

PARENTAL LEAVES AS A FORM OF PROTECTION OF FAMILY LIFE UNDER THE LABOUR LAW IN POLAND AND SELECTED EUROPEAN UNION MEMBER STATES

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1. INTRODUCTION

The subject of this paper concerns broadly understood paid, both maternity and paternity, leaves granted due to the need of providing personal care to the child, as well as supplementary leaves related to parenthood, excluding childcare (child-raising) leaves, and their impact on fertility ratios and on attaining the balance between work and family life.

First, it should be emphasized that in many EU member states the concept of a parental leave is often associated with the leave available to mothers/fathers for providing a long-term care to their children following the initial maternity/paternity leave.¹ The expression “parental leave” does not define the parent’s gender and means the time off work during which the employee is protected against the termination of an employment contract due to providing care to his/her child. In case of female employees, the parental leave is usually a continuation of their maternity leave. The leaves granted for the need of providing personal care to the child include mostly maternity, paternity and childcare leaves.

Numerous studies confirm the fact that family gives sense to our life and for the majority of us is the most significant value. For instance, according to a survey conducted by Centrum Badania Opinii, an opinion poll agency, in the period 2–9 March 2017 on a representative sample of 1,020 randomly selected adult Poles,

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¹ R. Ray, J.C. Gornick et al., *Parental leave policies in 21 countries*, Washington DC 2008.

over a half of the respondents (54%) regards family and its well-being (48%) as the most important value. In the view of one-seventh of the surveyed Poles (14%), children or grandchildren give the meaning to life.²

In *Diagnoza Społeczna* survey of 2013, the respondents were asked which of the family-friendly solutions were, in their opinion, most important. Women indicated mostly flexible working time (56.9%), better possibilities of childcare provided outside home for children up to seven years of age (37.1%), the possibility of performing some work from home (24.1%), and longer maternity leave (24%).³

Poland has been recording a fall in the births number since 1984, while the deaths rates have remained almost unchanged. The years 1991–2000 alone noted a slight, 0.48% natural increase.⁴ The decrease in the population in Poland is also largely influenced by the deficit of migration.⁵ Based on the Central Statistical Office of Poland (GUS) study, all scenarios envisage a gradual fall in the population in Poland. In extreme scenarios, the population of the country in 2050 is estimated to account for 32.1 million to 36.3 million.⁶

The popularisation of the negative demographic forecasts for Poland and the societal and economic consequences of the deep birth fall and the migration deficit

² *Sens życia – wczoraj i dziś, Komunikat z Badań Nr 41/2017* [Sense of life – the past and present. Communication on research No. 41/2017], <http://www.cbos.pl/PL/publikacje/raporty.php>; accessed on 15 March 2017.

³ I. Kotowska (ed.), *Diagnoza Społeczna 2013 – Rynek pracy i wykluczenie społeczne w kontekście percepcji Polaków* [Social Diagnosis research 2013: Labour market and social exclusion as perceived by Poles], Warsaw 2013, p. 42.

⁴ Poland since 1989 has been experiencing a deep fall in birth rates; see, Z. Strzelecki (ed.), *Sytuacja demograficzna Polski. Raport GUS 2010–2011* [Demographic situation of Poland. GUS report of 2010–2011], http://stat.gov.pl/cps/rde/xbr/bip/BIP_raport_2010-2011.pdf; accessed on 15 March 2017.

⁵ It is assumed that the fertility rate ensuring generation replacement is around 2.1. In Poland, this rate stands at around 1.3 births per woman, which places the country at the end of the world rank (in 2015 Poland was ranked 216 out of 224 surveyed countries). It is forecasted that if the current trend is maintained, the population in Poland will decrease to 32 million before 2060 from the present 39 million. The population structure will also change as there will be more people in the retirement age, whereas the number of working-age people will fall. One-third of the population will work to provide for the remaining two-thirds (children and pensioners) (cf. the latest data on the fertility level in Poland in the article: *Najnowsze dane. Poziom dzietności w Polsce dramatycznie niski* [Latest data. Fertility rates in Poland are dramatically low], *Wprost*, <https://www.wprost.pl/523361/Najnowsze-dane-Poziom-dzietnosci-w-Polsce-dramatycznie-niski>; accessed on 15 December 2016.

The permanent emigration balance (for a permanent stay) has increased over the recent years and in 2013 reached almost -20,000; in 2014 the permanent migration balance was estimated at -15,000. The highest permanent emigration values were recorded in 2006 and 2007 (-36,000 and -20,500, respectively) (cf. *Podstawowe informacje o rozwoju demograficznym Polski do 2014 roku* [Basic information on demographic development in Poland until 2014], GUS information notice, p. 2, http://stat.gov.pl/files/gfx/portalinformacyjny/pl/defaultaktualnosci/5468/12/5/1/podstawowe_informacje_o_rozwoju_demograficznym_polski_do_2014.pdf; accessed on 15 March 2017.

⁶ See, Central Statistical Office (2014), *Population forecast for 2014–2050*, file:///C:/Users/Biuuro/Downloads/prognoza_ludnosci_na_lata____2014_-_2050.pdf, pp. 146–156.

gave rise to the increased interest in legal (yet not only) solutions which would contribute to the reversal of those disadvantageous trends.⁷

The labour law solutions which are aimed, among others, at making it easier for employees to reconcile their work with family life include a wide range of parental leaves. Those leaves allow first of all discontinuation of work in order to provide personal care to children without termination of the employment relationship. Maternity leaves make it possible to mothers to recover after giving birth. The allowances paid during such leaves provide sufficiently for mothers over the period of taking care of their children. Parental leaves are also part of the state's family-friendly policy, which is an attempt at increasing the fertility rate.⁸

The necessity to ensure that employees have a defined length of parental leaves and financial support during them and to protect the continuity of their employment over the leave and after coming back to work results not only from demographic data but also from international and EU legal standards and from the constitutional protection of family, maternity and parenthood.⁹

Children benefit the society and this is another reason why statutory solutions such as parental leaves are introduced. Those relieve parents of the financial burden and thus some costs of child care and child-raising are also shared by the society, including employers. It should be noted that in recent years, the OECD and the European Union propagate the ideas of children seen as "social investment". Early childcare supported by the state is one of the significant foundations of "social investment states".¹⁰

In recent years the role of women has evolved from "carer of hearth and home", through "co-breadwinner" up to often the main or the only "income provider".¹¹ The increase in women's activity and the widespread family model where the living is earned by both spouses are the socio-economic phenomena which have established in the cultural consciousness in Poland and Europe. At present, income earned by women is ever similar to, and at times even higher than, men's income. Therefore, women's labour is often not supplementary but of equal rank to men's work. Women's professional activity frequently is the main source of income for

⁷ M. Gładoch (ed.), *Raport o pracy* [Report on labour], Pracodawcy RP 2016, p. 57.

