

THE DEVELOPMENT OF THE RIGHT TO MATERNITY LEAVE IN THE REPUBLIC OF CROATIA - LOOKING BACK AT THE PAST AND A LOOK INTO THE FUTURE

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ABSTRACT

Today, the right to maternity leave is the right of an employed or self-employed pregnant woman, that is, an employed or self-employed mother, which she uses during pregnancy, childbirth and child care, and which has its own time and financial component. Since the accession of

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the Republic of Croatia to the European Union, Croatian legislation has been marked by the implementation of relevant European directives that emphasize gender equality and the balance of the private and business life of parents. However, if we look into the past, the situation was different. The aim of this article is to show the development of the right to maternity leave through different periods of Croatian legal history and, finally, by comparing the results with contemporary reality, question their continuity and suggest possible improvements. The article provides an overview of the time and financial components of maternity leave, the conditions for its realization, as well as the possibility of transferring it to the father. Applying the method of historical comparison of legal acts related to the topic of maternity leave, the article presents the development of legal acts, their current status in Croatian and contemporary European Union law, and proposes a perspective proposal for the future.

Keywords: *Croatian and contemporary European Union law, Croatian legal history, maternity leave, time and financial components of maternity leave*

1. THE POSITION OF WOMEN IN LABOUR RELATED LEGISLATION FROM 1868 TO 1918

The development of legislation on the protection of employed women progressed with the regulation of issues related to the protection of women in the workplace, starting from the limitation of working hours, prohibition of working in dangerous jobs and finally by the protection of women during childbirth. Accordingly, the legal regulations related to maternity protection of employed women should be divided into these two groups: regulations on maternity protection of employed women in a narrower sense and regulations on maternity protection of employed women in a broader sense.¹ Regulations related to the protection of maternity in the narrower sense include regulations on the protection of women during pregnancy, childbirth (maternity leave) and breastfeeding. On the other hand, the regulations related to the protection of motherhood in a broader sense include measures aimed at taking care of children while a mother (a parent) is at work and measures to reduce the burden of household chores from employed mothers and women.²

Provisions on the protection of maternity in a narrower sense, i.e. on maternity leave, were introduced in the Croatian legislation in the later period of the development of protective labour legislation, in the second half of the 19th century. At that time, Croatia was part of the Austro-Hungarian Monarchy characterized by a dual system of government, in which Austria and Hungary were separate entities

¹ Đuranović-Janda, S., *Žena u radnom odnosu*, Naprijed, Zagreb, 1960, p. 215.

² For example, the introduction of part-time working hours with certain rights from such an employment relationship. More thereon, see in: Savić, B., *O skraćenom radnom vremenu*, *Žena danas*, No. 127, 1955.

with different legal systems.³ By the Austro-Hungarian Settlement, the territories of Dalmatia and Istria became Austrian provinces, and thus, attached to the Austrian part of the Monarchy, whereas Croatia and Slavonia were attached to the Hungarian part.⁴ Consequently, labour relations and the protection of workers in the territory of Dalmatia, but also in Slovenia, were regulated by the revised *General Civil Code* and the *Trade Regulation Act* of 1859, which pursuant to Art. 94 prohibited the employment of women for 4 weeks after giving birth.⁵ However, the aforementioned legal regulations caused workers' dissatisfaction for providing only the minimum protection and insufficient inspection.⁶

In the late 19th century labour relations in Croatia and Slavonia were regulated by the Crafts Act of 1872.⁷ This law set out the rules for industrial workers and apprentices, as well as special rules for factory workers. The rules were not clear, and women were only briefly mentioned. Special rules for the protection of employed women and children were proposed considering their abilities.⁸ Many laws in the Austro-Hungarian Monarchy referred to women and children as unskilful in independent decision-making, which was a common practice. In June 1909, specific protection of employed women was introduced by Article XIX of the *Act on the Insurance of Professional and Commercial Workers in Case of Sickness and Accident*.⁹ Pursuant to Art. 1 of that law, compulsory health insurance in case of sickness was introduced for all people "regardless of their gender, age and nationality".¹⁰ However, the law also included a provision that a woman could not work for her husband because she was considered to be his assistant (auxiliary) and not an equal partner.¹¹ Nevertheless, the law guaranteed certain protection to socially insured

³ In 1867, the Austro-Hungarian Settlement was concluded, the former single state was reorganized into a dual monarchy, but at the same time, it was stated that Austria and Hungary are unique and inseparable entities.

⁴ Heka, L., *Analiza Austro-ugarske i Hrvatsko-ugarske nagodbe (u povodu 150. obljetnice Austro-ugarske nagodbe)*, Zbornik Pravnog fakulteta Sveučilišta u Rijeci, Vol. 38, No. 2, 2017, p. 862.

⁵ Đuranović-Janda, S., *op.cit.*, note 1, p. 51.

⁶ In 1888, based on the Law of 1888, insurance was established on the territory of Slovenia, which provided for "maternity allowance" amounting to 50% of the insurance class for 4 weeks after childbirth. See in: Pešić, R., *Nastanak i razvitak socijalnog osiguranja u Jugoslaviji*, Savezni zavod za socijalno osiguranje, Beograd, 1957, p. 19 ff.

⁷ Text of the Crafts Act in: Vežić, M., *Pomoćnik za javnu upravu: sbirka najvažnijih zakonah i naredabab u javnoj sigurnosti obćem zdravlju, i o narodno-gospodarskoj prigledbi u kraljevinah Hrvatskoj i Slavoniji s pripojenom bivšom hrv-slav. Krajinom*, L. Hartman (Kugli i Deutsch), Zagreb, 1884, pp. 580-596.

⁸ Đuranović-Janda, S., *op.cit.*, note 1, p. 57.

⁹ Mihalić, A., *Zakon o osiguranju obrtnih i trgov. namještenika za slučaj bolesti i nezgode = sa provedbenom naredbom = (Zakonski članak XIX: 1907.)*, Naklada akademske knjižare Gjüre Trpinca, Zagreb, 1909, p. 5, 12, 51, 126-130, 138 – 139.

¹⁰ *Ibid.*

¹¹ *Ibid.*, p. 62.

employed women in the event of childbirth. During 6 weeks, the insured woman was entitled to maternity benefit amounting to half of her salary (wage). This benefit could increase to 75% of her salary and last for 8 weeks.¹² Moreover, women without any occupational record were also entitled to free health service during childbirth. Although the Act helped many people, in 1911 the total of insured women did not exceed 8,255. Moreover, women employed in state owned enterprises were entitled to special insurance and those working in agriculture were not entitled to any insurance at all.¹³

Along with the development of industry and social progress and with the need for a more qualified workforce, especially in factories, the demand for workers increased, which led to intensive employment of women. Women became important actors in the development of the Austro-Hungarian Monarchy. However, the laws did not keep up with social changes demanding quick and effective legal solutions to the problems that employed women were facing. Although the laws at the time assumed that men and women should have the same occupational opportunities, they actually supported the idea that men and women should stick to their traditional roles.¹⁴

During the First World War, the position of employed women suddenly deteriorated because in terms of labour relations, the legal protection of women did not develop and no administrative or similar bodies were established that would, at least to some extent, ensure better working and living conditions for women.

2. THE POSITION OF WOMEN IN LABOUR RELATED LEGISLATION FROM 1918 TO 1945

After the end of the First World War in 1918, the Austro-Hungarian Monarchy collapsed and the State of Slovenes, Croats and Serbs was declared comprising the areas that were part of Austria-Hungary, populated by the peoples of South Slavic origin. On 1 December 1918, in Belgrade, the Serbian regent Aleksandar Karađorđević announced the unification and creation of a new state called the Kingdom of SHS. The legal system and legislation before the adoption of the *Constitution of the Kingdom of SHS* were defined by legal particularism. This means that in the Kingdom of SHS there were six legal areas, namely the Slovenian-Dalmatian, Croatian-Slavonian, former Hungarian, Bosnian-Herzegovinian, Serbian and

¹² Đuranović-Janda, S., *op.cit.*, note 1, p. 57.

¹³ *Ibid.*, p. 58.

¹⁴ Rudančić, M., *Žena, majka, radnica: Zaposlenost žena u središnjoj Hrvatskoj u međuratnom razdoblju (1918-1941)*, Diploma paper, Sveučilište u Zagrebu Filozofski fakultet, 2017, p. 26.

