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Prohibition of Discrimination on Grounds of Disability in Slovak, Czech, and Polish Labor Law³

Abstract: The article examines the prohibition of discrimination on the grounds of disability in Slovak, Czech, and Polish labor law, with a particular focus on the definition of disability and its alignment with European Union law. While Slovakia and Poland emphasize a formalized recognition of disability through administrative decisions, Czech legislation provides a more material definition consistent with the case-law of the Court of Justice of the European Union. The comparative analysis highlights differences in legal frameworks and the challenges of harmonizing national concepts with the EU's substantive approach. The study underscores that effective protection requires not only legislative transposition of Directive 2000/78/EC but also its practical implementation, aiming to ensure both formal and substantive equality in employment for persons with disabilities.

Keywords: disability, discrimination, labor law, European Union law, equal treatment

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Introduction

The prohibition of discrimination is a fundamental right that belongs to everyone without distinction and essentially creates the basic framework for the application and implementation of all subjective rights. It is impossible to speak of the fair exercise of law if it is contrary to the principle of equal treatment. However, when complying with the prohibition of discrimination, it is necessary to bear in mind a basic principle: treat equals equally and unequals unequally. This means that the principle of equal treatment cannot be fulfilled in all circumstances by formally equal behavior alone; in certain situations, especially in cases of obvious inequality of opportunity, the introduction of special rules and measures to protect the weaker party is required.

In this context, we can talk of the material concept of non-discrimination, which applies more than any other reason to disability. The prohibition of discrimination on grounds of disability is regulated at European Union level by Council Directive 2000/78/EC of 27 November 2000, which establishes a general framework for equal treatment in employment and occupation (hereinafter: Directive 2000/78/EC). Directive 2000/78/EC is binding on each Member State, including the Slovak Republic, the Czech Republic, and the Republic of Poland, in terms of the result to be achieved, while the choice of forms and methods is left to the national authorities. The article focuses on identifying the chosen forms and methods of transposing Directive 2000/78/EC into Slovak, Czech, and Polish labor law.

As part of the analysis and comparison of individual legal systems, the article draws attention to the approach of Member States to the definition of the concept of disability itself. Unlike other grounds for discrimination (e.g., race, gender, age), the meaning of the term disability may not be obvious at first glance, which is why Member States are seeking to define it. On the other hand, Directive 2000/78/EC does not define the concept of disability and does not refer to national law in this regard. This means that the concept of disability is an autonomous concept in European Union law. The aim of this article

is to examine the prohibition of discrimination on the grounds of disability in Slovak, Czech, and Polish law, and to assess the compliance of these legal systems with European Union law, with an emphasis on defining the concept of disability.

Disability in Slovak Law

In Slovak law, the legal regulation of working conditions for employees with disabilities is the subject of Act No. 311/2001 Coll. Labor Code, as amended (hereinafter: Slovak Labor Code). This legislation includes a prohibition of discrimination (Article 1 of the Basic Principles and Section 13(1) and (2) of the Slovak Labor Code), increased protection upon termination of employment (Section 66 of the Slovak Labor Code), special conditions for the organization of working time (Section 87(3) of the Slovak Labor Code) and obstacles to work (Section 141(2)(f) of the Slovak Labor Code), but, above all, the creation of suitable conditions for the performance of work and retraining (Sections 158–159 of the Slovak Labor Code).

The Slovak Labor Code also contains a legal definition of the term “employee with a disability.” According to Section 40(8) of the Slovak Labor Code, an employee with a disability for the purposes of this Act is an employee recognized as disabled under a special regulation who submits a decision on disability pension to their employer. The legal regulation of disability assessment in the Slovak Republic is governed by Act No. 461/2003 Coll. on social insurance, as amended (hereinafter: Slovak Social Insurance Act).⁴ According to Section 71 of the Slovak Social Insurance Act, an insured person is disabled if, due to a long-term adverse health condition, their ability to perform gainful activity is reduced by more than 40% compared to a healthy person. A long-term adverse health condition is a health condition that causes a reduction in

⁴ For more on the relationship between labor law and social security law, see: Věra Štangová, “The Relationship between Social Security Law and Labor Law,” *The Lawyer Quarterly* 7, no. 4 (2017): 264–65.

the ability to perform gainful activity and which, according to medical science, is expected to last longer than one year. The reduction in the ability to perform gainful activity is assessed by comparing the physical, mental, and sensory abilities of an insured person with a long-term adverse health condition with the physical, mental, and sensory abilities of a healthy person.

In practice, it is debatable which specific documents an employee should submit to their employer in accordance with Section 40(8) of the Slovak Labor Code. Despite the wording of the legal definition of an employee with a disability, it is not reasonable to require an employee to submit a decision on disability pension. According to Section 70(1) of the Slovak Social Insurance Act, an insured person is entitled to a disability pension if they have become disabled and have acquired the necessary number of years of pension insurance. This means that not every insured person who has become disabled is entitled to a disability pension. However, it would not make sense if the definition of an employee with a disability only applied to those who are entitled to a disability pension and not to those who have been assessed as disabled without being entitled to a disability pension.⁵ In view of the above, it is sufficient for an employee to be recognized as disabled, i.e., to have a long-term adverse health condition that reduces their ability to perform gainful employment by more than 40% compared to a healthy person. According to the Regional Court in Banská Bystrica, it is sufficient if the employer is presented with a confirmation from the Social Insurance Agency regarding disability and the degree of reduction in the ability to perform gainful activity. This contains a statement that the employee's health condition was assessed for the purposes of pension benefits by a medical examiner, with the conclusion that the employee was recognized as disabled.⁶

5 For more details, see: Milena Barinková, "Persons with Disabilities and the Pitfalls of Their Comprehensibility in Legal Terminology," *Studia Iuridica Cassoviensia* 6, no. 1 (2018): 95.