⁸ The value of the rate indicates the number of births per woman in the childbearing age. It is assumed that the minimum rate allowing the generation replacement ranges from 2.10 to 2.15. In Poland, in 2013 the fertility rate stood at 1.29, which places the country third from the end among all the European Union states (cf. J. Stańczak, K. Stelmach, M. Urbanowicz, *Matżeństwa oraz dzietność w Polsce* [Marriages and fertility rates in Poland], GUS, Warsaw 2016, p. 6, file://C:/Users/Biuro/Downloads/malzenstwa_i_dzietnosc_w_polsce%20(1).pdf; accessed on 15 March 2017.

⁹ See, Arts. 18 and 71 of the Constitution of the Republic of Poland of 2 April 1997, *Journal of Laws* [Dz.U.] No. 78, item 483.

¹⁰ See, K. Davaki, *Benefits of a maternity/parental leave in the EU-27*, Brussels 2010, <http://www.europarl.europa.eu/studies>; accessed on 20 March 2017.

¹¹ M. Półtorak, M. Lekston, *Work-life balance jako przestrzeń do dialogu pomiędzy pracownikiem a (odpowiedzialnym) pracodawcą* [Work-life balance as a sphere of dialogue between an employee and a (responsible) employer], p. 256, the paper available at http://www.sbc.org.pl/Content/134304/P%20C3%B3%20C5%82torak_Lekston.pdf; accessed on 10 March 2017.

family.¹² The traditional man's role as the sole breadwinner in the family may be regarded as outdated.¹³

Numerous studies prove that countries which have better adapted to the change in the traditional role performed by women in relationships, e.g. France or the Scandinavian states, report currently higher fertility rates than, for instance, Germany or Austria which favour the single breadwinner model.¹⁴

The assumption that fertility rates fall mainly due to the fact that women cannot afford staying at home to raise children and promotion of schemes which would encourage professionally active women to give up their jobs and devote themselves to raising children are not supported by evidence. Women in the 21st century, when the divorce rates are high, if faced with a choice between work and founding a family, would usually prefer to select employment. Birth rates go up when both the government and employers support families in which both parents are in employment. The probability of having a larger family increases along with the growing number of solutions which make it easier for both parents to combine the professional and family responsibilities.¹⁵

Aiming at ensuring equal rights to men and women, including in their parental responsibilities, leads to "fathers becoming co-responsible" to a larger extent, for example by allowing them to use part of the parental leave in order to take personal care of their child. As rightly claimed by M. Latos-Miłkowska, total equality of rights of fathers with those of mothers with respect to parental leaves is not entirely possible due to the fact that it is women who get pregnant and give birth.¹⁶ It is the physiological reasons that decide about the larger protection in the labour law of motherhood responsibilities than of parental roles performed by men.

¹² D. Graniewska, *Praca zawodowa kobiet a warunki życia rodzin* [Women in employment and living conditions of families], [in:] P. Błędowski (ed.), *Między transformacją a integracją: polityka społeczna wobec problemów współczesności. Księga pamiątkowa z okazji 70. urodzin Profesora Adama Kurzynowskiego*, [Between transformation and integration: Social policy and contemporary problems. Professor Adam Kurzynowski 70th birthday jubilee book], SGH, Warsaw 2004, p. 143; and B. Balcerzak-Paradowska, D. Graniewska, B. Kołaczek, J. Mirosław, *Kobiety na stanowiskach kierowniczych. Polska na tle Unii Europejskiej i OECD* [Women at managerial positions. Poland vs. the EU and OECD states], [in:] B. Balcerzak-Paradowska (ed.), *Kobiety na stanowisku kierowniczym w sektorze publicznym* [Women at managerial positions in the public sector], Instytut Pracy i Spraw Socjalnych, Warsaw 2014, p. 35.

¹³ A. Giddens, *Socjologia* [Sociology], PWN, Warsaw 2010, pp. 420–421.

¹⁴ J. Sleebos, *The Low Fertility Rates in OECD Countries*, OECD Labour Market and Social Policy Occasional Papers No. 15, 2003, p. 20; D. Coleman, *The Road to Low Fertility*, Aging Horizons No. 7, Oxford 2007, pp. 10–11; and A. Matysiak, A. Baranowska T. Słoczyński, *Kobiety i mężczyźni na rynku pracy* [Men and women on the labour market], [in:] M. Bukowski (ed.), *Zatrudnienie w Polsce 2008. Praca w cyklu życia*, [Employment in Poland 2008. Work in the lifecycle], Warsaw 2009, p. 113.

¹⁵ A. Wittenberg-Cox, A. Maitland, *Kobiety i ich wpływ na biznes. Nowa rewolucja gospodarcza*, transl. based on: *Why women mean business. Understanding the emergence of our next economic revolution*, Wolters Kluwer, Warsaw 2013, pp. 44–45.

¹⁶ M. Latos-Miłkowska, *Przemiany stosunku pracy związane z rodzicielstwem* [Changes in employment relationship related to parenthood], [in:] L. Florek, Ł. Pisarczyk (eds.), *Współczesne problemy prawa pracy i ubezpieczeń społecznych* [Contemporary labour and social security law problems], LexisNexis, Warsaw 2011, p. 223.

2. PARENTAL LEAVES AS PROVIDED FOR IN THE INTERNATIONAL AND EUROPEAN UNION LAW

The protection of motherhood and parenthood results from the numerous international and EU law standards.

