean the conduct of a person who misuses the subordinate position of another to discriminate against a third party.

(5) Inciting discrimination shall mean the conduct of a person who persuades, confirms or encourages another to discriminate against a third party.

#### Section 5

(1) For the purposes of this Act, remuneration shall mean any performance, whether monetary or non-monetary, recurring or one-off, which is directly or indirectly provided to a person in paid employment.

(2) Provision for equal treatment shall mean the adoption of measures that are a precondition for effective protection against discrimination and that can be required, taking into consideration good morals, and given the circumstances and personal situation of the party which is to provide for equal treatment; provision for equal opportunities shall also be considered as provision for equal treatment.

(3) In matters of the right and access to employment and access to an occupation, business or other self-employment, working activities and other paid employment, including remuneration, employers shall be obliged to provide for equal treatment under paragraph 2 above.

(4) For the purposes of this Act, an occupation shall mean the activities of a natural person performed for consideration in paid employment or self-employment, whose proper performance is made subject by special provisions to fulfilment of qualification criteria, particularly completion of the required education and, if applicable, period of experience.

(5) For the purposes of this Act, social advantage shall mean a discount, exemption from duties or monetary or non-monetary performance provided independently of social security entitlements directly or indirectly to a certain group of natural persons with income normally lower or living costs higher than others.

(6) For the purposes of this Act, a disability shall mean a physical, sensory, mental, psychological or some other impairment which precludes or may preclude the right of persons to equal treatment in the areas defined by this Act; it must be a long-term disability which lasts, or according to the findings of medical science should last, for at least one year.

## Section 6

### **Admissible Forms of Difference of Treatment**

(1) Difference of treatment on grounds of age in access to employment or occupation shall not constitute discrimination, if

- a) a condition of minimum age, professional experience or period of employment is required which is essential for proper exercise of the employment or occupation or for access to certain rights and obligations connected with the employment or occupation, or
- b) vocational training is required for proper exercise of the employment or occupation, which is unreasonably long given the date on which the person seeking employment or occupation will attain retirement age pursuant to the special law.<sup>2</sup>

(2) Difference of treatment connected with the determination of different retirement ages<sup>2</sup> for men and women shall not constitute discrimination; this shall not apply in occupational social security schemes pursuant to Sections 8 and 9.

(3) Difference of treatment in matters of the right to employment, access to employment or an occupation, in matters of employment, service or other paid employment shall not constitute discrimination, provided that it is based on substantive grounds consisting in the nature of the performed work or activities and the requirements made are appropriate to that nature. Difference of treatment in matters of access to or vocational training for employment or occupation shall not constitute discrimination on grounds of sex, provided that it is based on substantive grounds consisting in the nature of the performed work or activities and the requirements made are appropriate to that nature.

(4) Difference of treatment applied in matters of the right to employment, access to employment or occupation, in the case of paid employment performed in churches or religious communities, shall not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person's religion, belief or opinions constitute a genuine, legitimate and justified

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<sup>2</sup> Section 32 of Act No. 155/1995 Coll., on pension insurance, as amended.

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occupational requirement, having regard to the ethos of the given church or religious community.

(5) Difference of treatment applied for the purpose of protection of women on grounds of pregnancy and maternity, of persons with a disability and for the purpose of protection of persons under the age of 18 beyond what is provided for in the special provisions shall not constitute discrimination, provided that the methods for achieving the aforementioned objectives are proportionate and necessary.

(6) Difference of treatment in the supply of services offered in the sphere of private and family life and acts performed in this context shall not constitute discrimination on grounds of sex.

(7) The exclusive or primary supply of goods and services available to the public shall not constitute discrimination on grounds of sex, if the provision of the goods and services exclusively or primarily to members of one sex is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

### Section 7

(1) Difference of treatment on grounds of sex, sexual orientation, age, disability, religion, belief or opinions in the matters specified in Section 1 (1) (f) to (j) shall not constitute discrimination, if the difference of treatment is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. This shall in no way prejudice the provisions of Section 6 above.

(2) Measures aimed at preventing or compensating for disadvantages resulting from a person's membership of a group of persons defined by any of the grounds specified in Section 2 (3) and ensuring equal treatment and equal opportunities for that person shall not be considered to be discrimination.