6 See further: judgment of the Regional Court in Banská Bystrica of July 23, 2014, ref. no. 15 CoPr 5/2014. See also: judgment of the Regional Court in Trnava of January 30, 2018, ref. no. 10 CoPr 4/2017.

With more specific regard to the principle of equal treatment, reference should be made to Article 1 of the fundamental principles and Section 13(1) and (2) of the Slovak Labor Code, which prohibit discrimination in labor relations and, at the same time, provide an exhaustive list of prohibited grounds for discrimination.⁷ These grounds also include poor health and disability. The listing of both of these grounds side each other is somewhat contradictory, because according to the definition of an employee with a disability (Section 40(8) of the Slovak Labor Code) or the term disability (Section 71(1) of the Slovak Social Insurance Act), disability is always the result of poor health. Therefore, if discrimination occurs on the grounds of disability, discrimination on the grounds of poor health also occurs. From this point of view, enshrining disability as a specific basis for discrimination seems superfluous. On the other hand, it is true that disability is linked to the employer's obligation to take positive measures (e.g., Section 158 of the Slovak Labor Code, according to which the employer is obliged to create conditions for the employee to have the opportunity to find employment, and improve workplace equipment so that they can achieve, if possible, the same work results as other employees and so that their work is made as easy as possible), which do not apply in the case of (other) adverse health conditions.

The Slovak Labor Code, in connection with the establishment of the principle of equal treatment, refers to Act No. 365/2004 Coll. on equal treatment in certain areas and on protection against discrimination and on amendments to certain acts (the Anti-Discrimination Act), as amended (hereinafter: Slovak Anti-Discrimination Act). The Slovak Anti-Discrimination Act regulates the application of the principle of equal treatment and establishes means of legal protection in the event of a violation of this principle. It should be emphasized

⁷ This calculation is exhaustive in formal terms, but it includes the discriminatory ground of "other status," which makes this calculation open-ended. See more: Nikolas Sabján and Michal Cenkner, *Výklad pojmu iné postavenie z pohľadu zákazu diskriminácie v judikatúre súdov* [Interpretation of the Term "Other Status" from the Perspective of the Prohibition of Discrimination in Court Case Law] (Wolters Kluwer, 2018), 8. See also: Marek Švec et al. *Zákonník práce / Zákon o kolektívnom vyjednávaní: Komentár* [Labor Code / Collective Bargaining Act: Commentary], vol. 1 (Wolters Kluwer, 2019), 31–32.

that, in relation to discrimination on the grounds of disability, this Act regulates the employer's obligation to take measures to enable persons with disabilities to have access to certain employment, to perform certain activities in employment, to a functional or other promotion in employment, or to access to vocational training (Section 7 of the Slovak Anti-Discrimination Act). However, the Slovak Anti-Discrimination Act does not define the term "disability" itself.

Disability in Czech Law

Act No. 262/2006 Coll., the Labor Code, as amended (hereinafter: Czech Labor Code) uses the term "person with a disability." Unlike Slovak law, the Czech Labor Code uses the term "disability" in a more general sense. According to Section 103(5) of the Czech Labor Code, an employer is obliged to provide, at its own expense, technical and organizational measures for employees who are persons with disabilities, in particular, the necessary adjustment of working conditions, adjustment of workplaces, reservation of jobs, training or instruction of these employees, and improvement of their qualifications in the performance of their regular employment. Apart from this general obligation, the Czech Labor Code does not contain any specific legal provisions aimed explicitly at persons with disabilities.⁸ Unlike Slovak legislation, the Czech Labor Code does not define the term "person with a disability" itself.

According to Section 237 of the Czech Labor Code, employers' obligations to employ persons with disabilities and to create the necessary working conditions for them are laid down in special legal regulations. However, Section 237 of the Czech Labor Code refers to Sections 67 to 84 of Act No. 435/2004 Coll. on Employment, as amended (hereinafter: Czech Employment Act). According to Section 67(2) of the Czech Employment Act, three categories of persons with disabilities can be distinguished. Persons with disabilities under this provision are natural persons who are recognized by the social se-

⁸ See more: Jan Pichrt et al., *Zákoník práce. Zákon o kolektivním vyjednávání* [Labor Code: Collective Bargaining Act] (Wolters Kluwer, 1997), 692.

curity authority as having a third-degree disability, a first- or second-degree disability, or a health disadvantage.

