

# **MATERNITY AND PARENTAL LEAVE: PRESENT AND PERSPECTIVES OF LEGAL TOOLS FOR HARMONIZING PROFESSIONAL AND FAMILY LIFE IN SLOVAKIA<sup>26</sup>**

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## **Abstract**

The harmony of professional and family life is a permanent agenda item of various institutions of the European Union. Creating conditions for handling work obligations of employed parents without threatening their ability to fulfil their family obligations falls in the obligations of the member states based on minimum European legal standards. This article analyzes the effects of specific tools of employment legislation in Slovakia that aids parents of small children to combine the child care with the demands of wage labour. The results are based on an assessment of development of the current legislation, which reflects society's priorities for the realization of economic and social policy, and which stem from the evaluation of the discussion in professional literature. Emphasis is also placed on reflections of perspectives and the need of redefining the legal conditions of the maternity and parental leave. The final outputs of this paper are de lege ferenda proposals in relation to the introduction of paternity leave and adoption leave.

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**Keywords:** Harmony of professional and family life, maternity and parental leave, paternity and adoption leave, the rights of male and female employees concerning childbirth and child care

## **Introduction**

The research project examines several proposals aimed at creating a legal framework to improve social rights and working conditions among individual categories of employed wage labourers. The emphasis in this paper is placed on the social status of employed women and men taking care

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of children at the same time. The working environment, more than in the past, interferes with free time, which affects the personal life of the employee. His family frequently feels and experiences his workload and stress; demands for better performance at work are met at the expense of childcare, partner care, and the discomfort in the family results in lower job performance.

The symbiosis of work and family has a specific meaning in the Slovak environment in relation to the gender equality, since the historically rooted stereotype of separating gender roles to men and women still persists. The burden of caring for small children rests mainly with women alongside the obligations of their job. The willingness of mothers to return to work after parental leave is high, but they encounter various barriers, which frequently cause fail to return to work. Therefore, they choose to link successive parental leaves and they leave the labour market for a long term (Žofčinová, 2015). However, in general, the dual income model of a family with women working full time persists. The economical shortage in securing material conditions in young families is the main reason for voluntary or forced delay of family formation to a later date. However, there are already noticeable changes in men's willingness to increase their share in childcare through the use of available legal means e.g. maternity and parental leave. Deeply rooted cultural traditions of family organization and behaviour patterns are gradually weakening. Working mothers and stay at home fathers are not as rare and absurd situation today in Slovakia as they were only twenty years ago, but the occurrence of such is still sporadic.

The need to facilitate the parallel performance of occupational duties and the provision of education and care of children or other family members is supported in the labour legislation through legal provisions providing employees with the time off from the work, in which the employer is legally bound to excuse their work absence. In this paper, we present the legal frameworks supporting maternity and parental leave, but simultaneously, we analyze the degree of quality of the national legislation after the split of Czechoslovakia, and moreover, we consider future directions of these frameworks with regard to the minimum European standards and the development of case-law.

### **Social legislation and support of work-life balance**

The means for balancing the professional and family life are regulated through labour and social legislation, but their expansion above the minimum standards is the subject of an agreement between social partners and subject to social policy programs of employers (Tkáč 2004). Several of them are formulated as social rights of employees guaranteed by the Constitution of the Slovak republic (Constitutional Act No. 460/1992 Coll.).

If the employee exercises them, the employer is legally obliged to respect the exercise of his or her right. In addition to flexible forms of work organisations (home office, telework, job sharing), the Slovak Labour Code recognizes (Act No. 311/2001 Coll., as amended) predominantly the basic need of a woman to maternity leave related to childbirth and childcare (§ 166 Sec. 1 of the Labour Code), as well as the right of woman and men to parental leave (§ 166 Sec. 2 of the Labour Code).

**Maternity leave** is legally constructed in Slovakia as a right of a woman. The Labour Code does not require at least two weeks of mandatory leave as is required by the minimum legislative standards of the European Union. Women are not legally required to take maternity leave in contrast to a number of other countries (e.g. Sweden, Luxembourg, Belgium, Finland and others).<sup>27</sup> However, if a woman exercises her maternity leave, typically six to eight weeks before the childbirth, she cannot return to work sooner than 6 weeks after the childbirth. In the scientific professional literature in Slovakia as well as the Czech Republic, where the legal regulation of maternity leave after the split of Czechoslovakia is similar, the suitability of introducing a mandatory maternity leave is being discussed (Galvas, 2004, Barinková, 2007, Halířová, 2011).