(3) In matters of access to employment or an occupation, the measures under paragraph 2 above may not result in the favouring of a person whose qualities for the performance of employment or an occupation are not higher than those of other persons assessed at the same time.

(4) The provisions of paragraph 1 above and Section 6 above shall in no way prejudice other admissible forms of equal treatment contained in special laws.

## **The principle of equal treatment for men and women in occupational social security schemes**

### Section 8

(1) Where an employer provides to employees, former employees and their family members

a) monetary performance or performance corresponding to a monetary value in order to substitute or supplement the benefits provided from the basic scheme of social protection covering

1. illness,
2. invalidity,
3. old age, including early retirement,

4. occupational injury and occupational disease,

5. unemployment,

b) other monetary or non-monetary performance having the characteristics of social benefits, particularly survivors' or family benefits, to the extent as they are paid by the employer to the employee on grounds of employment,

the employer shall be obliged not to discriminate against on grounds of sex.

(2) Men and women must have, in particular

- a) equal access to an occupational social security scheme,
- b) equal entitlement to the provision of a performance,
- c) equal conditions for the origin, duration and retention of entitlement to a performance,
- d) equally compulsory or voluntary affiliation to a scheme,
- e) equal rules for the provision of a performance, particularly age-limit, duration of employment or period of affiliation to a scheme,
- f) equal conditions for the suspension of a performance or acquisition of entitlement to benefits paid during maternity leave or family-related leave,
- g) entitlement to an equal scope of performance upon fulfilment of the same conditions,
- h) an equal method of calculation of the amount of employer's or employee's contributions,
- i) an equal method of calculation of the amount of performance including increases due in respect of a spouse or for dependants,
- j) equal conditions for the reimbursement of contributions to an employee when the employee leaves the scheme without having fulfilled the conditions guaranteeing a deferred right to long-term benefits,
- k) an equal method of fixing retirement age for the purposes of granting a pension from an occupational social security scheme.

(3) The provisions of paragraphs 1 and 2 above shall also apply *mutatis mutandis* to self-employed persons and professional associations, in which these persons participate, which are based on the principle of affiliation to an occupation.

(4) The provisions of paragraphs 1 to 3 above shall also apply to

- a) persons whose activity is interrupted due to illness, maternity or accident,
- b) persons seeking employment,
- c) retired people,
- d) invalid employees or former employees,
- e) persons claiming under the persons specified in subparagraphs a) to d) above.

## Section 9

(1) The employer's obligation to comply with the principle of equal treatment of men and women under Section 8 shall not apply to

- a) individual contracts for self-employed persons,
- b) employee schemes for self-employed persons, intended for only one member,
- c) insurance contracts to which the employer is not a party, in the case of salaried employees,
- d) optional provisions of schemes of social protection of persons offered to participants individually to guarantee them

1. additional benefits, or
  2. a choice of date on which the normal benefits for self-employed workers will start, or a choice between several benefits,
- e) employee schemes in so far as benefits provided from these systems are financed by contributions paid by employees on a voluntary basis.

(2) The employer's obligation to comply with the principle of equal treatment of men and women shall not preclude an employer from granting to persons who have already reached retirement age for the purposes of granting a pension by virtue of an employee scheme, but who have not yet reached the retirement age for the purposes of granting a statutory retirement pension, a pension supplement. The pension supplement serves to make equal or more nearly equal the overall amount of benefit paid to these persons in relation to the amount paid to persons of the other sex in the same situation who have already reached the statutory retirement age, until the persons benefiting from the supplement reach the statutory retirement age.

(3) The following shall not constitute violation of the obligation to comply with the principle of equal treatment of men and women

- a) setting different levels of benefit in connection with the application of necessary measures taking account of actuarial calculation factors which differ according to sex in the case of defined-benefit schemes; in the case of funded defined-benefit employee schemes, certain elements may be unequal where the inequality of the amounts results from the effects of the use of actuarial factors differing according to sex at the time when the scheme's funding is implemented
- b) setting different levels of employers' contributions to an employee scheme;
  1. with respect to a defined-benefit scheme if the aim is to equalise the amount of the final benefits or to make them more nearly equal for both sexes
  2. with respect to a funded defined-benefit scheme if the employer's contributions are intended to ensure the adequacy of the funds necessary to cover the cost of the benefits defined,
- c) setting different standards or standards applicable only to persons of a specified sex for the measures provided for in subparagraphs (a) and (b) above, as regards the guarantee or retention of entitlement to deferred benefits when a person leaves an occupational social security scheme.