The Czech Employment Act refers to Section 39 of Act No. 155/1995 Coll. on pension insurance, as amended, for the definition of disability and its degrees. The provision in question also defines the concept of work capacity and the basic criteria for assessing its decline. The concept of a person with a health disadvantage is defined in Section 67(3) of the Czech Employment Act.⁹ In individual cases, disability is proven by an assessment, confirmation, or decision of the social security authority.

For the purposes of this work, it is not necessary to pay further attention to the aforementioned legislation, as the Czech legal system contains a specific definition of disability in relation to the prohibition of discrimination. However, this definition is not included in the Czech Labor Code, and the Czech Labor Code does not even establish disability as a separate ground for discrimination. According to Section 16(1) of the Czech Labor Code, employers are obliged to ensure equal treatment of all employees in terms of their working conditions, remuneration for work and the provision of other monetary benefits and benefits of monetary value, professional training, and opportunities for promotion or other advancement in employment. This is followed by the provision of Section 16(2) of the Czech Labor Code, which contains an illustrative list of prohibited grounds for discrimination. Among the prohibited grounds for discrimination is health status, but not disability. From a linguistic point of view, however, it can be said, as we have indicated in the context of Slovak legislation, that the concept of health status is broader than the concept of disability, and therefore the prohibition of discrimination on the basis of health status also includes the prohibition of discrimination on the basis of disability.

Subsequently, Section 16(3) of the Czech Labor Code stipulates that the concepts of direct discrimination, indirect discrimination, harassment, sexual

⁹ Persons with health disabilities do not receive disability pensions, but from the perspective of employment law, they are classified as persons with disabilities. See more: Petr Hůrka, *Zákoník práce. Komentář* [Labor Code: Commentary] (Wolters Kluwer, 2020), 481.

harassment, persecution, instructions to discriminate and incitement to discriminate, and cases where different treatment is permissible, are regulated by Act No. 198/2009 Coll. on equal treatment and legal remedies against discrimination and on amendments to certain laws (the Anti-Discrimination Act), as amended (hereinafter: Czech Anti-Discrimination Act).

The Czech Anti-Discrimination Act defines in more detail the right to equal treatment and the prohibition of discrimination in matters including employment, service relationships, and other dependent activities, including remuneration. The definition of disability is contained in Section 5(6) of the Czech Anti-Discrimination Act, according to which, for the purposes of this Act, disability means a physical, sensory, mental, intellectual or other impairment that prevents or may prevent persons from exercising their right to equal treatment in the areas defined by this Act; it must be a long-term disability that lasts or, according to medical science, is expected to last at least one year.

A closer look reveals that the reference in the Czech Labor Code to the Czech Anti-Discrimination Act does not concern the concept of disability (or health condition), but only the concepts of direct discrimination, indirect discrimination, harassment, sexual harassment, victimization, instructions to discriminate and incitement to discriminate, and cases where different treatment is permissible. However, this problem is only apparent because the definition of direct discrimination under Section 2(3) of the Czech Anti-Discrimination Act includes a definition of prohibited grounds for discrimination, which already includes disability. Similarly, the definition of other forms of discrimination refers to the list of discriminatory grounds under Section 2(3) of the Czech Anti-Discrimination Act. It can therefore be concluded that the Czech Labor Code indirectly refers to the definition of disability in Section 5(6) of the Czech Anti-Discrimination Act.

It follows from the above that in Czech law, a distinction must be made between the contexts in which the term disability is used. In order for persons with disabilities to be entitled to individual benefits under the Czech Employ-

ment Act (e.g., job preparation, specialized retraining courses), their disability must be formally recognized by the competent social security authority (first to third degree disability or health disadvantage). On the other hand, in the area of claims arising from the prohibition of discrimination based on the definition of disability in the Czech Anti-Discrimination Act disability is understood as a factual condition. This does not, of course, preclude the court from examining (including through expert evidence) in a possible dispute over claims arising from discriminatory conduct whether the person asserting these claims is actually disabled.

Disability in Polish Law

The Act of June 26, 1974—Labor Code (Journal of Laws of 2023, item 1465, hereinafter: Polish Labor Code) differs from Slovak and Czech legislation in that it focuses on comprehensive regulation of the principle of equal treatment. The provisions of Article 11(3), Article 18(3a), Section 1, and Article 94(2b) of the Polish Labor Code enshrine the prohibition of discrimination and contain an illustrative list of prohibited grounds for discrimination. These grounds include disability, which is not defined in the Polish Labor Code. Unlike in Slovak and Czech legislation, health status and adverse health status are not included in this list.

The Polish Labor Code itself, in Article 18(3a) § 2 to § 6, defines the various forms of discrimination. The Polish Labor Code also allows for the adoption of positive measures in favor of employees with disabilities. According to the provisions of Article 18(3b) § 2(3) of the Polish Labor Code, the principle of equal treatment in employment is not violated by measures that are appropriate for achieving a legitimate objective consisting in differentiating the legal status of an employee, including, *inter alia*, measures that differentiate the legal status of an employee on the grounds of disability. Article 18(3b) § 3 of the Polish Labor Code allows for the adoption of temporary compensatory measures, i.e. mea-

sures to equalize opportunities for all employees or a significant number of employees excluded on one or more discriminatory grounds, by reducing the actual inequalities to the extent specified in that provision in favor of those employees.