Montenegrin administrative unit.¹⁵ However, the situation did not change significantly after the adoption of the Constitution, since the civil law in the country was not unified, and the laws governing civil society partly reflected feudal attitudes towards women's rights. Thus, the legal position of women in that new state was extremely complicated and the emancipatory processes were difficult.¹⁶ However, when presenting regulations related to the protection of women in employment and the protection of maternity, it should be noted that women in the former Yugoslavia did not have any political rights, including the right to vote. In addition, there were laws that limited their legal and business capacity, especially for married women, which ultimately put them in a subordinate position to men.¹⁷

The special protection of women was based on Art. 19 of the *Vidovdan Constitution*, which determined that women and (minors) "shall enjoy special protection as regards the jobs harmful to their health".¹⁸ Moreover, Art. 27 of the Constitution stipulated that motherhood protection is the domain of the state, whereas in the later *Octroyed Constitution of 1931*, this provision was omitted. The following legal regulations should be noted as regards the then labour legislation aimed at the protection of mothers (female workers): *the Law on Workers' Protection* (1922), *the Law on Workers' Insurance* (1922) and *the Law on Businesses* (1931), which were amended in the period between two wars. In addition to these laws, there were numerous ordinances whose provisions governed the protection of women in employment at the end of pregnancy, childbirth and during the period of breastfeeding: *Ordinance on the Provision of Benefits in Case of Illness, Exhaustion, Old Age, Death or Accident* (1937) and the *Ordinance on the Scope of Work of the Mother and Children Health Care Institute* (1930).

The first law that contained extensive provisions on the protection of women as mothers before and after childbirth was passed on 30 May 1922 under the title of the *Law on Insurance of Workers in Case of Illness, Exhaustion, Old Age, Death and Accident*.¹⁹ According to the provisions of that law, insured workers and their wives

¹⁵ Kosnica, I.; Protega, M., *Politička prava u Kraljevini Srba, Hrvata i Slovenaca: razvoj temeljnih obilježja*, Pravni vjesnik: časopis za pravne i društvene znanosti Pravnog fakulteta Sveučilišta J.J. Strossmayera u Osijeku, Vol. 35 No. 1, 2019, p. 146.

¹⁶ Vujnović, M., *Forging the Bubikopf nation: a feminist political-economic analysis of Ženski list, interwar Croatia's women magazine, for the construction of an alternative vision of modernity*, Thesis, University of Iowa, 2008, p. 48.

¹⁷ Prokop-Kulenović, A., *Ravnopravnost žene, brak i porodica po Ustavu FNRJ*, Antifašistička fronta žena Hrvatske, Beograd, 1946, pp. 5-7.

¹⁸ Constitution of the Kingdom of Serbs, Croats and Slovenians, Official Gazette No. 142a / 1921

¹⁹ Law on Insurance of Workers in Case of Illness, Exhaustion, Old Age, Death and Accident, Official Gazette 117/1922, in: Ostojić, D., *Naše radničko i nameštениčko zakonodavstvo*, Časopis Ekonomsko-finansijski život, Beograd, 1934, p. 76.

were entitled to the paid maternity leave (chapter IX – Benefits in Case of Illness). This law entitled the insured women during childbirth to the necessary treatment and midwife assistance. They also had the right to “maternity” benefit for the period of two months before and two months after childbirth in the amount of $\frac{3}{4}$ of the wage per day, and to monetary support in the amount of 14 times the wage, provided that the child was born alive, as well as to breastfeeding support in the amount of $\frac{1}{2}$ of the wage (maximum 3 dinars per day) for 20 weeks, starting from the day on which the “maternity” benefit ends (until the child reaches the age of seven months).²⁰ Mothers who could not breastfeed did not receive the monetary support but were entitled to receive support for “baby food”, the value of which was not to be higher than the breastfeeding support.²¹ Besides insured women, the wives of insured workers were also entitled to maternity benefit in the amount of 1.5 dinars per day for four weeks before and after childbirth, as well as to support for acquisition of baby essentials.²² During the period in which a woman was entitled to the benefit, she was not allowed to work to earn money, and would otherwise lose her rights to the benefits.²³

The Law on Amendments to the Provisions of the Law on Workers’ Insurance of 14 May 1922, related to granting benefits in the event of childbirth, made social security rights requirements stricter to fulfil in order to acquire the right to childbirth benefit.²⁴ According to this amendment, the right to midwife support (“midwife benefit”), treatment and medicines were conditioned by uninterrupted duration of insurance for at least six months or ninety days prior to childbirth.²⁵ In addition, women were entitled to exercise their right to maternity benefit if they had been insured for the period of ten uninterrupted months or eighteen months for the last two years. Accordingly, the benefit was reduced to six weeks prior to and six weeks after childbirth, but the amount of the benefit remained unchanged i.e. $\frac{3}{4}$ of the wage per day.²⁶ In contrast, the amount of benefit (support) for breastfeeding increased to 4 dinars per day for the period of twelve weeks, and

²⁰ *Ibid*, p. 83.

²¹ *Zakon o osiguranju radnika, Kraljevina Srba, Hrvata i Slovenaca*, Zakoni. Beograd: Ministarstvo socijalne politike, Kr. zemaljska tiskara, Zagreb, 1922, p. 22.

²² Ostojčić, D., *op.cit.*, note 19, p. 84.

²³ Duranović-Janda, S., *op.cit.*, note 1, p. 123.

²⁴ *The Law on Amendments to the Provisions of the Law on Workers’ Insurance* of 14 May 1922, Official Gazette No. 285a/1931.

²⁵ Ostojčić, D., *op.cit.*, note 19, p. 83. See more in: Gojković, E., *Zakon o osiguranju radnika od 14 maja 1922 godine. Objašnjen sporednim zakonodavstvom i praksom*, Izdavačko i knjižarsko poduzeće Geca Kon A. D. 12, Beograd, 1936, p. 229.

²⁶ *Ibid*, p. 83.

the amount of support for child equipment was 150 dinars.²⁷ According to this law, only the wife of an insured family member (married or unmarried woman who did not earn an independent income and lived in the same household with her husband) was entitled to the aforementioned support. Therefore, other family members (illegitimate and adopted children, grandchildren, mothers and sisters of the insured member of the family) could not receive these benefits.²⁸ *The Law on Officials* of 1931 set out that a woman official was entitled to maternity leave for the duration of six weeks.²⁹

The legal basis for the protection of women is also provided in the *Law on the Protection of Workers* (1922)³⁰, and includes the legal protection of employed women and the protection of their children. According to the *Law on the Protection of Workers*, maternity leave was provided for a period of four months (two months before and two months after childbirth).³¹ However, the *Labour Law* (1931) reduced the duration of maternity leave to 12 weeks (six weeks prior to and six weeks after childbirth – for three months).³² A woman could not be fired during maternity leave. In this context, if the woman, due to health reasons, had to extend maternity leave for more than two months, the employer could not dismiss her.³³

The Law on the Protection of Workers was more comprehensive than the *Law on Workers' Insurance* and this is supported by the fact that the law specified the paid breastfeeding breaks of 30 or 15 minutes for every 4-5 hours of work depending on whether the child resided at its mother's or in the children's shelter in the company.³⁴ Unfortunately, this provision did not apply in reality, because employed mothers were dismissed as soon as they started to exercise this legal right.³⁵

After the reduction of maternity protection by the *Law on Amendments of the Law on Workers' Insurance* (1931), the provisions governing the rights of insured per-

²⁷ *Ibid.*, p. 83.

²⁸ *Ibid.*, p. 84. See more in: Gojković, E., *Zakon o osiguranju radnika od 14 maja 1922 godine. Objašnjen sprovednim zakonodavstvom i praksom*, Izdavačko i knjižarsko poduzeće Geca Kon A. D. 12, Beograd, 1936, p. 231.

²⁹ Vragović, A., *Zakon o činovnicima : od 31. marta 1931 god. br. 36490 : (Č. Z.)*, Obnova, Zagreb, 1931, p. 41.

³⁰ Law on the Protection of Workers (*Zakon o zaštiti radnika*), Official Gazette No. 128/1922.

³¹ Art. 22 of the Law on the Protection of Workers.

³² Art. 236 of the Labour Law (Trade Law), Official Gazette No 262/1931).

³³ Art. 23 of the Law on the Protection of Workers, Official Gazette No. 128/1922.

³⁴ Art. 24 of the Law on the Protection of Workers, Official Gazette No. 128/1922.