The International Labour Organization (ILO) dealt with the problem of maternity leaves in its Maternity Protection Convention No. 183 (revised) of 1952.¹⁷ Article 4 stipulates the maximum period of maternity leave of not less than 14 weeks. Such leave should include at least six weeks' compulsory leave after childbirth, unless otherwise agreed at the national level by the government and the representative organizations of employers and workers.

Article 6 of the Convention No. 183 provides for financial benefits for women who are absent from work on maternity leave. Women on maternity leave are entitled to cash benefits at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living.

If under national law or practice, cash benefits paid with respect to maternity leave are based on previous earnings, the amount of such benefits may not be lower than two-thirds of the woman's previous earnings or of such of those earnings as are taken into account for the purpose of computing the benefits. When a woman does not meet the conditions to qualify for cash benefits under national laws and regulations or in any other manner consistent with national practice, she is entitled to adequate benefits out of social assistance funds, subject to the means test required for such assistance. Medical benefits are to be provided to the woman and her child, which include prenatal, childbirth and postnatal care, as well as hospitalization care when necessary.

Under Art. 8 of the ILO Convention No. 183, a woman at the end of her maternity leave is guaranteed the right to return to the same position or equivalent position paid at the same rate.

The provisions of the discussed Convention impose also on the member states the duty of counteracting discrimination by reason of maternity and of ensuring breastfeeding breaks (under Arts. 9 and 10 of the ILO Convention No. 183).

The female workers' right to paid maternity leave (or the relevant benefit from the social assistance fund) of at least 14 weeks has been also provided for in Art. 8 of the Revised European Social Charter.¹⁸

The European Union for years has undertaken steps in order to protect family life of employees, which include support for them in fulfilling parental responsibilities. The legal grounds for support and complementing of the member states' initiatives,

¹⁷ The Convention has not been ratified by Poland.

¹⁸ The Revised European Social Charter is an international treaty of 1996, a normative document of the Council of Europe, setting out social rights and freedoms in Europe. Poland is bound by the European Social Charter – the treaty of 1961. The country did not ratify 14 out of 72 paragraphs of the European Social Charter: Art. 2 §2, Art. 4 §1, Art. 6 §4, Art. 7 §1, 3 and 5, Art. 10 §3–4, Art. 13 §1 and 4, Art. 14 §1 and Art. 18 §1–3. It did not ratify two of seven absolutely binding provisions of the European Social Charter: Art. 6 §4, Art. 13 §1 and 4.

also with respect to ensuring equal opportunities for men and women on the labour market and equal treatment in employment, are provided in Art. 153 of the Treaty on the Functioning of the European Union¹⁹.

Protection of family life is one of the fundamental rights guaranteed in Art. 33 of the Charter of Fundamental Rights of the European Union of 30 March 2010,²⁰ referred to as the Charter of Fundamental Rights. In accordance with Art. 33(2) of the Charter, in order to reconcile family and professional life, everyone has the right to protection from dismissal due to reasons related to maternity and the right to paid maternity leave as well as to parental leave following birth or adoption of a child.

The above-mentioned regulation covers not only people with the employee status but “everyone”, i.e. also those who pursue activities as the self-employed. The protection of family life is guaranteed to both women and men.

The recommendation of the Council of Europe of 31 March 1992²¹ on child care includes a suggestion that the member states should develop and encourage initiatives helping women and men to balance their professional, family and upbringing responsibilities. The proposed solutions cover various childcare services, parental leaves, family-friendly options at the workplace and other types of actions supporting men’s participation in taking care of children.²²

At the beginning of the 1990s, the idea of “work-family life balance” started to be promoted as transition from equal rights of men and women on the labour market towards assisting women by creating flexible working conditions. At present, the EU policy of supporting an increase in fertility rates consists in the statutory right to maternity and parental leaves, financial benefits for working parents and for early education of all children. The promotion of gender equality has been of secondary importance, and the EU policy is focused on ensuring childcare facilities rather than on longer child-raising leaves.²³

The priority actions of the Lisbon Strategy²⁴ to stimulate economic growth and employment include, among others, the increase of total employment rate up to 70%, the female in employment rate up to 60% and of senior workers in employment rate up to 50%.²⁵ The Lisbon Strategy reviewed in 2005,²⁶ focused more on economic growth and employment, and it was concluded that if the strategy was

¹⁹ Official Journal of the European Union C 326 of 26.10.2012.

²⁰ Official Journal of the European Union, C 83/389 of 30.03.2010.

²¹ 92/241/EEC, Official Journal of the European Communities L 123 of 8.5.1992.

²² See, K. Davaki, *Benefits of a maternity/parental leave...*, p. 6.

²³ G. Pascall, J. Lewis, *Emerging gender regimes and policies for gender equality in a wider Europe*, Journal of Social Policy No. 33(3), 2004, pp. 373–394; and J. Lewis, *Work-family balance. Gender and social policy*, Edward Elgar Publishing, Cheltenham 2009.

²⁴ The action plan adopted for the European Union by the European Council at the seating in Lisbon in 2000.

²⁵ See, A. Budzyńska et al., *Strategia Lizbońska. Droga do sukcesu zjednoczonej Europy* [Lisbon Strategy. A path to the success of the united Europe], Departament Analiz Ekonomicznych i Społecznych, Urząd Komitetu Integracji Europejskiej, https://www.slaskie.pl/STRATEGIA/strat_L.pdf; accessed on 10 November 2016.

²⁶ COM(2005) 24.

to be successful, a better use should be made of a great potential of women on the labour market.

Reconciliation of work, family and private life is one of the priority areas defined by the European Commission in its "Roadmap for equality between women and men" adopted in March 2006.²⁷ The Commission lists three issues of key importance to better balancing of professional, family and private life:

- 1) flexible working arrangements for both women and men;
- 2) increasing care services;
- 3) better reconciliation policies for both women and men.