The Slovak Labour Code insofar does not explicitly prohibit women returning to work shortly after the childbirth and does not require the employer not to assign the work to this mother. Employers are only obligated to do so only in case if the woman opts to exercise her right to maternity leave period, in the period of fourteen weeks, six of which must be after the birth as stated above. If a woman in Slovakia decides not to exercise her right to maternity leave and due to childbirth requests the use of other paid/unpaid leave, the employer does not have a legal obligation to not assign work to her in the six month period after childbirth.

The introduction of new legal obligations for subjects in private legal relations is tied to the tendency to understand these obligations as authoritative government interference in the autonomous will of individuals. In the given case, a legitimate reason was the increased health protection of working women in connection to the termination of pregnancy and childbirth that is exhausting physical and mental powers of a mother. Legal establishment of the mandatory maternity leave in multiple countries stems from the objective to protect the health of a woman, which is fully acceptable.

The basic length of maternity leave in Slovakia is 34 weeks. It increases to 37 weeks for single mothers and to 43 weeks for women who

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<sup>27</sup>The report on child-based leave policies in OECD countries is available at: <http://www.cepr.net/publications/reports/plp?highlight=WyJwYXJlbnRhbCIsImx1YXZlIiwibGVhdmUnIiwibGVhdmUncyIsInBhcmVudGFsIGx1YXZlIi0=>

gave birth to multiple children simultaneously. Such increase of the amount of maternity leave is referred to as “additional maternity leave“ in some states, which (contrary to Slovakia) also extends to include cases of premature childbirth, hospitalization of the child after birth, and the birth of a child with a disability. These situations cause immense stress to the mother, which should be compensated and mitigated by additional leave.

The minimum length of maternity leave, when exercised by woman is 14 weeks. Maternity leave is financially covered by health insurance, in the event the woman has fulfilled the conditions to claim the maternity leave, in the amount of 65% of the accounting base (gross income of the mother). Historically the benefit was paid at 55% of gross income, later raised to 60%. In 2010, the right oriented Slovak government enacted legislation to increase the paid maternity benefit by 5% annually from the 55% of the net wage up to 75% of the net wage of the mother reached prior to the commence of the maternity leave. With the ascent of the left oriented government, paradoxically, the given tendency had slow down, with the exception of 2014, when the amount of the benefit reached 65%. The interest of the state to increase the maternity benefit does not appear to be of a systematic and deliberate procedure. The present, intermittent, modifications of the benefit increase have been reasoned as to a lack of financial resources of health insurers (as a part of social insurance). However, at the time of drafting this paper, the government is proclaiming a further increase in maternity benefits starting in 2016.<sup>28</sup>

*Parental leave* has two meanings in Slovak labour legislation. The same term describes two different legal situations relating to the two types of a parental leave. Each has its own place in the Labour Code, the different function they perform, but confusion arises as the same term is used in two contexts. Often, the exact two types of parental leave can only be precisely differentiated by legal professionals.

The first type is designed for a man providing that he takes care of a newly born child; he is entitled to the same duration of leave since the childbirth (as to the mother). Financial coverage is dependent on whether the mother of the child is on maternity leave and takes the maternity benefit or parental benefit. Therefore, in the event the mother takes the maternity benefit or parental benefit, the man cannot claim the benefit. If the mother does not take the benefit, the father can claim the benefit from the health insurance, which is counter-intuitively (in case of a man) also referred to as a “maternity benefit“. The most frequent is the situation where the mother does not use her entire maternity leave, and the father takes over the care of the

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<sup>28</sup> In these last days the Slovak government has submitted a proposal to increase the maternity benefit up to 70 % of the wage of mothers.

child with full rights to the maternity benefit, and takes the benefit for 28 weeks after taking the child into his care.

The second meaning of the parental leave includes woman as well as men to its extent and allows parents to take time off for the purpose of extended care for their child. The parental leave can be taken commencing on the day when the child reaches three years of age (six years of age if the child suffers from long-term unfavourable health conditions requiring individual care). The Act allows for an agreement between the employee and the employer on taking parental leave no longer than the day the child reaches five years of age (eight in the case of long-term unfavourable health conditions). The agreement does not prolong the assigned amount of leave, it only allows the leave to be used in parts, no longer than until the day the child reaches five (eight) years of age.

Parental leave rights in Slovakia are not provided by law for the parents of same sex, which is related to the prudent attitude of the majority of society towards same sex marriage or registered partnerships.