³⁵ Đuranović-Janda, S., *op.cit.*, note 1, p. 122.

sons of the guild coffers changed as well.³⁶ Thus, the support for the food of the child amounted to 3 dinars, and the condition for obtaining the maternity benefit was still nine months of occupational record. However, in 1937, under the new *Rules of the Guild Coffers*, the amount of support for the child essentials increased to 300 dinars paid immediately after the birth of the child, and not later than three days upon birth.³⁷ Furthermore, according to the *Ordinance on the Provision of Benefits in Case of Illness, Exhaustion, Old Age, Death or Accident* of 1937, female employees were entitled to free essential midwife support, i.e. free hospital care for a period of 8 days, treatment costs and 150 dinars for the child's equipment.³⁸ The provisions of the *Ordinance on the Scope of Work of the Mother and Children Health Care Institute*,³⁹ which prescribed a few measures to improve the position of women as mothers, for example, the provision of childbirth essentials etc.⁴⁰

3. REGULATION OF MATERNITY LEAVE FROM 1945 TO 1988

In the period prior to the adoption of the Constitutional Law of the Federal People's Republic of Yugoslavia in 1946,⁴¹ the laws in force in the former Yugoslavia⁴² regarding the special protection of women and maternity protection continued to apply. The provisions of this Constitution provide the basis for regulating the special protection of women, as well as the overall protection of maternity of women in employment (Articles 20, 24, 32 and 38). In this sense, Art. 24 applies exclusively to the female issues stipulating that women are equal before the law in all aspects of the public, economic and social-political life. Women are entitled to equal pay for the same work as men, and enjoy special privileges as female workers and employees. A special care is provided for employed mothers by establishing hospitals, children homes and establishing right of mothers to a paid job before and after childbirth. In Federal People's Republic of Yugoslavia, the duration of maternity leave was already regulated by this constitutional provision, as well. However, in the same year the Decree on the Absence of Women before and after Childbirth was issued, according to which maternity leave amounted to six

³⁶ Rules of the Guild Coffers, Official Gazette No 63 / 1933.

³⁷ Rules of the Guild Coffers, Official Gazette No. 300/1937.

³⁸ Đuranović-Janda, S., *op. cit.*, note 1, p. 125.

³⁹ Ordinance on the Scope of Work of the Mother and Children Health Care Institute, Official Gazette No. 121/ 1930

⁴⁰ Đuranović-Janda, S., *op. cit.*, note 1, p. 126.

⁴¹ Constitutional Law of the Federal People's Republic of Yugoslavia, Official Gazette No. 10/46.

⁴² Proposal for a decision on the repeal and invalidity of all legal regulations passed by the occupier and his helpers during the occupation, on the validity of decisions made during that time, on the repeal of legal regulations that were in force at the time of the enemy's occupation: Odluka o ukidanju i nevažnosti svih pravnih propisa, Official Gazette DFJ No. 4/45.

weeks prior to and six weeks after childbirth.⁴³ Even more, thorough provisions on the duration of maternity leave were contained in the Decree on the Protection of Pregnant Women and Nursing Mothers in Employment⁴⁴ and the Decree on Amendments to the aforementioned Decree⁴⁵, the provisions of which were in force until the adoption of the Law on Labour Relations (1957). According to these regulations, the duration of maternity leave was 90 days, out of which 45 days were used before and 45 days after childbirth. However, a woman had to take maternity leave 21 days before and 45 days after childbirth. According to the Law on Labour Relations of 1957,⁴⁶ the duration of maternity leave was extended to 105 days, and the leave had to be approved upon worker's request based on the medical findings determining the childbirth to occur within 45 days. In order to protect both mother and child, an employed woman can use her annual leave at the end of the maternity leave.⁴⁷ Similarly, in order to exercise a woman's right to maternity leave as effectively as possible, the fine of 10,000 to 200,000 dinars was imposed on the company or any other organisation and on the responsible person in the organisation for misdemeanour, if workers are denied maternity leave rights, etc.⁴⁸

The right to salary, i.e. compensation in lieu of salary for the duration of maternity leave in the Federal People's Republic of Yugoslavia was governed by several different regulations. Thus, according to the Ordinance on Absence of Women Before and After Childbirth of 1946, a woman was entitled to "maternity benefit" paid from social insurance fund provided that certain requirements were met. If this benefit amounted to less than the regular salary, then she was paid the difference. Socially insured women were entitled to salary compensation in the form of "maternity allowance" in the amount of 73-100% based on a certain legal basis for cash benefits. Accordingly, the difference up to the full amount of the salary was paid by the company, institution or a private employer.⁴⁹ In contrast to this Ordinance, the Ordinance on the Protection of Pregnant Women and Nursing Mothers in Employment of 1949 stipulates that a woman is entitled to a salary during maternity leave (therefore, the Ordinance does not refer to compensation but expressly to the right to a salary) with other reimbursements depending on

⁴³ Decree on the Absence of Women before and after Childbirth, Official Gazette FNRJ No. 56/46.

⁴⁴ Decree on the Protection of Pregnant Women and Nursing Mothers in Employment, Official Gazette No. 31/49.

⁴⁵ Decree on Amendments to the aforementioned Decree, Official Gazette No. 88/49.

⁴⁶ Art. 61-64 of the Law on Labour Relations, Official Gazette No. 53/1957.

⁴⁷ Art. 65 of the Law on Labour Relations, Official Gazette No. 53/1957.

⁴⁸ Art. 394 of the Law on Labour Relations, Official Gazette No. 53/1957.

⁴⁹ Art. 27 Social Security Law of workers and Officials and Their Families, Official Gazette No. 100/1946.

the job (title) that she regularly performed for the last month before the month in which the leave commenced.⁵⁰

Since 1950, women exercised their substantive rights (the right to salary i.e. compensation in lieu of salary) during pregnancy and childbirth based on the provisions of the Social Security Law⁵¹ and the amending regulations. In order to exercise the right to substantive insurance for the duration of maternity leave for a period of 90 days, women had to have an uninterrupted occupational record for 6 months or 18 months for the last two years.⁵² In addition, the right to compensation instead of salary during absence due to pregnancy and childbirth for the entire period of maternity leave (105 days) was determined by the Law on Labour Relations.⁵³ Consequently, according to the provisions of the Law on Health Insurance, compensation instead of salary amounted to 100% of the basis for compensation, provided that by the day of childbirth, the woman had an uninterrupted occupational record of 6 months or 12 months with interruptions for the last two years. The compensation was determined regularly on the basis of the average salary with fixed allowances paid for regular working hours for the period of the last three months⁵⁴. If the length of occupational record was less than three months, then the average salary was calculated according to the amount of salary that the woman received from the day of employment.⁵⁵ Likewise, the Law on Health Insurance provided for the duration of the above-mentioned substantive rights for the period of 90 days, which was not in accordance with the provisions of the Law on Labour Relations, by which the duration of maternity leave was extended to 105 days. However, the Law on Health Insurance of 1962 harmonised the aforementioned provision with the provision of the Law on Labour Relations of 1957, which stipulated that employed women were entitled to maternity leave of 105 days, during which they received 100 % of the average monthly salary. It was calculated on the basis of the previous three month salaries under the condition that they were insured for six uninterrupted months or for a total of twelve months in the last two years (otherwise the compensation amounted to 80 %).⁵⁶

⁵⁰ Art. 2 Decree on the Protection of Pregnant Women and Nursing Mothers in Employment, Official Gazette No. 31/49.

⁵¹ Social Security Law of Workers and Officials and Their Families, Official Gazette No. 10/1950.

⁵² Art. 17 22 and 23 of the Social Security Law of workers and Officials and Their Families, Official Gazette No. 10/1950.

⁵³ Art. 63 of the Law on Labour Relations, Official Gazette No. 53/1957.

⁵⁴ Art. 23 Law on Health Insurance of Workers and Officials FNRJ, Official Gazette No. 51/1954.

⁵⁵ *Ibid.*

⁵⁶ Art. 70 Law on Health Insurance, Official Gazette No.12 /1962.

As regards significant novelties on the regulation of labour relations, in this period the new Constitution of the SFRY of 1963⁵⁷ and the Basic Law on Labour Relations of 1965⁵⁸ were adopted governing the labour relations of all employees in a unique way, while determining a unique socio-economic position of all working people. However, unlike the old Constitution, the new Constitution did not include a special provision related to equal rights of women and men.⁵⁹ Regarding the regulation of labour rights, this Constitution brought many changes, namely Articles 36, 37 and 38 prohibited forced labour, guaranteed the right and freedom of work, limited working hours (maximum 42 working hours per week), introduced the right to daily and weekly rest and paid annual leave of at least 14 days and, minimum personal income, compensation for the unemployed, the right to personal safety and to health and other protection at work for workers and those incapable to work. Consequently, special protection at work for young people, women and the disabled was established.

The Basic Law on Labour Relations of 1965 stipulated that in case of pregnancy and childbirth, a worker enjoyed the right to maternity leave of uninterrupted 133 days.⁶⁰ However, with the Law on Amendments to the Basic Law on Labour Relations of 1966, the duration of maternity leave was shortened to at least uninterrupted 105 days.^{61, 62} Therefore, maternity leave could not be used intermittently, but uninterrupted. Likewise, a worker could take maternity leave 45 days, or obligatory 28 days prior to childbirth. A woman also had the right to take maternity leave in the case of a stillborn child or if the child died before the end of the maternity leave. The worker had the right to continue to use the leave for as long as it was necessary according to the medical findings for the woman to recover from childbirth and the mental trauma caused by the loss of a child, and in any case for at least 30 days.⁶³ During the absence from work due to maternity leave, the worker received personal income compensation as a special protection pursuant to the regulations on health insurance. Compensation for the duration of maternity leave amounted to 100% of the basis for compensation, and the

⁵⁷ The Constitution of the SFRY, Official Gazette SFRJ No. 19/1963.