In the Communication of 3 October 2008 on "A better work-life balance: stronger support for reconciling professional, private and family life",²⁸ the European Commission defined the support for balancing work and private life as one of the priorities in the "Roadmap for equality between women and men 2006–2010". The fundamental policy measures in this area are, according to the European Commission, childcare facilities, right to take leave and flexible working hours.²⁹

The legislative measures that should be mentioned include the adoption of the Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding.³⁰ Under its Art. 8, Member States must take the necessary measures to ensure that pregnant workers or workers who have recently given birth are entitled to a continuous period of maternity leave of at least 14 weeks allocated before and/or after confinement in accordance with national legislation and/or practice. The maternity leave should include compulsory maternity leave of at least two weeks allocated before and/or after confinement in accordance with national legislation and/or practice (and only this part of the maternity leave is compulsory which cannot be waived).

The Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by the Union of Industrial and Employers' Confederations of Europe (UNICE), European Centre of Employers and Enterprises providing Public Services (CEEP) and the European Trade Union Confederation (ETUC)³¹ was adopted in 1996 and granted both parents the right to parental leave (irrespective of maternity leave available only to women).

The Preamble of the above-mentioned Directive quotes paragraph 16 of the Community Charter of the Fundamental Social Rights of Workers on equal treatment for men and women which provides that measures should be developed enabling men and women to reconcile their occupational and family obligations. The Preamble also invokes the Council Resolution of 6 December 1994, in line with which effective policy of equal opportunities requires an integrated, general strategy allowing better

²⁷ COM(2006) 92 final, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0092:FIN:en:PDF>; accessed on 20 March 2017.

²⁸ COM(2008) 635 final, http://ec.europa.eu/eu2020/pdf/1_PL_ACT_part1_v1.pdf; accessed on 15 November 2016.

²⁹ *Ibid.*, p. 2.

³⁰ Official Journal of the European Communities L 348/1 of 28.11.1992.

³¹ Official Journal of the European Communities L 145 of 19.06.1996.

working time arrangement, greater flexibility of the working hours and easier return to professional life, while considering the significant role of social partners in this respect and offering both men and women opportunities of reconciling occupational and family responsibilities. The Preamble recommends that the family-friendly policy should be shaped based on the context of demographic changes, the effect of the population aging, closing in the generation gap and promoting women's participation in the labour force. Men in turn should be encouraged to assume an equal share of family responsibilities, for example to take parental leave. Clause 2 under Section II of the Council Directive 96/34/EC stipulates the entitlement to the at least three-month parental leave, both for men and women, on the grounds of the birth or adoption of a child to enable them to take care of that child until the defined age of up to eight years, as envisaged by member states and/or management and labour social partners. The right to parental leave should, in principle, be granted on a non-transferable basis. Member states may decide on their own, for example, such issues as: conditions of access and detailed rules for applying for parental leave, whether parental leave is granted on a full-time or part-time basis, making the entitlement to parental leave subject to a period of work qualification and/or a length of service (which period may not exceed one year), conditions of access and detailed rules for applying for parental leave in the special circumstances of adoption, specifying the beginning and the end of the period of the leave, defining the circumstances in which an employer, following consultation in accordance with national law, collective agreements and practices, is allowed to postpone granting of parental leave for justifiable reasons related to the operation of the undertaking (e.g. where work is of seasonal nature, where a replacement cannot be found within the notice period, where a significant proportion of the workforce applies for parental leave at the same time, where a specific function is of strategic importance).

The European Commission (in accordance with Art. 138 paras. 2 and 3 of the Treaty establishing the European Community) conducted consultations with the European management and labour social partners (ETUC, CEEP and BUSINESSEUROPE, formerly UNICE, and the European Association of Craft, Small and Medium-Sized Enterprises – UEAPME) in the years 2006 and 2007 on the better ways of reconciling professional, private and family life, in particular on the applicable Community regulations with respect to parental leave and protection of maternity, as well as on the possibility of introducing new types of family leaves, such as paternity leave, adoption leave and the leave to provide care to family members. The European social partners reviewed thoroughly the Framework Agreement of 1995 on parental leave, which resulted in signing on 18 June 2009 of a revised framework agreement on parental leave and repealing of the Directive 96/34/EC by means of the Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC.³²

The agreement forming Annex to the Directive 2010/18/EU provides for the minimum requirements concerning parental leave as an important measure

³² Official Journal of the European Union L 68/13 of 18.3.2010.

for reconciling professional and family responsibilities and promoting equal opportunities and treatment between men and women. Clause 1 of the Framework Agreement defines its purpose and scope, which is laying down minimum requirements designed to facilitate the reconciliation of parental and professional responsibilities for working parents, taking into account the increasing diversity of family structures, while respecting national law, collective agreements and practice. The agreement applies to all workers, men and women, who have an employment contract or employment relationship as defined by the law, collective agreements and/or practice in force in each member state. The agreement does not exclude from the scope and application of the agreement workers employed part-time, under fixed-term contracts or persons with a contract of employment or employment relationship with a temporary agency.

Clause 2 of the Framework Agreement entitles men and women workers to an individual right to parental leave on the grounds of the birth or adoption of a child to take care of that child until a given age of up to eight years to be defined by member states and/or social partners. The leave is granted for at least a period of four months and, to promote equal opportunities and equal treatment between men and women, should, in principle, be provided on a non-transferable basis. To encourage a more equal take-up of leave by both parents, at least one of the four months is to be provided on a non-transferable basis. The particular rules of application of the non-transferable period are to be set down at the national level through legislation and/or collective agreements taking into account existing leave arrangements in the member states.

The conditions of access and detailed rules for applying for parental leave are stipulated under Clause 3 of the Framework Agreement annexed to the Directive 2010/18/EU. Those conditions and rules are defined by law and/or collective agreements in the member states, provided that the minimum requirements of the discussed agreement are respected. Member states and/or social partners, taking into account the needs of both employers and workers, may, in particular, decide whether parental leave is granted on a full-time or part-time basis, in a piecemeal way or in the form of a time-credit system. Member states may also make entitlement to parental leave subject to a period of work qualification and/or a length of service qualification, which may not exceed one year. Basing on this provision, member states and/or social partners ensure that in case of successive fixed-term contracts with the same employer the sum of these contracts should be taken into account for the purpose of calculating the qualifying period. Moreover, member states and/or social partners should also define the circumstances in which an employer, following consultation in accordance with national law, collective agreements and/or practice, is allowed to postpone the granting of parental leave for justifiable reasons related to the operation of the organisation. Any problems arising from the application of the above provision should be dealt with in accordance with national law, collective agreements and/or practice. Member states and/or social partners establish also notice periods to be given by the worker to the employer when exercising the right to parental leave, specifying the beginning and the end of the period of leave. When defining the length of the notice periods, member

states and/or social partners should have regard to the interests of workers and of employers. Moreover, they should assess the need to adjust the conditions for access and specific rules of application of parental leave to the needs of parents of children with a disability or a long-term illness (Clause 3 para. 3).