The pecuniary compensation during the parental leave is covered by the resources of the state budget and belongs only to one of the parents in the set amount of 203.20 Euro per month. As it seems, the period of parental leave in Slovakia means a great sacrifice of both parents because the financial situation of the family abruptly decreases during this period. This lower level of parental leave benefits may place pressure on the financial situation of the family. Young families are found in many cases on the verge of the poverty line, and experience the period of babyhood with financial and spiritual restrictions. Critical attitudes have been dominating for a long time in the society towards the ignorance of a more significant financial support of parents on family leave. The situation is complicated by a lack of job opportunities for mothers with small children and insufficient capacity of existing childcare facilities. In the 1990's, during the transition to a market economy, a period marked by high increasing unemployment, the early childhood education facilities (kindergartens, day-care centres – most of them established directly by employers), as historically proven service for employed parents, were restricted or even closed. Their numerical deficit is still a serious barrier for achieving work-life balance. Their revitalization has still not taken place, even though the current government is adopting measures for their repair. Mothers in many jobs could and would want to work in flexible work environments, e.g. from home, while taking care of children. However, most employers do not sufficiently allow for mutually positive flexible working arrangements insofar and the government support and incentive for the development of these arrangements is weak. Slovakia has a great opportunity to get inspired by other states, where the offer and

development of flexible working arrangements are tied to company's tax deductions.

Mothers are therefore frequently forced to use the whole duration of parental leave, thus far without a perspective for a change of her financial coverage. Such situation can reduce their motivation to return to work; while the long-term removal from the working environment can cause professional atrophy, even the loss of qualification, as well as to weaken their self-confidence in handling the delayed return to work. There is an apparent need to search for more attractive conditions of parental leave or perhaps new forms thereof, which would support a smooth transition from fulltime childcare to resuming full time workforce. Inspiration can be drawn from models of parental (or maternity) leave in countries, where the mother can choose a quicker, thus shorter model of leave with higher financial compensation, or a slower and longer with lower financial benefit. Women would also welcome a moderate transition back to the workplace during parental leave or the present work performance in the part-time form or other form of lower extent for their employer, neither of which is allowed by current legislation.

### **Future development tendencies in parental leave**

We believe that it is not desirable to further extend the parental leave in the Slovak republic. Its long duration (up to three or six years of age of the child), can cause difficulties for women in their return to work. It is more suitable to consider the extension of the age limit of the child from five to six years until which time the parental leave can be split and used. Children at the age of six years usually start the first year of compulsory education. In our *de lege feranda* opinion, an agreement between the parent and the employer for splitting the parental leave up to the fifth (eighth) birthday of the child should be replaced in the Act with the right of the employee to do so unilaterally, while maintaining the notification period of the employer to the minimum of one month in advance.

In May of this year, the European commission issued the *Council recommendation, which relates to the national program of reforms in Slovakia for the year 2015, and by which the opinion of the Council on the program for stability of Slovakia for the year 2015 is being submitted* (COM 2015). It notes the absence of progress in the employment of women in comparison with the average of the EU, which is a consequence of insufficient quality and financial affordable childcare services, as well as the relatively long duration of the parental leave.<sup>29</sup>

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<sup>29</sup>Available at:[http://ec.europa.eu/europe2020/pdf/csr2015/csr2015\\_slovakia\\_sk.pdf](http://ec.europa.eu/europe2020/pdf/csr2015/csr2015_slovakia_sk.pdf)

The national labour legislation reflects legal standards of the directive 92/85/EHS on the Protection of mothers regarding the maternity leave, and directive 2010/18/EU on “Revised framework agreement on parental leave „regarding the parental leave. For several years, talks have been taking place between the European Commission, the EU Council of Ministers, and the European parliament about a new directive on the maternity leave. Due to reluctance of the Council and roadblocks to further progress, the European Commission withdrew the proposal in July 2015, saying that it will present a more complex framework for the improvement of the protection of mothers in the next year, easing their re-entry to the labour market and improving the work-life balance. The main reasons for failure of the new directive was the opposition of several states towards extending the minimum maternity leave from 14 to 20 weeks, introduction a 2 week paternity leave, and especially mandating financial compensation during both leaves in the amount of 100% of the income. While in some countries there is full wage compensation being disbursed, elsewhere (e.g. Slovenia) this amount has decreased to 90%.