⁵⁸ Basic Law on Labour Relations, Official Gazette No. 17 / 1965.

⁵⁹ Mihaljević, J., *Ustavna uređenja temeljnih prava u Hrvatskoj 1946.–1974.*, Časopis za suvremenu povijest, Vol. 43, No. 1, 2011, p. 42.

⁶⁰ Art. 73 of the Basic Law on Labour Relations, Official Gazette No. 17 / 1965

⁶¹ Art. 76 the Law on Amendments to the Basic Law on Labour Relations of 1966, Official Gazette No. 52 /1966

⁶² At that time, there were proposals in Yugoslavia to extend maternity leave to 172 days, as well as to recognize the right to unpaid leave for one or more years. See more in: Tintić, N., *Radno i socijalno pravo*, Narodne novine, Zagreb, 1969, p. 520.

⁶³ Art. 77. of the Basic Law on Labour Relations from 1970, Official Gazette No. 12/1970.

basis for determining compensation for personal income was the average personal income that the worker earned in the previous year (i.e. in the last 12 months) before the year in which she acquired right to compensation.⁶⁴ In the same way, a female worker who worked part time was provided at the end of her maternity leave a part of her personal income compensation in proportion to the time she did not work. The child's father was also entitled to compensation in the event that the mother was unable to take care of the child.⁶⁵

The latest changes regarding the regulation of labour law in Yugoslavia began with the adoption of Constitutional Amendments XX-XLII of 1971, and amendments XXI-XXIII (the so-called workers' amendments) were particularly important. Consequently, the Constitution of the SFRY of 1974⁶⁶ also offered solutions provided for by constitutional amendments related to the organisation of labour unions and mutual relations of workers at work, which were broken down by the Law on Associated Labour of 1976.⁶⁷ This Constitution guaranteed both men and women the right to work and prohibited any form of sexual discrimination (every citizen had the right to equal pay for equal work for a minimum of 42-hour working week and for a minimum of 18 days of holiday), to health and social insurance, education; youth, women and the disabled enjoyed special protection at work.⁶⁸

Employed women had the right to special protection during pregnancy and after childbirth including the right of pregnant female workers to protection from hard work, harmful substances at work, overtime and night work, maternity leave, shorter working hours after childbirth and for the care of a small child and other rights that guarantee the protection of motherhood.⁶⁹

Since the Law on Associated Labour did not stipulate the duration of maternity leave, the Law on Mutual Relations of Workers in Associated Labour of 1973⁷⁰ determined that republic and provincial laws could also include other provisions on maternity leave (duration), protection of workers during pregnancy, childbirth and care for a small child. Namely, on the basis of this authorisation, the republic and provincial laws passed after 1973 included provisions that extended the

⁶⁴ General law on health insurance and mandatory forms of health protection of the population, Official Gazette of SFRJ No. 20 /1969.

⁶⁵ *Ibid.*

⁶⁶ The Constitution of the SFRY, Official Gazette of SFRJ No 9/1974.

⁶⁷ Brajić, V., *Radno pravo*, Privredna štampa, Beograd, 1980, p. 50.

⁶⁸ Art. 159-163 of the Constitution of the SFRJ 1974.

⁶⁹ Art. 189 of the Law on Associated Labour, Official Gazette No. 53/ 1976.

⁷⁰ The Law on Mutual Relations of Workers in Associated Labour, Official Gazette No. 22/1973.

duration of maternity leave.⁷¹ Thus, the Law on Labour Relations of Workers in Associated Labour of the Republic of Croatia⁷² stipulated that during pregnancy and childbirth, a worker had to use an uninterrupted maternity leave of at least 180 days, which is a novelty compared to the previous labour law system. Likewise, there is no reference to the right of a worker to maternity leave, but to the obligation of a worker to use it, which certainly speaks for the support to motherhood protection.⁷³ Based on the medical findings, a worker could start maternity leave 45 days before childbirth at the earliest, and had to take it 28 days before childbirth. If the delivery takes place before 28 days passed, starting from the commencement of maternity leave, then the female worker could use a longer leave after delivery.⁷⁴ On the other hand, a female worker who, due to a sudden delivery did not take maternity leave before delivery was entitled to use 180 days of maternity leave after delivery.

The law also included a provision that applied to cases in which a worker used more than 45 days of maternity leave before delivery based on medical findings. Then the worker was entitled to use at least 135 days of leave after delivery. The right of a worker who gave birth prematurely (premature baby) to have her leave extended for as long as the child was born prematurely was also regulated. Finally, if the child was stillborn, or if the child died before the end of the maternity leave, the worker had the right to use the leave for as long as the doctor determined it necessary for her to recover from childbirth and trauma caused by the loss of the child. In any case, this leave could not last less than 30 days.⁷⁵

The child's father (employee) could also use maternity leave for up to 180 days instead of the mother (employee) in following cases: in the event of the mother's death, if the mother abandoned the child or if the mother could not take care of the child due to her poor health confirmed by an authorized doctor. However, when the mother is unemployed, i.e. when the person independently performs

⁷¹ Art. 32 of the Law on Mutual Relations of Workers in Associated Labour (Official Gazette No 22/1973) stipulates maternity leave for an uninterrupted duration of 105 days, and that a female worker can start maternity leave 45 days before childbirth, and obligatory 28 days before childbirth.

⁷² The Law on Labour Relations of Workers in Associated Labour (Official Gazette No. 11/78, 32/82, 39/82, 40/82 – official consolidated version, 20/83, Official Gazette SFRJ No. 68/84, Official Gazette No 49/85, 27/87, 27/88, 31/88 - official consolidated version, 47/89, Official Gazette SFRJ No. 83/89, Official Gazette No. 19/90), Official Gazette No. 355/1978

⁷³ *Ibid*, Art. 71 of The Law on Labour Relations of Workers in Associated Labour.

⁷⁴ Art. 71. para. 2 and 3. In practice, this means that the worker can enjoy the mentioned right only if she specifically requests it, and not otherwise. See in: Crnić, Z., *Komentar Zakona o o radnim odnosima radnika u udruženom radu i odgovarajućih odredbi ZUR-a sa sudskom praksom*, Narodne novine, Zagreb, 1988, p. 235.

⁷⁵ Art. 71. para. 5, 6 and 7.

the activity through personal work with funds owned by citizens, the child's father (employee) has all the rights arising from maternity leave.⁷⁶ This aimed at eliminating misunderstandings that arose from the fact that the competent self-governing interest communities did not acknowledge these rights for the fathers of children whose mothers were not employed. All the rights enjoyed by the employee who is the father of the child apply to the employee as the child's adoptive parent, as well as to the person (employee) taking care of the child.⁷⁷ The father shall only exercise the aforementioned rights upon an opinion of an authorized primary health care physician and finding confirming the inability of the mother to take care of the child in an appropriate and complete manner.⁷⁸

After the expiration of the compulsory maternity leave of 180 days, the worker had the right to work four hours a day if she so requested, until the child reaches the age of one year or to use optional maternity leave until the child reaches the age of one. This meant that only the employee herself decided which option suited her situation. The child's father, i.e. the person taking care of the child and the child's adoptive parent was entitled to exercise this right in case of the mother's death, if she abandoned her child or due to her poor health, confirmed by an authorized doctor's opinion that she could not take care of the child.⁷⁹ If, after the expiration of maternity leave, the employee decided to work part-time until the child turned one, she was entitled to a share in the distribution of funds for personal income on all grounds and according to the results of her four hour a day work, as well as to compensation for working more than four hours a day (which she did not perform) according to health insurance regulations. If, on the other hand, the worker decided to take optional maternity leave, then she was entitled to compensation of personal income, the amount of which is determined according to the health insurance regulations.⁸⁰ The father of the child, instead of the mother, also had the right to additional maternity leave, but could not enjoy it absolutely, but only under the following conditions: if he was caring for the child and if the parents agreed so, upon confirmation that the mother works full-time. If these requirements were not met, then the father could not enjoy this right instead of the mother.⁸¹

⁷⁶ Art. 73. para. 1 and 2.

⁷⁷ Art. 73. para. 3.

⁷⁸ Crnić, Z., *op. cit.*, note 75., p. 238.

⁷⁹ Art. 72. para. 1. Of the Law on Labour Relations of Workers in Associated Labour.

⁸⁰ Art. 72. para. 2 and 3.

⁸¹ Art. 72. para. 4.