Clause 4 of the Framework Agreement requires that member states and/or social partners should assess the need for additional measures to address the specific needs of adoptive parents.

Clause 5 provides for employment rights related to parental leaves and non-discrimination of workers for reason of their fulfilling parental responsibilities. At the end of parental leave, workers have the right to return to the same job or, if that is not possible, to an equivalent or similar job consistent with their employment contract or employment relationship. Rights acquired or in the process of being acquired by the worker on the date on which parental leave has started are to be maintained until the end of parental leave. At the end of parental leave, those rights still apply, including any changes arising from national law, collective agreements and/or practice.

Under the provisions of Clause 6 of the Framework Agreement, workers, when returning from parental leave, may request changes to their working hours and/or patterns for a set period of time. Employers consider and respond to such requests, taking into account both employers' and workers' needs. Moreover, workers and employers are encouraged to maintain contact during the period of leave.

Clause 7 of the above Agreement sets out the time off from work on grounds of force majeure for urgent family reasons in cases of sickness or accident making the immediate presence of the worker indispensable. In such a case, member states and/or social partners should specify the conditions of access and detailed rules for applying such time off and limit this entitlement to a certain amount of time per year or per case.

Member states, under Clause 8 of the Framework Agreement, may introduce more favourable provisions than those set out in the Agreement.

3. EVOLUTION OF MATERNITY AND PARENTAL LEAVES IN THE POLISH LABOUR LAW

The provisions of the Labour Code regulating the duration of maternity leave belong to the most frequently amended over the whole 40-year history when the Labour Code has been in force (the Act of 26 June 1974).³³ In its original version Art. 180 of the Labour Code provided for 16, 18 or 26 weeks of maternity leave. The length of the leave depended on three factors: number of births, number of children born at one birth, and an adoptive child raised by the mother. The maternity leave lasted 16 weeks in case of the first childbirth and 18 weeks at subsequent pregnancies. The leave of 18 weeks was also available to a worker who, before the first childbirth, had already been raising an adoptive child. The 26-week leave was allocated to a worker

³³ Consolidated text: Journal of Laws [Dz.U.] of 2016, item 1666.

who gave birth to more than one child at one childbirth. The minimum, compulsory maternity leave covered eight weeks. The labour law provisions for a long time, up to 2001, did not stipulate the respective rights for fathers.

Article 180 of the Labour Code was amended after 25 years. On 1 January 2000, the provisions of the Act of 19 November 1999 on amendment to the Act – Labour Code³⁴ came into force and increased the duration of maternity leave up to 26 weeks in case of single childbirth (irrespective of the number of prior pregnancies) and 39 weeks (irrespective of number of children born at one childbirth). The worker could use at least four weeks of maternity leave before the planned date of predicted childbirth. The opponents of the introduced changes highlighted the too excessive burden for the state budget and the difficulties of women with returning to the labour market resulting from the employers' reluctance to employ them. Some women complained also about being deprived of the right to decide how long to provide personal care to their child after childbirth. Due to the above, the legislator introduced, under the Act of 25 April 2001 on amendment to the Act – Labour Code,³⁵ a possibility to waive a part of maternity leave after the lapse of 16 weeks (Art. 180 §5 of the Labour Code). The remaining part of the maternity leave could be used by the child's father. Under the Act of 21 December 2001 on amendment of the Act – Labour Code, the possibility of shortening of maternity leave by the mother was made subject to the use of the remaining part of the leave by the working father raising his child. The provisions of the last of the discussed acts marked the return to the previous shorter maternity leave.

In subsequent years, based on the Act of 16 November 2006 on amendment of the Act – Labour Code and the Act on pecuniary benefits from the social security fund in case of illness and maternity³⁶ and the Act of 6 December 2008 on amendment of the Act – Labour Code and some other acts,³⁷ the maternity leave became gradually longer and diversified from three to five weeks, depending on the number of children born at one childbirth. The shortest leave amounted to 20 weeks (whether in case of the first childbirth or a subsequent one), and the longest lasted 37 weeks (when five or more children were born). The Act of 6 December 2008 introduced also an improvement of optional supplementary maternity leave which initially was available only to mothers, and later (under the Act of 28 May 2013 on amendment of the Act – Labour Code and some other acts³⁸) also to fathers. However, the priority right to use the supplementary maternity leave was granted to mothers.

The provisions of the Act of 28 May 2013 on amendment of the Act – Labour Code and some other acts³⁹ came into force on 17 June 2013. The act increased the length of the supplementary maternity leave by two weeks, and introduced a new, 26-week parental leave. As a result of those changes, parents (yet mothers,

³⁴ Journal of Laws [Dz.U.] No. 99, item. 1152.

³⁵ Journal of Laws [Dz.U.] No. 52, item 538.

³⁶ Journal of Laws [Dz.U.] No. 221, item 1615.

³⁷ Journal of Laws [Dz.U.] No. 237, item 1654.

³⁸ Journal of Laws [Dz.U.], item 675.

³⁹ Journal of Laws [Dz.U.] of 2016, item 960.

in particular) gained an opportunity of spending a year in total with their child, being on paid leaves related with parenthood.

The provisions of the Act of 15 May 2015 on amendment to the Act on pecuniary benefits from the social security fund in case of illness and maternity and some other acts⁴⁰ brought a number of significant changes in terms of maternity and parental leave entitlements, extended the scope of rights available to fathers raising children, and introduced new rules of determining maternity allowance for enterprises. Those changes became effective on 14 August 2015.