For the sake of completeness, it should be added that the Polish legal system also includes the Act of December 3, 2010, on the implementation of certain European Union regulations on equal treatment (Journal of Laws of 2023, item 970, hereinafter: Polish Equal Treatment Act). However, according to Article 2(2) of the Polish Equal Treatment Act, the provisions of Chapters 1 and 2 of this Act (i.e. essentially the entire Polish Equal Treatment Act, with the exception of the legal regulation of the authorities competent to deal with violations of the principle of equal treatment) do not apply to employees to the extent regulated by the provisions of the Polish Labor Code. The Polish Labor Code therefore constitutes a special legal regulation that takes precedence over the provisions of the Polish Equal Treatment Act.

Apart from establishing a prohibition of discrimination, the Polish Labor Code does not regulate the legal aspects of disability.¹⁰ In Polish law, these issues are regulated by a special act of August 27, 1997, on the professional and social rehabilitation and employment of persons with disabilities (Journal of Laws of 2023, item 100 as amended, hereinafter: Polish Act on the Employment of Persons with Disabilities), which also defines the concept of disability. According to Article 2(10) of the Polish Act on the Employment of Persons with Disabilities, disability means a permanent or temporary inability to perform social tasks as a result of a permanent or long-term decline in bodily functions, resulting in particular in an inability to work.

¹⁰ The Polish Labor Code establishes a general obligation for employers to protect the health and lives of employees by ensuring safe and hygienic working conditions with the appropriate use of scientific and technical knowledge. In addition, employers are required to take into account the protection of the health of young people, pregnant or breastfeeding employees, and employees with disabilities as part of the preventive measures adopted (Article 207 § 2(5) of the Polish Labor Code). In addition, the Polish Labor Code provides special protection for employees who care for family members with disabilities (see Article 67(19) § 6, Article 142(1) § 1(3)(a) and Article 186 § 3 of the Polish Labor Code).

The Polish Act on the Employment of Persons with Disabilities regulates a whole range of diverse institutions and measures aimed at supporting persons with disabilities. From the perspective of the working conditions of persons with disabilities, these include the employment rights enshrined in Chapter 4 of the Polish Act on the Employment of Persons with Disabilities. These include, for example, special arrangements for working hours, additional breaks at work, additional leave, and special time off work (Articles 15–20 of the Polish Act on the Employment of Persons with Disabilities). A person with a disability is entitled to these employee rights from the date on which they were included in the employment of persons with disabilities pursuant to Article 2a of the Act on the Employment of Persons with Disabilities. Under this provision, a person with a disability is considered a person with a disability from the date of submission of the disability certificate to the employer. This means that, in a similar way to Slovak legislation, Polish legislation requires an assessment of the state of health and formal proof of its result to the employer.

The term ‘person with a disability’ is relatively broad. It primarily includes persons whose disability has been confirmed by an assessment classifying them into one of three degrees of disability (i.e., severe, moderate, or mild). The decisive factors for classification into the relevant degree of disability are the impact of the decline in physical functions on the ability to perform work and the degree of dependence of the person in performing social tasks (Article 4 of the Polish Act on the Employment of Persons with Disabilities). The term “person with a disability” also includes persons whose disability has been confirmed by an assessment of total or partial incapacity to perform work in accordance with specific regulations. In this context, according to the Act of December 17, 1998, on pensions and annuities from the Social Insurance Fund (Journal of Laws of 2023, item 1251 as amended), a person who, due to the deterioration of their physical functions, has completely or partially lost the ability to perform gainful activity and is unlikely to regain this ability despite retraining is considered incapable of performing work. Finally, persons whose disability was confirmed by a disabil-

ity assessment before reaching the age of 16 are also considered disabled. Such individuals are considered disabled if they have a physical or mental disability with an expected duration of more than 12 months, caused by a congenital defect, long-term illness, or physical injury, for which it is necessary to provide them with comprehensive care or assistance in meeting their basic living needs to an extent exceeding the needs of a person of their age.

Disability in European Union Law

The EU regulation prohibiting discrimination on the grounds of disability is based on primary law in Article 19 of the Treaty on the Functioning of the European Union (hereinafter: TFEU). According to Article 19(1) TFEU, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may adopt measures to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. This enabling provision was subsequently reflected in Joint Directive 2000/78/EC, which builds not only on primary European Union law, but also on a number of international community documents that are binding on all Member States.

The purpose of Directive 2000/78/EC is to establish a general framework for combating discrimination in employment and occupation on the grounds of religion or belief, disability, age or sexual orientation, with a view to putting into effect in the Member States the principle of equal treatment. Anti-discrimination EU law in relation to persons with disabilities is characterized by the fact that its application is not limited to compliance with the prohibition of discriminatory conduct, but focuses more broadly on positive measures to compensate for the disability of persons with disabilities, with a view to ensuring not only formal but also substantive equality.

Directive 2000/78/EC emphasizes in its introductory points that measures to accommodate the needs of people with disabilities in the workplace play

an important role in combating discrimination on the grounds of disability. Employers should take effective and practical measures, which could include adapting the workplace to the disability, for example, by adapting the premises or work equipment, adjusting working hours, distributing tasks, or providing training and integration opportunities. Employers should, where necessary, take appropriate measures to enable a person with a disability to enter, participate in, or advance in employment or training, unless such measures would impose a disproportionate burden on the employer. This burden will not be disproportionate if it is sufficiently offset by measures existing under the disability policy of the Member State concerned.