At the end of the optional maternity leave or at the end of the period at which she worked part-time, the employee was entitled to work four hours a day until the child turns three, if, according to the assessment of the competent insurance authority, the child needed the mother's intensive care. The right to shorter working hours until the child turned three was granted to the employee only upon her request. During that time, the employee was entitled to a share in the distribution of funds for personal income on all grounds and according to the results of a four-hour a day work. For the remaining working time exceeding four hours a day, the employee was provided with a personal income allowance according to the health insurance regulations.⁸² The aforementioned rights were also granted to the employee - the child's father, the employee - the child's adoptive parent and the person taking care of the child, in the event of the mother's death, if the mother abandoned the child or if the mother could not care for the child due to her poor health confirmed by an authorized doctor's opinion. It should be noted that the child's father could exercise the aforementioned rights only in the event that an authorized primary health care physician issued an opinion and finding stating the mother's inability to take care of her child in an appropriate and complete manner.⁸³

Maternity leave, additional maternity leave, shorter working hours for the mother for the period until the child turns three were considered full time and are recognized in the insurance period. This means that occupational record was also acknowledged to an employee whose employment relationship ended in course of the maternity leave, and she continued to use maternity leave for up to 180 days. However, the legislator did not apply this provision to the child's father, the adoptive parent and the employee taking care of the child.⁸⁴

After the expiration of maternity and optional maternity leave, or part-time work, the employee was entitled to return to the position or work tasks she had been performing before the onset of her maternity leave; in the event of their cancellation, she was entitled to perform other jobs or work tasks suited to her professional qualifications. Similar to the previous provision, these rights apply only to the female employee, and not to any other person who, for the reasons already listed above, would be able to enjoy the rights and obligations of a mother when she takes care of a child.^{85, 86}

⁸² Art. 74. para. 1.

⁸³ Art. 74. para. 2, 3, and 4.

⁸⁴ Art. 75.

⁸⁵ Art. 76.

⁸⁶ The authors of the Commentary on the Law of Labour Relations of Workers in Associated Work state that all persons who, on the basis of this Law, assume the role of mother (the father of a child, an

During maternity and optional maternity leave, workers are provided with personal income compensation as a special protection. Personal income compensation is granted to the employee for the period of 180 days, since the Law on Labour Relations of Workers in Associated Labour stipulated duration of maternity leave of uninterrupted 180 days.⁸⁷ This compensation is provided according to the regulations on health insurance⁸⁸ and it amounts to 100% of the compensation base during maternity leave. In course of the use of optional maternity leave, the compensation amounts to 70% of the compensation base. However, the Communities within the Union of Communities established the criteria and benchmarks by means of Self-Governing Agreement providing for the cases when this compensation can be less than 70% or more than 70%, but not exceeding 100% of the compensation base.⁸⁹ In this context, the Self-Governing Agreement stipulated that the amount of personal income compensation, depending on the economic and financial income ranged from 50% to a maximum of 100% of the compensation base.⁹⁰ Personal income compensation for the duration of the optional maternity leave applies until the child turns one.⁹¹ The basis for determining the personal income allowance is the monthly average of the personal income paid to the beneficiary-employee in the last 12 months before the month in which the right to allowance was acquired.⁹² The child's father, i.e. the child's adoptive parent or the person taking care of the child after the mother's death, or when the mother abandoned the child or could not take care of her child due to her poor health, as confirmed by an authorized doctor's opinion, were entitled to personal income compensation amounting to 100% of the compensation base. If the child's father used optional maternity leave until the child reached the age of one after the mother's death, or when the mother abandoned the child, he is entitled to personal income compensation amounting to 100%, or 90% of the compensation base if the income of the family household in the previous year exceeded 250% of the guaranteed personal income per family member.⁹³ In the event that the child's father used optional maternity leave because the mother could not take care of the child due to her poor health as confirmed by an authorized doctor, he was entitled

adoptive parent and a worker who cares for a child) enjoy the same rights indicated in these two legal provisions (Art. 75 and 76) as a working mother. Crnić, Z., *op. cit.*, note 75, p. 240.

⁸⁷ Nikolovski, C., *Pravo na porodiljski i dodatni porodiljski dopust na rad sa skraćenim radnik vremenom i na isplatu naknade osobnog dohotka*, Informator, Zagreb, 1986, p. 39.

⁸⁸ Law on Health Care and Health Insurance, Official Gazette No. 10/1980.

⁸⁹ Art. 53, para. 5 and 6 of the Law on Health Care and Health Insurance, Official Gazette No. 10/1980.

⁹⁰ Samoupravni sporazum o kriterijima i mjerilima za utvrđivanje visine naknade osobnog dohotka za vrijeme korištenja dodatnog porodiljskog dopusta, Official Gazette No. 1/1981 (Art. 3).

⁹¹ Art. 72 of the Law on Labour Relations of Workers in Associated Work.

⁹² Art. 52 of the Law on Health Care and Health Insurance, Official Gazette No. 10/1980.

⁹³ Nikolovski, C., *op. cit.*, note 88, p. 51.

to personal income compensation amounting from 50% to 90% of the compensation base, depending on the amount of income per family household member.

4. MATERNITY LEAVE IN THE PROVISIONS OF THE LAW ON BASIC RIGHTS IN EMPLOYMENT OF 1989 AND THE LAW ON EMPLOYMENT RELATIONS OF 1990

The intervention of the state regarding maternity leave was noticeable as early as in the socialist period and it aimed at protection of mothers, as well as at strengthening their rights within labour legislation. According to Dobrotić, at the end of the socialist period, maternity leaves began to gain greater importance. Industrialisation and lack of the labour force resulted in intensive employment of women, so that paid maternity leave in that period was considered a basic prerequisite for women to enter the labour market.⁹⁴ The regulation of the issue of maternity leave in transition countries was based on several basic features such as primarily pro-natal measures reflected in longer parental leaves for parents with multiple children, followed by gender equality features that tended to expand the rights of fathers when using the leave. Finally, it was based on inclusion features i.e. the expansion of rights related to maternity protection to new groups of parents.⁹⁵

Although the federal Law on Basic Rights in Employment, regulating basic rights and obligations and responsibilities for the duration of the employment relationship applied at the entire territory of Yugoslavia, the republic, i.e. provincial laws to a certain extent regulated separate social rights and more extensive maternity leave schemes.

The federal law, i.e. the Law on Basic Rights in Employment stipulates the right of a mother to maternity leave for an uninterrupted duration of 270 days.⁹⁶ The legal provision sets out that based on the medical findings, the female worker is allowed to use the leave 45 days before childbirth, and obligatory has to take it 28 days before childbirth.⁹⁷ Thus, the right of a female worker to use maternity leave

⁹⁴ Dobrotić, I., *Promjenjiva narav društvenih i rodnih nejednakosti povezanih uz dizajn politika usmjerenih skrbi za djecu u post-jugoslavenskim zemljama*, Tehničko izvješće- INCARE project, April 2019. Available at [https://www.incare-pyc.eu/wp-content/uploads/2019/07/INCARE_final_hr.pdf], Accessed 26 January 2024.

Zrinščak, S.; Puljiz V., *Hrvatska obiteljska politika u europskom kontekstu*, Revija za socijalnu politiku 9, No. 2 (2002): 117-137. Available at [<https://doi.org/10.3935/rsp.v9i2.170>], Accessed 29 February 2024.

⁹⁵ Dobrotić, I., *op. cit.*, note 1, p. 9.

⁹⁶ Law on Basic Rights in Employment, Official Gazette of the SFRY No. 60/1989, 42/1990, Official Gazette No. 34/1991, 19/1992, 26/1993, 29/1994, 38/1995, Art. 41, paragraph 1.

⁹⁷ Law on Basic Rights in Employment, paragraph 2.

during a period of 9 months protected both the mother and the child. Unlike the federal law, the Republic of Croatia regulated the issue of maternity leave by passing a separate regulation. The Law on Labour Relations stipulated the mother's obligation to use maternity leave for an uninterrupted period of 180 days.⁹⁸ In this context, female workers in the territory of the Socialist Republic of Croatia were entitled to use maternity leave for a duration of 180 days with salary compensation of 100% of the compensation base. After that, female workers were entitled to use the rest of the total of 270 days of uninterrupted maternity leave, as they were entitled to do so by the Law on Basic Rights in the Employment. According to the interpretation of the provisions of the two legal regulations, female workers were not allowed to terminate maternity leave and start work before the end of maternity leave for an uninterrupted period of 6 months. On the other hand, neither the labour organisation nor the employer were allowed to permit work after an interrupted maternity leave before the period expired in which the female worker using maternity leave was obliged to use the maternity leave.⁹⁹ Only after the obligatory period of maternity leave expired, the female worker could decide on whether to use the remaining maternity leave as stipulated by law for up to 270 days, or to terminate the maternity leave and start working.¹⁰⁰

The federal legislation also regulates the protection of the mother in case of still-birth or death of the child before the end of maternity leave. In that case, the female worker had the right to request an extended maternity leave for the time that, according to medical opinion, was necessary for the recovery from childbirth and trauma caused by the loss of the child, for at least 45 days.¹⁰¹ During that time, she was entitled to enjoy the rights that normally apply to basic maternity leave.

Fathers could take maternity leave pursuant to Art. 41, paragraphs 1 and 2 of the Law on Basic Rights in Employment in exceptional cases such as in the event of the mother's death, if the mother abandoned the child, or if she was prevented from using the said right for justified reasons.