Article 180 of the Labour Code supplemented by §8 and §7 was amended so that fathers could use the remainder of maternity leave not only in case of the employed mother's death but also upon abandonment of the child by the mother during maternity leave. With respect to a working woman who holds a certificate confirming her incapability to lead an independent life, whose medical condition makes it impossible for her to provide personal care to her child, upon using eight weeks of maternity leave after childbirth, the new regulations allowed that the remaining leave be waived. In such case, the unused part of the leave was granted to the working father who raised the child, upon his written request.

The Act of 24 July 2015 on amendment to the Act – Labour Code and some other acts came into force on 2 January 2016. The new provisions are to make it even easier for parents to reconcile professional and family life, among others due to the change of the time limit for filing an application for maternity leave, or a prohibition of discrimination by reason of fulfilling family responsibilities. The parental leave has been supplemented by additional maternity leave (previously cancelled), and consequently it lasts currently 32 weeks in case of single childbirth at one birth and 34 weeks with respect to more than one child born at one childbirth. The right to parental leave is acquired upon using maternity leave or the maternity allowance for a period equivalent to maternity leave. The amendment to the act has introduced also a possibility of dividing paternity leave, the proportional extension of parental leave when it is combined with work, and allows both parents (carers) to use the child-raising leave at the same time over its whole duration.

The number of changes to the regulations concerning parenthood-related leaves after 25 years of their application in a basically unchanged form should in principle deserve approval. Their aim is to assist working parents in reconciling their professional and family responsibilities, and to ensure equal rights to men and women on the labour market. In particular, solutions helping to combine part-time work and parental or child-raising leave should be welcomed as this allows employees to both maintain a close contact with their children and work.

It should be noted though that the compulsory, in case of mothers, 14-week maternity leave⁴¹ is not grounded in either the European Union or international labour law. The ILO Convention No. 183 stipulates only that maternity leave

⁴⁰ Journal of Laws [Dz.U.], item 1066.

⁴¹ In accordance with Art. 180 §5 and 9 of the Labour Code, 14 weeks after childbirth are compulsory for a mother, while the remaining part may be waived by the mother if the working father raising the child or another worker – a close family member – “assumes” the remainder of the maternity leave.

(of at least 14 weeks) should include six weeks of compulsory leave (based on the agreement between representatives of the government and employers and employees organisations, this period may be different, also shorter). The Council Directive 92/85/EEC provides only for two weeks of compulsory maternity leave allocated prior to and/or after childbirth. The medically justified maternity leave comprises exclusively the compulsory period of six weeks as it covers confinement, or a postnatal period when anatomic, morphological and functional changes experienced at pregnancy gradually abate and the female body returns to a pre-pregnant state.⁴² Therefore, the 14-week compulsory maternity leave is not medically or legally justified. Moreover, it makes the legal circumstances less advantageous for women workers who for various reasons have decided to raise their children as single parents and have nobody to share their maternity leave with.

In the majority of the European Union member states, the compulsory maternity leave after childbirth is shorter than in Poland and lasts two weeks in the United Kingdom, Denmark and Iceland. The six-week compulsory leave is available in Portugal, Spain and Romania. Longer than six weeks compulsory maternity leaves are provided in Belgium (allocated as one week before and nine weeks after childbirth), Slovakia (14 weeks) and Austria (eight weeks before and eight weeks after childbirth).⁴³

4. PARENTAL LEAVES IN SELECTED EUROPEAN UNION MEMBER STATES

A special attention should be paid to France successfully protecting workers' family life, which spends 3.8% of its GDP on family-friendly policy, compared to 2.4% on average in the OECD member countries. France ranks second in the European Union (behind Ireland) in terms of fertility rates (2.01 births per woman). 85% of women in France are professionally active. The social perception of a working mother is extremely positive in this country. She is regarded as pro-active and participating all spheres of life.⁴⁴

France for years has been pursuing family-friendly policy which is reflected, for instance, in a broad range of different family benefits and allowances, such as housing allowance, child benefit, child birth/adoption grant, parental leave for both parents of a child up to three years of age, free pre-school care for all children

⁴² G.H. Bręborowicz, *Położnictwo i ginekologia* [Obstetrics and gynaecology], Ed. I, Vol. 2, PZWL, Warsaw 2010, after A. Kurowska, *Ocena zasadności założeń reformy urlopów i zasiłków związanych z opieką nad małym dzieckiem* [Assessment of principles of new reform with respect to leaves and benefits related to providing care to young children], *Problemy Polityki Społecznej. Studia i Dyskusje*, Vol. 2, No. 21, 2013, pp. 157–158, <http://problemypolitykispolecznej.pl/images/czasopisma/21/Kurowska%20PPS%2021-13-12.pdf>; accessed on 10 April 2017.

⁴³ A. Kurowska, *Ocena zasadności założeń...* [Assessment of principles...], p. 158.

⁴⁴ See, *Francja, kraj o jednym z najwyższych współczynników dzietności w Europie* [France as a country with one of the highest birth rates in Europe], [http://www.ambafrance-pl.org/Francja-kraj-o-jednym-z/](http://www.ambafrance-pl.org/Francja-kraj-o-jednym-z;); accessed on 10 November 2016.

above three years of age, availability and high quality of childcare in nurseries, tax reliefs, supplementary pension entitlements and special entitlements for families.⁴⁵

The country pays special attention to institutional solutions allowing parents to combine work and care of children. Such solutions include various sorts of collective nurseries, stay-in, family and parental day care, professional nannies or family assistants.⁴⁶ The state participates to a large extent in covering the cost of the above care. Parents of two or more children may give up work or reduce its time after childbirth and receive a flat-rate allowance due to providing care to the child until three years of age.

Maternity leave is mandatory and lasts for 16 weeks (two weeks of which must be taken before childbirth). The allowance paid during maternity leave amounts to 100% of the regular pay. The entitlement to benefits and allowances due to parenthood is available in respect of every person covered by social insurance for at least ten months before the predicted childbirth.