The concept of disability is not defined in Directive 2000/78/EC itself, nor does the Directive refer to the right of Member States to define this concept in order to determine its meaning and scope. This means that a separate and uniform EU interpretation of this concept is required, which must take into account the context and objective pursued by the relevant legislation.¹¹ Since the European Union has acceded to the United Nations Convention on the Rights of Persons with Disabilities, the provisions of that convention have been an integral part of the legal order of the European Union since its entry into force, and Directive 2000/78/EC must be interpreted as broadly as possible in accordance with that convention.¹² According to Article 1 of that Convention, persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others.¹³ The preamble

11 See further: Judgment of the Court of Justice of the European Union in Case C-327/82 (*Ekro BV Vee- en Vleeshandel v. Produktschap voor Vee en Vlees*). See also: Judgment of the Court of Justice of the European Union in Case C-323/03 (*Commission of the European Communities v. Kingdom of Spain*).

12 See: Judgment of the Court of Justice of the European Union in Joined Cases C-335/11 and C-337/11 (*HK Danmark*). The United Nations Convention on the Rights of Persons with Disabilities was approved on behalf of the Union by Council Decision 2010/48/EC of 26 November 2009 (Official Journal of the European Union L 23, 2010, p. 35).

13 This definition is contained in Article 1 of the United Nations Convention on the Rights of Persons with Disabilities, which defines the purpose of the Convention, not in Article 2, which contains individual definitions. For this reason, some authors consider whether this

to the Convention emphasizes that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others.

However, the decisive definition of the term disability can be found in the case-law of the Court of Justice. In the *Chacón Navas* case, a preliminary question was referred to the Court of Justice for a preliminary ruling on whether the general framework established by Directive 2000/78/EC to combat discrimination based on disability provides protection to a person who has been dismissed by their employer solely on the grounds of illness. In its reasoning, the Court also considered the definition of the term “disability”, establishing that this term should be understood as meaning a limitation resulting in particular from a physical, mental or psychological impairment which hinders the participation of the person concerned in professional life. In order for a particular limitation to be covered by the concept of disability, it must also be likely that this limitation will be long-term.¹⁴

The long-term nature of the health restriction and its assessment were subsequently addressed by the Court of Justice in the *Daouidi* case. In that case, the Court of Justice stated that the indications from which it may be inferred that the impairment is long-term include the fact that at the time of the allegedly discriminatory act, the incapacity of the person concerned is not precisely limited in time as regards its prospect of ending in the short term, or the fact that this incapacity for work may be significantly prolonged before the person concerned recovers. In order to verify the long-term nature of the restriction on the person’s ability to work, the national court must rely on all the objective information available to it, in particular, documents and certificates relating to

is a deliberate attempt not to define disability. For more details, see: Jiří Šamánek et al., *Antidiskriminační právo v judikatuře a praxi* [Anti-Discrimination Law in Case Law and Practice] (C.H. Beck, 2017), 32.

¹⁴ See: Judgment of the Court of Justice of the European Union in Case C-13/05 (*Sonia Chacón Navas v. Eures Colectividades SA*).

that person's condition, drawn up on the basis of current medical and scientific knowledge and data.¹⁵

Disability from the Perspective of the Relationship Between European Union Law and National Legislation

From the perspective of European Union law, several points should be made in relation to individual national regulations. Slovak and Polish legislation share common features, which allow them to be assessed together. Both legal regulations establish a formalized process for assessing disability, which results in the issuance of a formal act (decision, assessment, confirmation) declaring the existence of a disability.¹⁶ If a person's health condition is not objectified in this way and proven to the employer, that person cannot be considered a person with a disability.

In contrast, European Union law perceives the concept of disability in a material sense. European Union law does not require (and thus excludes) the existence of a disability to be linked to the issuance of a formal document. The Court of Justice has explicitly stated that the assessment of disability must be based on all available objective information, not solely on a document issued by the competent authority, which would be the only body authorized to assess the existence of a disability. For this reason, the Slovak and Polish definitions of the term "employee (or person) with a disability" (Section 40(8) of the Slovak Labor Code, Article 2a of the Act on the Employment of Persons with Disabilities) contradict the Court's conclusions on the meaning of the term "disability."

However, it should be noted here that, in addition to discrimination on the grounds of disability, Slovak law also prohibits discrimination on the grounds

¹⁵ See: Judgment of the Court of Justice of the European Union in Case C-395/15 (*Mohamed Daouidi v. Bootes Plus SL and Others*).