⁹⁸ Pursuant to the provisions on maternity protection of the Law on Labour Relations in the territory of the Republic of Croatia a female worker shall take uninterrupted 180 days of maternity leave during pregnancy, childbirth and child care (obligatory maternity leave). If the child is born prematurely, the period of leave will be extended by the length of time between the actual date of birth of the premature baby and the time in which the baby was due. Law on Labour Relations, Official Gazette No. 19/1990, Art. 47, paragraphs 1 and 2.

⁹⁹ Crnić I.; Momčinović Z., *Law on Basic Rights in Employment, Commentary*, Informator, Zagreb, 1990, p. 70.

¹⁰⁰ Crnić I.; Momčinović Z., *op. cit.*, note 6, p. 70.

¹⁰¹ See Art. 44 of the Law on Basic Rights in Employment.

All the rights enjoyed by parents in terms of using maternity leave also applied to the adoptive parents of the child.¹⁰²

A more extensive protection scheme of maternity leave took place in Slovenia and Croatia with the introduction of the so-called institution of extended maternity leave. Pursuant to Art. 48, paragraph 1 of the Law on Labour Relations, upon expiration of compulsory maternity leave, one of the child's parents had the right to work part-time until the child reaches the age of one or to use optional maternity leave until the child reaches the age of one. The novelty in the field of maternity leave regulation in relation to federal legislation is the right of fathers to use optional maternity leave under certain conditions. Pursuant to paragraph 2 of the same article, fathers had the right to use optional maternity leave instead of the mother if they were taking care of the child and if the parents agreed to do so, provided that at the same time, the mother worked full-time. Furthermore, the law guarantees the right of fathers to take optional maternity leave in the event of the mother's death, if she abandons the child or if she is prevented from this right for justified reasons, regardless of whether the mother is employed or is employed less than full-time or if she performs an independent activity i.e. individually or individually and with funds owned by citizens.¹⁰³ Although the institution of optional maternity leave meant extended rights in terms of the protection of family life, Dobrotić believes that there was no flexibility in using it since it could only be used in one piece, and there was a possibility to use it partially as part-time work, which could not extend the duration of the leave.¹⁰⁴ Finally, it can be concluded that maternity leave is also defined in the provisions of the Law on Labour Relations as the primary right of the mother, and despite the possibility for fathers to use part of the leave, there was no significant change in parental practices, as Dobrotić claims, because the leave was almost always used by mothers.¹⁰⁵

Article 50 of the Law on Labour Relations stipulates special protection for the parents of disabled children. This protection was realised through the right to work part-time granted to one of the parents of a child with severe disability as long as needed. A parent who worked part-time in accordance with Art. 50, paragraph 1 of the Law had the right to compensation of salary amounting to the difference between the salary earned by working part-time and the one earned in a full-time work.¹⁰⁶

¹⁰² See Art. 43, para.2 of the Law on Basic Rights in Employment.

¹⁰³ Art. 48, para. 3 of the Law on Labour Relations.

¹⁰⁴ Dobrotić, I., *op. cit.*, note 1, pp. 5-6.

¹⁰⁵ Dobrotić, I., *op. cit.*, note 1, p. 9. Prema Korintus Stropnik 2009.

¹⁰⁶ Article 66, paragraphs 1 and 2 of the Labour Law of 1995 (Official Gazette No. 38/95) sets out similar protection to the parents of a child with developmental disabilities, i.e. a child with severe disability,

To a certain extent, the Collective Agreements provided protection for the female worker during pregnancy and for the parent of a child with a severe disability who worked part-time since the transfer to a workplace more than 50 km away from the previous working place.¹⁰⁷

Furthermore, certain shortcomings of the socialist legislation regarding the possibility of using the leave are evident in practice. First, the legal regulations that governed the issue of leave and compensation while exercising this right enabled the exercise of the right only for parents employed on the basis of the standard employment contracts. This means that the categories of temporary and occasionally employed parents are completely excluded from the possibility of exercising their rights to maternity leave. It was not until the early 80s that self-employed parents and parents employed in agriculture had the possibility to exercise the right.¹⁰⁸ Furthermore, in order to obtain the right to maternity benefits, employed beneficiaries had to fulfil the obligatory insurance period in order to obtain the right to full benefits for the duration of the leave. In Croatia, it was only in the late 1980s that the restrictive provision was alleviated, and the right to full compensation was made available to mothers with shorter occupational record.

The primary purpose of the provision of a three-year maternity leave pursuant to Art. 48, paragraph 4 of the Law on Labour Relations is not quite clear.¹⁰⁹ However, although the provision was in force until the adoption of the Labour Law in 1995, amidst the negative social and economic situation during the war period, the implementation of the three-year leave did not take root in practice.¹¹⁰

After the independence of the Republic of Croatia, the earlier legislation in the field of protection of labour relations was taken over by the Law on the Adoption of Federal Laws in the Field of Labour Relations and Employment that applied in

thus determining that one of the parents was entitled to parental leave or work part time until the child is seven years old. After that, one parent is entitled to continue working part time, if needed. The parent is entitled to compensation in accordance with special regulations at the expense of social welfare funds.

¹⁰⁷ The collective agreement stipulates the protection of female workers with children less than seven years old, as well as single parents of minor children. General Collective Agreement for the Economy, Official Gazette No. 47/1992 and the General Collective Agreement for Public Activities and Public Undertakings Official Gazette No. 66/1992. See more in Jelčić, V., *Žena u radno-socijalnom zakonodavstvu Republike Hrvatske*, Revija za socijalnu politiku 1, No. 4, 1994, p. 357.

¹⁰⁸ Dobrotić, I., *op. cit.*, note 1, p. 9.

¹⁰⁹ Thus, in accordance with Article 48, paragraph 4 of the Law on Labour Relations, upon the expiration of extended maternity leave, the mother had the right not to work until the child reached the age of three years, during which time her rights and obligations acquired at work and based on work were suspended.

¹¹⁰ Dobrotić, I., *op. cit.*, note 1, p. 9.

the Republic of Croatia as a republic law.¹¹¹ Thus, the maternity leave policy almost completely followed the normative solutions determined by the socialist laws passed before the change in the constitutional order. After passing the Labour Law of 1995, which entered into force on 1 January 1996, the previous laws related to labour law ceased to apply; these were the Law on Basic Rights in Employment (Official Gazette, 34/91, 26/93 and 29/94) and the Law on Labour Relations (Official Gazette, 25/92 - consolidated text, 26/93 and 29/94).

Before the Law entered into force, by passing the provisions of the Constitution of the Republic of Croatia adopted in 1990, family life and motherhood protection became protected categories.¹¹² Article 62 of the Constitution of the Republic of Croatia protects motherhood, children and youth and creates social, cultural, educational, substantive and other conditions that promote the exercising of the right to a dignified life. Furthermore, Article 64 paragraph 3 of the Constitution provides youth, mothers and disabled persons with special protection at work. By this, as Vinković points out: "...the aforementioned persons in the domain of work are subject to positive discrimination, and the protection of motherhood represents positive discrimination of the biological condition inherent exclusively to the female gender..."¹¹³ In this sense, the Labour Law precisely established the framework for motherhood protection in the Croatian labour law.

5. MATERNITY LEAVE IN THE PROVISIONS OF THE LABOUR LAW OF 1995

Since demographic renewal was one of the basic social goals during the first half of the 90s, the family policy measures tended at that time to re-traditionalise women in the society and deviated from those deriving from the earlier socialist period.¹¹⁴

¹¹¹ The Law on Taking over the Federal Laws in the Field of Labour Relations and Employment was applicable for the Republic of Croatia, Official Gazette No. 34/91. The first Labour Law in the Republic of Croatia was adopted in 1995 (Official Gazette, No. 38/95, 54/95, 65/95, 102/98, 17/01, 82/01, 114/03, 123/03, 142/03, 30/04 and 68/05) and entered into force on 1 January 1996. Until then, labour law issues were governed by the provisions of the Law on Basic Rights in Employment, which was taken over by the Law on the Adoption of Federal Laws in the Field of Employment Relations and Employment, which applied in the Republic of Croatia, Official Gazette no. 34/91, and the Law on Labour Relations, Official Gazette, No. 25/92, 26/93 and 29/94. Although amendments to the Law on Labour Relations entered into force in 1992, 1993 and 1993, they did not refer to the issue of maternity protection, i.e. normative regulation of maternity leave. Milković, D., *Ugovor o radu i zakon o obveznim odnosima*, Zbornik Pravnog fakulteta Sveučilišta u Rijeci, Vol. 37, No. 1, 1991, p. 685.

¹¹² Constitution of the Republic of Croatia, Official Gazette No. 56/1990.

¹¹³ Vinković, M., *Zaštita majčinstva- stanje i perspektive hrvatskog radnog zakonodavstva*, Radno parvo, No. 01/06, pp. 6-7.