(4) As regards the funded defined-benefit schemes specified in paragraph 3 (a) above, the following shall not constitute violation of the principle of equal treatment of men and women

- a) conversion into a capital sum of part of a periodic pension,
- b) transfer of pension rights,
- c) reversionary pension payable to a dependant in return for the surrender of part of an annual pension,
- d) a reduced pension where the person opts to be provided with an earlier old-age pension.

(5) Where men and women may claim a flexible retirement age under an occupational social security scheme under the same conditions, this shall not contravene the principle of equal treatment of men and women.

(6) For the purposes of this Act, in occupational social security schemes, as regards self-employed persons, a legal or natural person providing the security shall also be considered to be an employer.

## TITLE II

### LEGAL MEANS OF PROTECTION AGAINST DISCRIMINATION

#### Section 10

(1) In the event of a violation of the rights and obligations following from the right to equal treatment or of discrimination, the person affected by such act shall have the right to claim before the courts, in particular, that the discrimination be refrained from, that consequences of the discriminatory act be remedied and that (s)he be provided with appropriate compensation.

(2) Should a remedy under paragraph 1 above not appear sufficient, particularly due to the fact that a person's reputation or dignity or respect in society has been harmed, the person shall also have the right to monetary compensation for non-material damage.

(3) The amount of the compensation under paragraph 2 above shall be assessed by the court taking into account the seriousness of the damage and the circumstances under which the right was violated.

#### Section 11

(1) In matters of protection against discrimination, a legal person,

- a) which was founded for the protection of the rights of victims of discrimination, or
- b) whose objects of activities specified in the statutes or rules consist in protection against discrimination or the aforementioned fact follows from its activities or is stipulated in a law,

may provide information on the possibilities of legal assistance and cooperation in the drafting or supplementing of proposals and applications to persons claiming protection against discrimination.

(2) A legal person specified in paragraph 1 above shall be entitled to submit to administrative authorities monitoring compliance with legal regulations, including the right to equal treatment, instigation of inspection and, if applicable, instigation of commencement of administrative proceedings.

## TITLE III

### TRANSITIONAL PROVISION

#### Section 12

Any legal relationships in matters of the right to equal treatment arising out of facts which have occurred before the date of effect of this Act shall be governed by the former regulations.

## **PART TWO**

### **Amendment to the Act on the Public Defender of Rights**

#### **Section 13**

Act No. 349/1999 Coll., on the Public Defender of Rights, as amended by Act No. 265/2001 Coll., Act No. 309/2002 Coll., Act No. 320/2002 Coll., Act No. 626/2004 Coll., Act No. 381/2005 Coll., Act No. 342/2006 Coll. and Act No. 129/2008 Coll., shall be amended as follows:

1. In Section 1 (4) (c), the words “social care institutes” shall be replaced by the words “social service facilities”.

2. In Section 1, a new paragraph 5 shall be inserted after paragraph 4 and shall read, including footnote No. 1, as follows:

“(5) The Defender shall perform his/her mandate in matters of the right to equal treatment and protection against discrimination 1).

1) Act No. 198/2009 Coll., on equal treatment and on the legal means of protection against discrimination and on amendment to some laws (the Anti-Discrimination Act).”.

The former paragraphs 5 and 6 shall be designated as paragraphs 6 and 7.

The former footnotes Nos. 1 to 5 shall be designated as footnotes Nos. 2 to 6, including references to the footnotes.

3. In Section 8, paragraph 2 shall read as follows:

“(2) The Defender shall be entitled to a salary, severance pay, reimbursement of expenses and benefits in kind equal to that of the President of the Supreme Audit Office. The Deputy Defender shall be entitled to a salary, severance pay, reimbursement of expenses and benefits in kind equal to that of the Vice-President of the Supreme Audit Office.”.