¹⁶ This process is also enshrined in Czech law, but for the purposes of prohibiting discrimination, it contains a specific definition of disability, in which disability is perceived as a factual condition.

of unfavorable health status (Article 1 of the Basic Principles, Section 13(2) of the Slovak Labor Code). According to the case-law of the Court of Justice, the principle of consistent interpretation of national law requires national courts to do everything within their power, taking into account the whole of national law and applying the methods of interpretation recognized by it, in order to guarantee the full effectiveness of the directive and to arrive at a solution that is consistent with the purpose pursued by the directive.¹⁷ The use of the term “adverse health condition,” which is not defined in the legal system, makes it possible to achieve the objective of Directive 2000/78/EC. We are convinced that the term “disability” can also be understood to include limitations resulting in particular from physical, mental or psychological impairments which prevent the person concerned from participating in professional life, i.e. disability within the meaning of the case-law of the Court of Justice.

As regards Polish law, although the Polish Labor Code does not contain a prohibition of discrimination on the grounds of poor health, the list of grounds for discrimination in Article 113 of the Polish Labor Code is demonstrative. It is therefore debatable whether unfavorable health status can be included among these grounds, as is (explicitly) the case in Slovak and Czech law. In any case, according to the case-law of the Court of Justice, a national court may not apply a provision of national law if the application of that provision would be contrary to the objective pursued by the directive, whereas non-application of that provision would result in the national law being in conformity with European Union law.¹⁸ In this case, it concerns the provision of Article 2a(1) of the Polish Act on the rehabilitation and employment of persons with disabilities, according to which a person with a disability is considered to be a person with a disability from the date of submission of the disability certificate to the employer (but also the provision of Section 40(8) of the Slovak

17 See: Judgment of the Court of Justice of the European Union in Case C-212/04 (*Konstantinos Adeneler and Others v. Ellinikos Organismos Galaktos (ELOG)*).

18 See: Judgment of the Court of Justice of the European Union in Case C-262/97 (*Rijksdienst voor Pensioenen v. Robert Engelbrecht*).

Labor Code, which requires the recognition of disability and the submission of a disability pension decision to the employer).

In this context, the question arises as to whether a distinction should be made between two meanings of the term “disability” in national legislation (both Slovak and Polish). It is clear that in cases falling within the scope of European Union anti-discrimination law, it is necessary to proceed on the basis of the concept of disability as defined in the case-law of the Court of Justice. However, it is debatable how to proceed in other cases (i.e., outside the scope of European Union law). In the literature, we encounter the view that the case-law of the Court of Justice defines the concept of a person with a disability for the purposes of prohibiting discrimination.¹⁹ This could suggest that in other cases, the concept of disability should be based on Section 40(8) of the Slovak Labor Code or Article 2a(1) of the Polish Act on the Employment of Persons with Disabilities.

Two comments should be made on this issue. First, as we have repeatedly emphasized, the prohibition of discrimination cannot be understood merely as formal compliance with equal treatment in all circumstances, but also as a requirement that persons in unequal situations be treated differently. National legislation on the status of employees with disabilities therefore falls within the scope of European Union law, not only as regards the principle of equal treatment in the formal sense, but also (and above all) in terms of reasonable accommodation to enable a person with a disability to enter, participate in or advance in employment or to undergo vocational training (see Article 5 of Directive 2000/78/EC). It follows from the above that the scope of European Union anti-discrimination law is relatively broad when it comes to the protection of persons with disabilities. For example, the Court of Justice has ruled that Article 5 of Directive 2000/78/EC must be interpreted as meaning that a reduction in working hours may also constitute one of the reasonable accommodation measures referred to in that article.²⁰ Furthermore, EU law covers

¹⁹ See: Helena Barancova et al., *Zákoník práce* [Labor Code] (C.H. Beck, 2019), 436.

²⁰ See further: Judgment of the Court of Justice of the European Union in joined cases C-335/11 and C-337/11 (*HK Danmark*).

not only the protection of persons who are themselves disabled, but also the protection of persons caring for children with disabilities.²¹ It could even be argued that it is difficult to find cases that fall outside the scope of European Union law (if we disregard national social security systems, which are excluded from the scope of Directive 2000/78/EC, see below). Secondly, if we identify such cases, the general principle of interpretation of law is that if the legislator has used the same terms in a legal provision, he or she also meant the same content. A rational legislator uses terms with a uniform meaning. There must be serious reasons for assigning two different meanings to one term.²²

In conclusion, with regard to Slovak and Polish legislation, it may be added that the above-mentioned principles concerning the relationship between European Union law and national law also apply vice versa. In the Ruiz Conejero case, the Court of Justice explicitly stated that the fact that a person has been recognized as a person with a disability under national law does not automatically mean that they are a person with a disability within the meaning of Directive 2000/78/EC.²³ Disability as a concept of European Union law and as a concept of national law may therefore be two different concepts. We note in passing that the Court of Justice did not state in the Ruiz Conejero case that European Union law precludes the adoption of a specific national definition of a person with a disability. It must be respected that Member States have the right to determine the specific meaning of this concept in cases that fall outside the scope of European Union law (e.g., national social security systems).²⁴

21 See further: Judgment of the Court of Justice of the European Union in Case C-303/06 (*S. Coleman v. Attridge Law and Steve Law*).

22 See: Filip Melzer, *Metodologie nalézání práva* [Methodology of Finding Law] (C.H. Beck, 2011), 93.

23 See: Judgment of the Court of Justice of the European Union in Case C-270/16 (*Carlos Enrique Ruiz Conejero v. Ferroservicios Auxiliares SA and Ministerio Fiscal*).