¹¹⁴ Dobrotić, I., *Obiteljska politika*, in: Bežovan G., *et al.*, *Socijalna politika Hrvatske*, 2nd ed., Pravni fakultet Sveučilišta u Zagrebu, Zagreb, 2019, p. 358.

The system of family benefits in the Republic of Croatia was supported in 1996 with the adoption of the National Programme of Demographic Development, which laid the foundations of a new family policy. The adoption of this document and the family focused proposed measures aimed at strengthening the social role of the family and increasing the birth rate. This document was also reflected in the Croatian labour, social and family legislation. A special chapter of the new Labour Law (Official Gazette, nos. 38/95, 54/95, 64/95, 17/01, 82/01, 114/03 and 30/04), which entered into force on 1 January 1996, referred to the protection of motherhood.¹¹⁵ A number of measures, among these also the institution of mother-educators and a three-year maternity leave were normatively regulated in the Labour Law, tended to increase the birth rate, but according to research, they were not fully implemented in practice due to a lack of financial resources.¹¹⁶

Article 58, chapter IX of the Labour Law governs maternity leave.¹¹⁷ The result of the discussion on the proposal of the Labour Law showed that due to negative demographic trends, the provisions governing protection of motherhood should be encouraging. Possible disagreements appeared only with regard to the limitation of financial possibilities in exercising certain rights.¹¹⁸

In comparison to the provisions of previous laws, the new legal framework adopted mainly earlier solutions, especially when it comes to Art. 41 of the Law on Basic Rights in the Employment, setting out the duration of leave, as well as Articles 47 and 48 of the Law on Labour Relations, that provide for the possibility of optional maternity leave. The Labour Law adopted two novelties in relation to the previously mentioned laws, namely the right to use the leave until the child reaches the age of three for twins, the third and every subsequent child, as well as

¹¹⁵ The draft law on maternity and parental benefits, with the Final draft law, Available at: [https://www.sabor.hr/sites/default/files/uploads/sabor/2019-04-15/122702/PZE_85.pdf], Accessed: 1 March 2024.

¹¹⁶ *Ibid.*, p. 358.

¹¹⁷ Article 58 of the Labour Law (Official Gazette No. 38/95) in its original version, as well as in other articles governing this issue, uses the term “porodni dopust” to refer to maternity leave. The special regulation governing this issue, the Law on Maternity Leave for Self-Employed Mothers and Unemployed Mothers (Official Gazette No. 24/96) uses the term “porodni dopust” (meaning: “maternity leave”) to designate the rights and obligations deriving from the field of protection of parental rights and obligations related to upbringing and care for children. The Law on Amendments to the Law on Maternity Leave for Self-Employed Mothers and Unemployed Mothers (Official Gazette No. 30/04) introduced the term “rodiljni dopust” (meaning: maternity leave) into legal practice, which is still in legal use today.

Note by the translator: The terms “porodni dopust”- “leave related to giving birth” and “rodiljni dopust” – leave related to a “woman giving birth” are lexical variants and near synonyms.

¹¹⁸ Ružđjak M.; Šrbar P.; Zuber M., *Zakon o radu s komentarom*, inženjerski biro, Zagreb, 1995, Art. 58.

the right of a woman to exceptional termination of the obligatory leave before the 6-month period expires, but not earlier than 42 days after childbirth.¹¹⁹

Amendments to the Labour Law of 2001 reduced the duration of the leave to the time when the child reaches the age of three for twins, the third and each subsequent child.¹²⁰ A new solution on shortening the duration of leave in the aforementioned case to two years was announced in a government document in August 2001, and then implemented in amendments to the Labour Law and other positive regulations.¹²¹ This legal change was followed by changes of special regulations on which compensation for the duration of the leave was based.¹²² Since the change in the form of shortening the duration of maternity leave was a measure of the centre-left government, in 2004, as a result of the pre-election policy of the new centre-right government, a three-year leave was reintroduced for twins, the third and every subsequent child, and the amount of flat-rate maternity benefits was corrected to the 2001 amount.¹²³ Furthermore, the duration of leave for unemployed parents is extended to one year with higher compensation amounts.¹²⁴

In comparison to the first amendment, the law also determined a corresponding provision according to which fathers could use maternity leave instead of mothers who worked full-time for the child between six months and one year of age for twins and every third or the subsequent child until the age of three and upon

¹¹⁹ Labour Law, Art. 58, paragraphs 3, 4 and 6.

¹²⁰ The Law on Amendments to the Labour Law, Official Gazette No. 82/2001. amended the previous Art. 58, paragraph 4 of the Labour Law (Official Gazette No. 38/95, 54/95, 65/95 and 17/01) and female workers could take maternity leave for twins, triplets, quadruplets, or several children of the same age until the age of two. Amendments to the Labour Law (Official Gazette No. 30/2004) applied to this provision so that Art. 58, paragraph 4 of the Labour Law (Official Gazette No. 38/95, 54/95, 65/95, 102/98, 17/01, 82/01, 114/03, 123/03 and 142/03) changed that a female worker could take maternity leave for twins, for the third child and every subsequent child until the child reaches the age of three. Amendments to the legal provisions also referred to other provisions of the law that regulated the rights of mothers, i.e. fathers to twins, the third child and every subsequent child. The aforementioned amendments to the Labour Law also reflected in a special regulation of the issue of maternity leave. The Law on Amendments to the Law on Maternity Leave for Self-Employed Mothers and Unemployed Mothers (Official Gazette No. 82/01 and 30/04) also increases the rights of self-employed or unemployed mothers (beneficiaries) in the same way as for employed beneficiaries of this right, if the prescribed conditions are met. See more about the changes to the special regulation below.

¹²¹ See more on starting points for determining social policy until the end of 2001 and the basics of social policy in 2002. On the development of social policy in the Republic of Croatia and on appropriate family policy measures in: Zrinščak, S.; Puljiz V., *op. cit.*, note 1, p. 12.

¹²² See note 51.

¹²³ Labour Law (Official Gazette 137/2004) Art. 66, paragraph 4.

¹²⁴ Dobrotić, I., *op. cit.*, note 20, p. 362.

agreement with the mother.¹²⁵ Amendments to the Labour Law of 2003 introduced two additional months of maternity leave in cases where fathers have partially already used the leave. This was an attempt to involve fathers in upbringing of the child to a greater extent, but in practice the aforementioned change did not result in intensive use of leave, so that the leave was still mainly used by mothers.¹²⁶

The law further stipulates the right of a woman to use maternity leave during pregnancy, childbirth and childcare, in addition to the right of an employed woman to start using leave at the earliest 45 days before the expected birth, and at the latest until the age of one of the child.¹²⁷ The limits of compulsory leave are set by the law as follows. A woman is obliged to use maternity leave 28 days prior to delivery until the child reaches the age of six months.¹²⁸ Another novelty that the legislator emphasized *expressis verbis* is the right of the mother to use leave in the case of an earlier birth for as much time as the child was born earlier.¹²⁹ In comparison to the previous legislation, all the rights of a mother who gives birth to a stillborn child or whose child dies before the end of the maternity leave were retained. In this case, according to the medical opinion, mothers are allowed to use maternity leave for the time needed for her recovery, and at least for 45 days.¹³⁰

Mothers with four or more children should gain the special status of mother-educator. According to the law, regardless of whether they are employed or unemployed, mothers-educators have the right to monetary compensation, pension and disability insurance, health insurance and other rights in accordance with special regulations.¹³¹ The purpose of this provision was not an immediate application, but it was included in the Law as an obligation set by the legislator in anticipation of the elaboration implementation of this institution within the framework of a special law.¹³² Undoubtedly, this was one of the pro-natal policy measures from the national programme of demographic renewal. According to the results of the research, the mentioned measure was not implemented for the lack of funds dur-

¹²⁵ Labour Law, Art. 58, paragraph 1. The father's right to use maternity leave instead of the mother when the child is between six months and one year old is stipulated by the earlier Law on Labour Relations (Article 48, paragraphs 1 and 2).

¹²⁶ Amendments to the Labour Law (Official Gazette No. 114/2003), Art. 16.

¹²⁷ Labour Law, Art. 58, paragraph 1.

¹²⁸ Labour Law, Art. 58, paragraph 6.

¹²⁹ Labour Law, Art. 58, paragraph 7.

¹³⁰ Labour Law, Art. 64. Compare with the previously applicable provision: Law on Basic Rights in Employment, Art. 44.

¹³¹ Labour Law, Art. 63.