The state provides support also to parents taking care of ill or disabled children. Parents of a child with a grave illness or disability are entitled to paid leave or reduced working time (up to three years) until the child reaches 20 years of age. Single parents receive increased disability allowance for that period. A similar leave is available to workers who look after an elderly or ill family member residing with them in the same household.⁴⁷

An example of a country where relatively long paid parental leaves do not translate directly into higher fertility rates is Germany. This country with a population of 82.3 million has been recording, since the 1990s, a continuously shrinking average household size and the lowering number of young children per household (only 22% of households are composed of children under 18 years of age, of which 52% of households have only one child, 36% two children, and 11% three children or more). The fertility rate in 2014 amounted to 1.41, which ranks Germany at one of the last places among the OECD states in terms of fertility rates. The reasons of such a situation are seen in the traditional family model prevailing in this country, where care of children is basically women's responsibility. German mothers spend over twice more time on childcare than men. The difference in wages between men and women is 17% (against the OECD average of 15%).⁴⁸

⁴⁵ See, *Skąd we Francji tak wysoki przyrost naturalny?* [What is the cause of such high natural increase rates in France?], interview with H elene P erivier, http://wyborcza.pl/1,76842,12018854,Skad_we_Francji_tak_wysoki_przyrost_naturalny_.html; accessed on 10 November 2016.

⁴⁶ M. G lodoch (ed.), *Raport...* [Report...], p. 59.

⁴⁷ J. Miros law, A. Smoder, *Zatrudnienie przyjazne rodzinie w krajach konserwatywnego modelu welfare state* [Family-friendly employment in conservative welfare states], [in:] B. Balcerzak-Paradowska (ed.), *Zatrudnienie przyjazne rodzinie. Do wiadczenia mi dzynarodowe. Realia polskie* [Family-friendly employment. International experience. Polish reality], IPiSS, CPS "Dialog", Warsaw 2014, pp. 119–123.

⁴⁸ *Ibid.*, pp. 105–109.

5. LEAVES RELATED TO PARENTHOOD AS PART OF THE STATE FAMILY-FRIENDLY POLICY – CONCLUSIONS

The leaves related to parental responsibilities form an important part of the state family-friendly policy which aim is to help working parents in reconciling their professional and family responsibilities. The leaves, even if longer, do not resolve all the problems with low fertility rates or the conflicts resulting from work-life imbalance. Workers, including women, should have the right to decide how long they intend to avail themselves of the entitlement to paid parental leaves (within the maximum time limits provided for in the law). Special employee entitlements related to providing care and raising children should not be regarded then as employment privileges but as a "compensation for additional burden which some employees assume not only for their own benefit".⁴⁹

The results of research on effectiveness of institutional solutions aiming to support workers in reconciliation of their professional and family responsibilities, such as longer paid parental leaves, prove that such schemes do not bring the expected effects.⁵⁰ Longer paid parental or child-raising leaves may reduce the work-family life conflict but they do not eliminate the problem in a manner satisfactory to workers.⁵¹ Without eliminating or reducing all the barriers to parental plans of employees, it would be difficult to achieve a demographic success, or at least the reduction of the work-life imbalance. The discussed barriers include limitations of the world-view nature, insufficient support of families by the state family-friendly policy, financial difficulties, unemployment (or threat of job loss), as well as objective issues, such as problems getting pregnant or risk of genetic disorders.⁵²

Labour law solutions, such as longer parental leaves, which do not coincide with counteracting stereotypical attitudes towards the division of roles in the family are not sufficient measures which would effectively encourage women's decisions on childbearing. In Poland, there are still persisting stereotypes that it is exclusively women who are liable for child care in the family, especially in case of a child's illness or using parental leaves. Those views are unfortunately reflected in the employers' decisions concerning employment of young women. They usually prefer to employ men as (in the employers' opinion) they are not that burdened with parental responsibilities. Negative perception of women trying to combine work and family life is related to another stereotypical view that those spheres are irreconcilable and women should make a choice what is more important for them.

⁴⁹ T. Liszcz, *Prawo pracy* [Labour law], Info-Trade, Gdańsk 1998, p. 381.

⁵⁰ A. Zalewska, *Konflikty praca-rodzina – ich uwarunkowania i konsekwencje. Pomiar konfliktów* [Work-family conflicts, their causes and consequences. Measurement of conflicts], [in:] L. Golińska, B. Dudek (eds.), *Rodzina i praca z perspektywy wyzwań i zagrożeń* [Family and work from the perspective of challenges and threats], Wydawnictwo Uniwersytetu Łódzkiego, Łódź 2008, pp. 418–430.

⁵¹ T.D. Allen, L.M. Lapierre, P.E. Spector, S.A.Y. Poelmans, M. O'Driscoll, J.I. Sanchez et al., *The link between national paid leave policy and work-family conflict among married working parents*, *Applied Psychology*, Vol. 63, 2014, pp. 5–28.

⁵² A. Grabowska, *Praca i życie rodzinne – czy i dlaczego musimy wybierać?* [Work and family life: do, and why, we have to choose?], *Dialog* No. 1(40), 2014, pp. 99–100.

The insufficient number of inexpensive nurseries and pre-school facilities is also a barrier to making the decision on increasing a family.⁵³

A change in the stereotypical perception of the role of women in providing care to children could start with solutions relieving employers of parents, in particular women having or planning a family, from some of the financial burden, such as paid annual leaves granted after the maternity, parental or child-raising leaves, the requirement of prolonging employment contracts until the childbirth even if an employer cannot offer the appropriate position for the female worker (Art. 177 of the Polish Labour Code), paid breaks for breastfeeding (Art. 187 of the Labour Code), paid leaves to take care of the healthy child (Art. 188 of the Labour Code), or the need to cover sick leave for a total period of 33 days in a year (Art. 92 §1(1) of the Labour Code). Such costs taken over by the state could impact a more positive attitude of employers towards employing workers who try to combine work and care of children. The solutions of this type would definitely contribute to creating better opportunities for women in the childbearing age on the labour market. One must agree with the standpoint expressed by A. Sobczyk that burdening employers with responsibilities for protecting family life of workers, in particular maternity, is disproportionate to their means.⁵⁴

It seems that longer maternity, parental and child-raising leaves alone are not an effective measure in the strive to achieve higher fertility rates and higher activity of women on the labour market. Particularly low (against the background of other European Union member states) employment rates among women in Poland give rise to the need of wider and more effective actions in order to provide better access to institutional childcare facilities⁵⁵ and increase social acceptance for women who do not give up or suspend professional career for the sole reason of giving birth to their child.