24 According to Article 3(3) of Directive 2000/78/EC, this Directive does not apply to any benefits provided by public or similar schemes, including public social security or social protection schemes. Member States may therefore establish, for example, their own method of assessing disability as a prerequisite for entitlement to a disability pension (or other benefits), which is the primary objective of legislation on the material security of employees (e.g., the Slovak Social Insurance Act). See also: Jana Žul'ová and Monika Minčíčová, *Posudzovanie zdravot-*

From the perspective of European Union law, the Czech legal framework is more favorable than the Slovak and Polish legal frameworks. Czech legislation contains a specific definition of disability (Section 5(6) of the Czech Anti-Discrimination Act), which is based on the principles described by the Court of Justice in its case law. For this reason, there is no need for a conforming interpretation of national law or to refuse to apply the relevant provision of national law. Nevertheless, as we have already mentioned, in Czech law, a distinction must be made between the contexts in which the term “disability” is used. Incorrect identification of this context may ultimately result in the interpretation of national (Czech) law being contrary to European Union law.

An example of this problem is the provision in Section 103(5) of the Czech Labor Code, according to which an employer is obliged to provide, at its own expense, technical and organizational measures for employees who are persons with disabilities, in particular the necessary adjustment of working conditions, workplace adjustments, job reservations, training or instruction for these employees, and improving their qualifications in the performance of their regular employment. The question arises as to how the term “person with a disability” should be interpreted in this case, since the provision in question does not refer to the Czech Anti-Discrimination Act or the Czech Employment Act. The professional literature tends to take the view that for these purposes, the definition of a person with a disability under Section 67(2) of the Czech Employment Act should be used.²⁵ We disagree with this view, because according to Section 3(2) of the Czech Anti-Discrimination Act, indirect discrimination on the grounds of disability also entails refusing or failing to take reasonable measures to enable a person with a disability to have access to a particular job, to perform work activities, or to be promoted or otherwise advanced in employment. The provisions of Section 103(5) of the Czech Labor Code and Section 3(2) of the

nej a psychickej spôsobilosti na prácu (v podmienkach Slovenskej republiky) [Assessment of Physical and Mental Fitness for Work (in the Slovak Republic)] (Leges, 2021), 24–25.

25 See, in more detail: Miroslav Bělina et al., *Zákoník práce* [Labor Code] (C.H. Beck, 2015), 616 and 991. See also: Pichrt et al., *Zákoník práce*, 692.

Czech Anti-Discrimination Act are also transpositions of Article 5 of Directive 2000/78/EC. The obligation to take reasonable measures therefore applies to persons with disabilities under Section 5(6) of the Czech Anti-Discrimination Act, in accordance with the case-law of the Court of Justice.

Conclusion

Legal protection for persons with disabilities is clearly present in the Slovak, Czech, and Polish legal systems. The starting points and objectives of this protection are common to all three cases, but each country approaches them using different methods. While in the Slovak Republic the regulation of working conditions for employees with disabilities is relatively broadly elaborated in the Slovak Labor Code, the Czech Labor Code regulates this issue only in general terms. The Polish Labor Code focuses on comprehensive regulation of the principle of equal treatment, while the employment of persons with disabilities is subject to a separate Polish law on the employment of persons with disabilities.

The term “disability” is defined in all three legal regulations, but the approaches of the individual countries differ. The differences are not only in the sources of law that contain the individual definitions but also in their content. Slovak and Polish legislation establish a formalized process for assessing disability, which results in the issuance of a document declaring the existence of a disability. Czech legislation also provides for this process, but it additionally contains a specific definition of disability for the purposes of prohibiting discrimination.

From the perspective of European Union law, the definition of disability in individual Member States is problematic. In the Slovak and Polish legal systems, the emerging contradictions need to be overcome by a Euro-compliant interpretation of national law or by rejecting the relevant provision of national law that conflicts with European Union law. In the Czech legal system, which contains a specific definition of disability for the purposes of prohibiting dis-

crimination, the problem remains of correctly identifying the legal context in which the term “disability” is used.

The results of the comparison indicate that, although all three countries have taken significant measures to protect persons with disabilities, differences remain that may cause difficulties in application. In particular, the requirement for a formal act in Slovak and Polish legislation is contrary to the substantive understanding of the concept of disability as interpreted by the Court of Justice of the European Union. In the future, it will therefore be necessary for national courts and legislators to take greater account of the factual circumstances and practical consequences of health limitations.

At the same time, legislation alone is not sufficient without its consistent implementation. The effectiveness of anti-discrimination mechanisms depends on the active approach of employers, the functioning of supervisory institutions, and the willingness of courts to enforce a Euro-compliant interpretation. At the European level, it can be expected that the case-law of the Court of Justice will continue to play a key role in harmonizing different national approaches.

The protection of persons with disabilities thus remains an open and dynamic area that will require not only legislative innovation but also social change in the understanding of inclusion. The challenge for the coming years is therefore not only to achieve formal equality, but also to ensure material equality, which will enable persons with disabilities to participate fully in working life and thus in society as a whole.