The reactions of several MEPs and European organizations for the protection of women’s rights (e.g. EWL – European Women’s Lobby) imply the view that there is a deconstruction of rights of working women and threats to gender equality from European institutions.<sup>30</sup> Europe is facing the threat of a demographic crisis that will have dramatic negative impact on the labour market, and the entire social welfare framework and pension systems are in threat. As pointed out by some studies, a serious issue of the social policy in Slovakia is the maintenance of the relation between flexicurity and social security on the labour markets. (Janičová 2015 and Švec 2012)

Prudent and future perspective measures, including the enhancement of work and family conditions for parents of little children and the system of benefits, which would not exclude them for extended periods of time from the labour market, are motivational measures for women to return to their jobs. On the other hand, approximately a third of the EU member states consider the proposal for amending the directive on the protection of mothers as unacceptable, because the subject of the amendment falls within the national competences of the arrangement of social systems.

Unwillingness to increase the maternity benefit and the recent decrease of such benefits in Slovenia are both justified by the economic crisis and the need to introduce austerity measures. The same arguments can be heard in Slovakia in regard to implementing the *paternity leave*. Slovakia is part of a group of one quarter of EU member states, which have not introduced it yet. Employed fathers are not entitled to specific time off after

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<sup>30</sup>Available at:[www.euractiv.sk/verzia-pre-tlac/clanok/je-europska-smernica-o-materskej-dovolenke-zbytocna-byrokracia-022669#sthash.l6BsOzU8.dpuf](http://www.euractiv.sk/verzia-pre-tlac/clanok/je-europska-smernica-o-materskej-dovolenke-zbytocna-byrokracia-022669#sthash.l6BsOzU8.dpuf)  
<http://womenlobby.org/spip.php?article6775&lang=en>

the birth of their child to help the mother of the child during the first days after the birth. The Labour Code allows the employed fathers only to accompany the women to the hospital and back home from the hospital within their time-off from the work.

A society-wide discussion on the optimum setting and form of maternity and paternity leave has been lacking in Slovakia for a long time. In February 2015 MPs of the opposition political party, Christian Democratic Movement, have submitted a proposal to the parliament to introduce a one week paternity leave, with wage compensation by the employer, which the father may use within one month after the childbirth. However, the Slovak parliament rejected the proposal for the paternity leave and the sponsors subsequently withdrew the proposal. The proposed paternity leave was designed only for legally married parents and not to the father in other partnership relation to the mother. However, this limited restriction of the personal right to paternity leave was illogical. It undermines laws establishing similar treatment in employment relations regardless of marital status. It is equally unacceptable to discriminate against employees because of their performance of any obligations towards the family. Studies point to a low acceptance of a broader spectrum of models of family behaviour by Slovak legislature when considering legal tools work-life balance (Žul'ová 2013, 2014). According to the decision of the European Court for Human Rights (ECHR) in the case of Kozak v. Poland, the protection of family life under Article 8 of the European Convention also applies to same sex couples. The court confirmed that family established by marriage is not the exclusive form of family life.<sup>31</sup>

*On a similar line, the Slovak Labour Code does not regulate the adoption leave, also referred to as foster leave, as an individual type of parental leave.* However, parents who legally adopted or to which a child has been entrusted, based on the decision of the court for later adoption, are also entitled to use the institute of maternity leave and/or parental leave until reaching three/six years of age. The leave for adoption, which has been introduced in several countries, e.g. in Netherlands, is designed to meet the needs of future adoptive parents and the preparation for adoption of the parents themselves. These preparations may include visiting the appropriate authorities in the adoption process, cooperating with the authorities in verifying whether the conditions for the adoption have been met.

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<sup>31</sup>Judgment of the ECHR of 2. March 2010, No. 13102/02, in case Kozak v. Poland, Article 98



## Conclusion

The harmonization of work and family life in the Slovak republic would benefit from equalizing the legal importance of childcare while performing the job and thus reinforce the responsibility of both parents for the family. The elimination of economic dependence of women upon men, who are still viewed as breadwinners, and the abandonment of dogmatic patterns of their status and roles in the family, requires the shift in values and beliefs, the modification of cultural habits, not only in the families themselves, but in the systematic approach of the state and the entire society. The priority of state social policy should be the future healthy and well-educated young generation and the support for functional, economically self-sufficient and independent family. Effective solutions and their suitable accumulation (better working conditions, less onerous tax burdens, improved social services for families with children, education and transportation) would make it easier for the parents to meet their parental duties.

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