As evidenced by the experience of many countries, a high number women in employment combined with the state family-friendly policy is often related with high fertility rates. According to data published by the Financial Times, in some of the developed countries with the highest birth rates, such as Sweden or the United States,⁵⁶ the paid employment level among women much exceeds that in, for instance, Japan or Italy which report lower birth rates.⁵⁷ This would mean that the appropriate family-friendly policy may contribute to the expected fertility rates, even if the women-in-employment rate is high.

⁵³ A. Kacprzak, M. Żemigala, *Wyzwania stojące przed rodzicami w miejscu pracy* [Challenges that parents face in the workplace], [in:] D. Walczak-Duraj (ed.), *Humanizacja pracy. Jakość życia pracownika w perspektywie work-life balance?* [Humanisation of work. Quality of employees' life in the context of work-life balance?], No. 4 (274) (XLVI), Płock 2013, pp. 99–103.

⁵⁴ A. Sobczyk, *Prawo pracy w świetle Konstytucji RP* [Labour law in the light of the Constitution of the Republic of Poland], Vol. II: *Wybrane problemy i instytucje prawa pracy a konstytucyjne prawa i wolności człowieka* [Selected issues and institutions of labour law vs. constitutional human rights and freedoms], C.H. Beck, Warsaw 2013, pp. 195–198.

⁵⁵ M. Gładoch (ed.), *Raport...* [Report...], p. 97.

⁵⁶ The fertility in the US is currently 40% higher than in Europe (cf. C. Freeland, *Women are the hidden engine of world growth*, Financial Times, 28 August 2006, quoted after A. Wittenberg-Cox, A. Maitland, *Kobiety i ich wpływ...* [Why women mean...], p. 42).

⁵⁷ C. Freeland, *Women are the hidden engine...*, p. 42.

Parenthood-related leaves should correspond to other labour law solutions supporting the family-friendly policy, such as equal rights of men and women, flexible and task-based working time, regular increase of the minimum wage so that providing for a family was possible, telework, unlimited-term contracts, limits on work performed by parents at night, on Sundays and public holidays, and overtime, or on delegating such workers to perform work outside their regular workplace.

The state family-friendly policy with respect to eliminating discrimination in employment of women in the childbearing age or those taking care of small children could focus not only on labour law provisions but also on other branches of law, e.g. tax law. A noteworthy idea is the solution proposed by two professors of economics, A. Alesin and A. Ichino, who suggest a reform of the tax system consisting in lowering income tax for women, and its slight rise in case of men. In their opinion, such solution would contribute to increasing the women-in-employment rate and discrimination due to gender would become more costly for employers.⁵⁸

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⁵⁸ A. Wittenberg-Cox and A. Maitland, *Kobiety i ich wpływ... [Why women mean...]*, pp. 281–282.

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PARENTAL LEAVES AS A FORM OF PROTECTION OF FAMILY LIFE UNDER THE LABOUR LAW IN POLAND AND SELECTED EUROPEAN UNION MEMBER STATES

Summary

The subject of the paper concerns broadly understood paid, both maternity and paternity, leaves granted in order to provide personal care to a child, as well as supplementary parental leaves, excluding childcare (child-raising) leaves and their impact on fertility rates and attaining the work-family balance. The study offers a negative assessment of the solutions encouraging women who are professionally active to give up employment and devote themselves to child-rearing. The discussion presented in the paper covers an analysis of provisions on parental leaves in the international and European Union law, the evolution of maternity and parental leaves in the Polish labour law, regulations on parental leaves in selected European Union member states, and the issue of parenthood-related leaves as part of the state family-friendly policy. The final section presents the key conclusions resulting from the above discussion.

Key words: parental leave, maternity leave, paternity leave, childcare (child-raising) leave, fertility rates, work-life balance, work-family conflict, length of parental leaves, Council Directive 92/85/EEC, Council Directive 96/34/EC, Council Directive 2010/18/EU

URLOPY RODZICIELSKIE JAKO PRZEJAW OCHRONY  YCIA RODZINNEGO W PRAWIE PRACY W POLSCE I W WYBRANYCH PAŃSTWACH CZŁONKOWSKICH UNII EUROPEJSKIEJ

Streszczenie

Tematyka niniejszego artykułu dotyczy szeroko pojętych płatnych urlopów udzielanych ze względu na konieczność sprawowania osobistej opieki nad dzieckiem, zarówno macierzyńskich, ojcowskich, jak i dodatkowych urlopów związanych z rodzicielstwem, z wyłączeniem urlopów wychowawczych i ich wpływu na wskaźniki dzietności oraz osiągnięcie równowagi na linii praca-życie rodzinne. W opracowaniu poddano krytycznej analizie propagowanie rozwiązań, które zachęcałyby aktywne zawodowo kobiety do rezygnacji z pracy i poświęcenia się wychowywaniu dzieci.

Rozważania podjęte w artykule obejmują analizę regulacji urlopów rodzicielskich w prawie międzynarodowym oraz w prawie Unii Europejskiej, ewolucji regulacji instytucji urlopów macierzyńskich i rodzicielskich w polskim prawie pracy, regulacji urlopów rodzicielskich

w wybranych państwach członkowskich Unii Europejskiej oraz problematykę urlopów związanych z rodzicielstwem jako elementu polityki rodzinnej państwa. W części końcowej przedstawione zostały najważniejsze wnioski wynikające z przeprowadzonych rozważań.

Słowa kluczowe: urlop rodzicielski, urlop macierzyński, urlop ojcowski, urlop wychowawczy, wskaźniki dzietności, work-life balance, konflikt na linii praca-życie rodzinne, wymiar urlopów rodzicielskich, dyrektywa Rady 92/85/EWG, dyrektywa Rady 96/34/WE, dyrektywa 2010/18/WE