References

- Barancová, Helena et al. *Zákoník práce* [Labor Code]. C.H. Beck, 2019.
- Barinková, Milena. “Persons with Disabilities and the Pitfalls of Their Comprehensibility in Legal Terminology.” *Studia Iuridica Cassoviensia* 6, no. 1 (2018): 89–98.

- Bělina, Miroslav et al. *Zákoník práce* [Labor Code]. C.H. Beck, 2015.
- Hůrka, Petr. *Zákoník práce. Komentář* [Labor Code: Commentary]. Wolters Kluwer, 2020.
- Melzer, Filip. *Metodologie nalézání práva* [Methodology of Finding Law]. C.H. Beck, 2011.
- Pichrt, Jan et al. *Zákoník práce. Zákon o kolektivním vyjednávání* [Labor Code: Collective Bargaining Act]. Wolters Kluwer, 2017.
- Sabján, Nikolas, and Michal Cenkner. *Výklad pojmu iné postavenie z pohľadu zákazu diskriminácie v judikatúre súdov* [Interpretation of the Term “Other Status” from the Perspective of the Prohibition of Discrimination in Court Case Law]. Wolters Kluwer, 2018.
- Šamánek, Jiří, Eva Nehudková, Petr Polák, Marína Urbániková, and Lucie Obrovská. *Antidiskriminační právo v judikatuře a praxi* [Anti-Discrimination Law in Case Law and Practice]. C.H. Beck, 2017.
- Štangová, Věra. “The Relationship between Social Security Law and Labor Law.” *The Lawyer Quarterly* 7, no. 4 (2017): 255–68.
- Švec, Marek et al. *Zákoník práce / Zákon o kolektivnom vyjednaní: Komentár* [Labor Code / Collective Bargaining Act: Commentary], vol. 1. Wolters Kluwer, 2019.
- Žuľová, Jana, and Monika Minčíčová. *Posudzovanie zdravotnej a psychickej spôsobilosti na prácu (v podmienkach Slovenskej republiky)* [Assessment of Physical and Mental Fitness for Work (in the Slovak Republic)]. Leges, 2021.

Judgments

- Judgment of the Regional Court in Banská Bystrica of July 23, 2014, ref. no. 15 CoPr 5/2014.
- Judgment of the Regional Court in Trnava of January 30, 2018, ref. no. 10 CoPr 4/2017.
- Judgment of the Supreme Court of the Czech Republic of 19 March 1997, ref. no. 2 Cdon 475/96.

Judgment of the Court of Justice of the European Union in joined Cases C-335/11 and C-337/11 (*HK Danmark*).

Judgment of the Court of Justice of the European Union in Case C-13/05 (*Sonia Chacón Navas v. Eurest Colectividades SA*).

Judgment of the Court of Justice of the European Union in Case C-212/04 (*Konstantinos Adeneler and Others v. Ellinikos Organismos Galaktos (ELOG)*).

Judgment of the Court of Justice of the European Union in Case C-262/97 (*Rijksdienst voor Pensioenen v. Robert Engelbrecht*).

Judgment of the Court of Justice of the European Union in Case C-270/16 (*Carlos Enrique Ruiz Conejero v. Ferroservicios Auxiliares SA and Ministerio Fiscal*).

Judgment of the Court of Justice of the European Union in Case C-303/06 (*S. Coleman v. Attridge Law and Steve Law*).

Judgment of the Court of Justice of the European Union in Case C-327/82 (*Ekro BV Vee- en Vleeshandel v Produktschap voor Vee en Vlees*).

Judgment of the Court of Justice of the European Union in Case C-395/15 (*Mohamed Daouidi v. Bootes Plus SL and Others*).

Judgment of the Court of Justice of the European Union in Case C-323/03 (*Commission of the European Communities v. Kingdom of Spain*).

Legal Acts

Resolution of the Supreme Court of the Slovak Republic of June 30, 2009, ref. no. 4 Cdo 122/2008.

Resolution of the Constitutional Court of the Slovak Republic of 15 April 2011, ref. no. IV. ÚS 156/2011.

United Nations Convention on the Rights of Persons with Disabilities.

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

Act No. 155/1995 Coll., on pension insurance, as amended.

Act No. 262/2006 Coll., Labor Code, as amended.

Act No. 311/2001 Coll. Labor Code, as amended.

Act No. 365/2004 Coll. on equal treatment in certain areas and on protection against discrimination and on amendments to certain acts (Anti-Discrimination Act), as amended.

Act No. 461/2003 Coll. on social insurance, as amended.

Act No. 198/2009 Coll. on equal treatment and legal means of protection against discrimination and on amendments to certain acts (Anti-Discrimination Act), as amended.

Act No. 435/2004 Coll. on employment, as amended.

Act of June 26, 1974 – Labor Code (Journal of Laws of 2023, item 1465).

Act of December 3, 2010, on the implementation of certain European Union regulations concerning equal treatment (Journal of Laws of 2023, item 970).

Act of December 17, 1998 on pensions and annuities from the Social Insurance Fund (Journal of Laws of 2023, item 1251, as amended).

Act of August 27, 1997 on professional and social rehabilitation and employment of persons with disabilities (Journal of Laws of 2023, item 100 as amended).

Treaty on the Functioning of the European Union.