4. In Section 15 (1) (c) the words "under Section 1 (2)" shall be cancelled.

5. A new Section 21b shall be inserted after Section 21a and shall read as follows:

#### **“Section 21b**

The Defender shall contribute to promotion of the right to equal treatment of all persons irrespective of their race or ethnic origin, nationality, sex, age, disability, religion, belief or opinions, and to this end, he/she shall

- a) provide methodological assistance to victims of discrimination in lodging their proposals for commencement of proceedings concerning discrimination,
- b) undertake research,
- c) publish reports and issue recommendations on discrimination-related issues,
- d) provide for exchange of the available information with the relevant European parties.”.

## **PART THREE**

### **Amendment to the Code of Civil Court Procedure**

#### **Section 14**

In Act No. 99/1963 Coll., the Code of Civil Court Procedure, as amended by Act No. 36/1967 Coll., Act No. 158/1969 Coll., Act No. 49/1973 Coll., Act No. 20/1975 Coll., Act No. 133/1982 Coll., Act No. 180/1990 Coll., Act No. 328/1991 Coll., Act No. 519/1991 Coll., Act No. 263/1992 Coll., Act No. 24/1993 Coll., Act No. 171/1993 Coll., Act No. 117/1994 Coll., Act No. 152/1994 Coll., Act No. 216/1994 Coll., Act No. 84/1995 Coll., Act No. 118/1995 Coll., Act No. 160/1995 Coll., Act No. 238/1995 Coll., Act No. 247/1995 Coll., Award of the Constitutional Court promulgated under No. 31/1996 Coll., Act No. 142/1996 Coll., Award of the Constitutional Court promulgated under No. 269/1996 Coll., Act No. 202/1997 Coll., Act No. 227/1997 Coll., Act No. 15/1998 Coll., Act No. 91/1998 Coll., Act No. 165/1998 Coll., Act No. 326/1999 Coll., Act No. 360/1999 Coll., Award of the Constitutional Court promulgated under No. 2/2000 Coll., Act No. 27/2000 Coll., Act No. 30/2000 Coll., Act No. 46/2000 Coll., Act No. 105/2000 Coll., Act No. 130/2000 Coll., Act No. 155/2000 Coll., Act No. 204/2000 Coll., Act No. 220/2000 Coll., Act No. 227/2000 Coll., Act No. 367/2000 Coll., Act No. 370/2000 Coll., Act No. 120/2001 Coll., Act No. 137/2001 Coll., Act No. 231/2001 Coll., Act No. 271/2001 Coll., Award of the Constitutional Court promulgated under No. 276/2001 Coll., Act No. 317/2001 Coll., Act No. 451/2001 Coll., Act No. 491/2001 Coll., Act No. 501/2001 Coll., Act No. 151/2002 Coll., Act No. 202/2002 Coll., Act No. 226/2002 Coll., Act No. 309/2002 Coll., Act No. 320/2002 Coll., Award of the Constitutional Court promulgated under No. 476/2002 Coll., Act No. 88/2003 Coll., Act No. 120/2004 Coll., Award of the Constitutional Court promulgated under No. 153/2004 Coll., Act No. 237/2004 Coll., Act No. 257/2004 Coll., Act No. 340/2004 Coll., Act No. 436/2004 Coll., Act No. 501/2004 Coll., Act No. 554/2004 Coll., Act No. 555/2004 Coll., Act No. 628/2004 Coll., Act No. 59/2005 Coll., Act No. 170/2005 Coll., Act No. 205/2005 Coll., Act No. 216/2005 Coll., Act No. 342/2005 Coll., Act No. 377/2005 Coll., Act No. 383/2005 Coll., Act No. 413/2005 Coll., Act No. 56/2006 Coll., Act No. 57/2006 Coll., Act No. 79/2006 Coll., Act No. 112/2006 Coll., Act No. 113/2006 Coll., Act No. 115/2006 Coll., Act No. 133/2006 Coll., Act No. 134/2006 Coll., Act No. 135/2006 Coll., Act No. 189/2006 Coll., Act No. 216/2006 Coll., Act No. 233/2006 Coll., Act No. 264/2006 Coll., Act No. 267/2006 Coll., Act No. 308/2006 Coll., Act No. 315/2006 Coll., Act No. 296/2007 Coll., Act No. 104/2008 Coll., Act No. 123/2008 Coll., Act No. 126/2008 Coll., and Act No. 129/2008 Coll., Section 133a including footnotes Nos. 56b, 56c and 56d shall read as follows:

#### **“Section 133a**

If the complainant claims facts before the court from which it can be derived that there has been direct or indirect discrimination by the defendant

- a) based on sex, racial or ethnic origin, religion, belief, opinions, disability, age or sexual orientation in the area of working activities or other paid employment including access thereto, occupation, business or other self-employment including access thereto, membership of employees' or employers' associations and membership of, and involvement in, professional chambers 56b)
- b) based on racial or ethnic origin in the provision of healthcare and social care, in access to employment and vocational training, access to public contracts,

access to housing, membership of special-interest associations and in the sale of goods in a shop or supply of services 56c), or  
c) based on sex in access to goods and services 56d),

it shall be the defendant's responsibility to demonstrate that the principle of equal treatment has not been violated.

56b) Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in access to and supply of goods and services.

Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex.

56c) Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

56d) Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in access to and supply of goods and services.”.

## **PART FOUR**

Amendment to the Act on salary and compensation for readiness for work in budgetary and some other organisations and bodies

### **Section 15**

In Section 3 (3) of Act No. 143/1992 Coll., on salary and compensation for readiness for work in budgetary and some other organizations and bodies, as amended by Act No. 217/2000 Coll. and Act No. 264/2006 Coll., the words “Men and women” shall be replaced by the words “Employees irrespective of their race or ethnic origin, nationality, sex, sexual orientation, age, disability, religion, belief or opinions”.

## **PART FIVE**

### **Amendment to the Insurance Policy Act**

#### **Section 16**

In Act No. 37/2004 Coll., on insurance policy, as amended by Act No. 377/2005 Coll. and Act No. 57/2006 Coll., new paragraph 13a shall be inserted after paragraph 13 and shall read, including heading and footnote No. 4a, as follows:

#### **“Section 13a**

##### **The principle of equal treatment**

(1) The rights and obligations following from private insurance shall not be at variance with the principle of equal treatment pursuant to special provisions 4a).

(2) The use of sex as a determining factor in setting the amount of premiums and for calculating benefits in the insurance of risks where the assessment of risk is based on relevant and accurate actuarial and statistical data shall not be at variance

with the principle of equal treatment, provided that the difference in the amount of premiums or of benefits is proportionate.

(3) Costs related to pregnancy and maternity shall not result in differences in premiums and the calculation of benefits.

4a) Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in access to and supply of goods and services.

Act No. 198/2009 Coll., on equal treatment and on the legal means of protection against discrimination and on amendment to some laws (the Anti-Discrimination Act).”.

## **PART SIX**

### **Amendment to the Insurance Act**

#### Section 17

In Section 13a of Act No. 363/1999 Coll., on insurance companies and amendment to some related laws (the Insurance Act), as amended by Act No. 39/2004 Coll., the former text shall be designated as paragraph 1 and paragraphs 2 and 3 shall be added, which shall read as follows:

“(2) Where an insurance company uses the difference between sexes as a determining factor in setting the different amount of premiums and different calculation of benefits, it shall be obliged to ensure that the differences are

- a) based on accurate actuarial and statistical data and
- b) proportionate.

(3) In setting different amount of premiums and different calculation of benefits under paragraph 2 above, the insurance company shall refer to data available to the public and data obtained from its own insurance activities or statistics created jointly by insurance companies. If data available to the public, including statistics created jointly by insurance companies are not available, the insurance company shall be obliged to publish and regularly update its own statistics it refers to in setting different amounts of premiums and different calculations of benefits, in a manner allowing for remote access.”.

#### Section 18

##### Transitional Provision

On the basis of information pursuant to Section 13a) (3) of Act No. 363/1999 Coll., on insurance companies and amending some related laws (the Insurance Act), as amended, obtained as of 1 April 2012 at the earliest, the Ministry of Finance shall examine justification of the use of the difference between sexes as a determining factor in setting different amounts of premiums and different calculations of benefits and communicate the results of the examination to the Commission of the European Communities by 21 December 2012 at the latest.

## **PART SEVEN**

### **EFFECT**

#### Section 19

This Act shall enter into effect on the first day of the third calendar month following the date of its promulgation, except for Part Two, which shall enter into effect on the first day of the sixth calendar month following the date of its promulgation.

*Vlček, signed*

*Fischer, signed*