¹³² See explanation Ruždjak M.; Šrbar P.; Zuber M., *Zakon o radu s komentarom*, Inženjerski biro, Zagreb, 1995, Art. 63.

ing the 90s, but it was updated again, as Dobrotić claims, during the period of strengthening the national pro-natal agenda in 2016 in the City of Zagreb.¹³³

When it comes to the rights of fathers related to upbringing and care of the child, in addition to the previously mentioned possibility of using the leave for the period until the child reaches the age of six months and three years of age for twins, every third or subsequent child, the legislator retained the earlier provision of the Law on Basic Rights in the Employment. Accordingly, one of the parents was thus entitled to work part time after the expiration of the obligatory maternity leave until the child reaches one year of age.¹³⁴ The right of fathers is temporary extended by the new Law in comparison to the fathers of twins, the third or every subsequent child until the child reaches the age of three. Fathers could use these rights in an agreement with mothers if the mothers worked full time. By the Amendments to the Labour Law of 2003, a provision was added to the existing regulation of paternal leave according to which the father exercises the right to paternal leave for at least three months. Maternal leave pursuant to Article 58, paragraphs 2 and 4 of the Labour Law was extended for two months.¹³⁵ The right of the father to exercise the rights of the mother if case of her death, or if she abandoned the child or was unable to take care of the child due to illness is also retained.¹³⁶ Fathers acquired the right not to work after the maternity leave expired until the child reaches the age of three, and during that time, their employment rights were suspended. Previously, the Law on Labour Relations, Art. 48, paragraph 4, recognized this right exclusively for mothers, and by the provisions of this Law, this right was recognized for fathers as well.

The law also regulates the right of an adoptive parent or guardian, i.e. a person to whom a child is entrusted based on the decision of the competent social welfare body, to exercise the rights established by the Law for the purpose of motherhood protection and raising a child.¹³⁷

A novelty in the category of maternity protection, which is granted to women after the expiration of maternity leave or part-time work, is the right to continue

¹³³ See for details in: Dobrotić, I., *op. cit.*, note 1, p. 13.

¹³⁴ Labour Law, Art. 59, paragraph 1. Compare with the previous applicable provision: Law on Basic Rights in Employment Art. 42, paragraph 1.

¹³⁵ Amendments to the Labour Law, Official Gazette No. 114/2003., Art. 16.

¹³⁶ Labour Law, Art. 61, paragraph 1. Compare with the previous applicable provision: Law on Basic Rights in Employment, Art. 43, paragraph 1, and the Law on Labour Relations, Art. 48, paragraph 3. These rights are enforceable upon meeting the conditions prescribed by the ordinance on determining the inability of the mother to take care of the child. Adopting of the ordinance is the responsibility of the Minister of Health. See Art. 61, paragraph 2.

¹³⁷ Labour Law, Art. 67, paragraph 1.

breastfeeding their children during full-time work, in the form of two breaks of one-hour during the working day.¹³⁸ A woman could exercise this right until the child reaches the age of one, and she was entitled to receive a salary compensation calculated according to special regulations.

In comparison to the previous legislation, the legislator introduced another novelty in the framework of the new Labour Law, and that is the compulsory notice to the employer of the use of maternity leave, adoption leave or the suspension of the employment contract until the child reaches the age of three, at least one month prior to exercising the aforementioned rights.¹³⁹

When it comes to the compensation for the duration of maternity leave or working part time, the Labour Law stipulates the way the amount of compensation is regulated by special regulations. In this regard, a more detailed regulation of this issue is governed by separate regulations, the Law on Maternity Leave for Self-Employed and Unemployed Mothers, the Health Insurance Law and the Law on the Execution of the State Budget of the Republic of Croatia, which are discussed further below.

As the subject of this part of the research largely focuses on determining the normative changes that followed the changes in the Labour Law in the area of maternity leave policy, the following text analyses the regulation in the provisions, later amendments to the special regulation governing maternity leave, i.e. the Law on Maternity Leave of Self-Employed and Unemployed Mothers. The content of other positive regulations governing certain rights related to maternity leave will be dealt with sporadically, when needed for the analysis of a separate right.

6. REGULATION OF MATERNITY LEAVE IN THE PROVISIONS OF THE LAW ON MATERNITY LEAVE FOR SELF-EMPLOYED AND UNEMPLOYED MOTHERS

The Law on Maternity Leave for Self-Employed and Unemployed Mothers entered into force in 1996 (hereinafter: Law on Maternity Leave)¹⁴⁰, and amendments to the Law of 1997 and 2001 sought to provide a broader framework of legal protection, especially when it comes to the duration of the leave and the compensation. In relation to the provisions of the Labour Law, the Law on Mater-

¹³⁸ Labour Law, Art. 61.

¹³⁹ Labour Law, Art. 67, paragraph 1. See the explanation in the commentary to the Law.

¹⁴⁰ The Law on Maternity Leave for Self-employed and Unemployed Mothers will be cited below in the original text. (Official Gazette, No. 24/96), while the amendments to the Law will be explained separately.

nity Leave of 1996 provided the right to use the leave primarily to mothers who are self-employed, perform crafts, agricultural or other activity, and who, based on their work, are insured by pension, disability and health insurance, as well as to unemployed mothers with Croatian citizenship and residence in the Republic of Croatia, for twins, the third and every subsequent child (Article 1, paragraphs 1 and 2). Regarding the duration of compulsory leave, even a self-employed mother had the right to maternity leave during pregnancy, childbirth and childcare, from 28 days before childbirth until the child reaches the age of six months (compulsory maternity leave). However, even with the earlier Labour Law, which regulated the issue of maternity leave, a self-employed mother could start using maternity leave 45 days before the due birth and could use it until the child reaches the age of six months.¹⁴¹ At her own request, a self-employed mother could, by exception, start working before the child is six months old, but not before the end of 42 days after giving birth.¹⁴² In the same way, i.e. in accordance with the previously adopted Labour Law, other issues of maternity protection are also regulated. The right to compensation during the maternity leave is governed by the provisions of the Health Insurance Law.¹⁴³ The monetary compensation for the use of compulsory maternity leave was paid from the funds of the Croatian Institute for Health Insurance, from the first day of use of that right.¹⁴⁴

The funds for financial compensation for the period of use of maternity leave until the child reaches the age of one and for the period of use of maternity leave until the child reaches the age of three were provided in the budget of the Republic of Croatia, and funds for monetary compensation for maternity leave for unemployed mothers were provided in the budget of the Republic of Croatia.¹⁴⁵

The Law on Amendments to the Law on Maternity Leave for Self-Employed and Unemployed Mothers (Official Gazette 109/1997) expanded the circle of beneficiaries of the right to maternity leave in such a way that the Law enabled and regulated the right to maternity leave for unemployed mothers, but it is she could exercise the right only if she gave birth to twins, the third and every subsequent child.¹⁴⁶ Furthermore, pursuant to Art. 2 of the Amendments to the Law, mothers - pension beneficiaries exercise the right to maternity leave and to monetary com-

¹⁴¹ Law on Maternity Leave for Self-Employed and Unemployed Mothers, Art. 2, paragraphs 1, 2, and 3.

¹⁴² Law on Maternity Leave for Self-Employed and Unemployed Mothers, Art. 2, paragraph 4.

¹⁴³ Pursuant to the provisions of Articles 25, 33 and 34 of the Law on Health Insurance (Official Gazette, No. 75/93).

¹⁴⁴ Art. 9. para. 1.

¹⁴⁵ Art. 9. paragraphs 2 and 3.

¹⁴⁶ See Article 1 of the Law on Amendments to the Law on Maternity Leave for Self-Employed and Unemployed Mothers (Official Gazette No. 109/1997).

pensation for the period of maternity leave the same as unemployed mothers.¹⁴⁷ Regarding compensation for the duration of the leave, the legislator did not foresee any changes; only a provision was added in Art. 8 on the method of determining monetary compensations for the duration of the leave of unemployed mothers and mothers who are pension beneficiaries.¹⁴⁸

Later amendments to the Law of 2001 expanded the circle of beneficiaries of the right to maternity leave, and the right to use the leave was also guaranteed to mothers in full-time education with Croatian citizenship, continuous residence in the Republic of Croatia for at least three years before submitting the request for recognition of rights, and health insurance.¹⁴⁹

The biggest amendment compared to the earlier version of the law was the adoption of Article 2, which shortened the duration of leave for mothers of twins, triplets, quadruplets, or with multiple children of the same age and for mothers who were self-employed to up to the maximum of two years.¹⁵⁰ The aforementioned amendment corresponded to the earlier amendment to the Labour Law that entered into force in 2001. Furthermore, unemployed mothers and mothers in full-time education had the right to maternity leave from the day the child was born until the child was six months old.¹⁵¹ In relation to the earlier provision of the Law allowing unemployed mothers to use maternity leave after the birth of twins, the third or each subsequent child,¹⁵² this amendment facilitated the use of the leave for all unemployed mothers, regardless of the number of children, on the condition that they had Croatian citizenship, uninterrupted residence in the Republic of Croatia for at least three years prior to submission of the request for the recognition of rights and health insurance in the Republic of Croatia.¹⁵³ This has undoubtedly expanded the circle of maternity leave beneficiaries. Unemployed mothers and mothers in full-time education were entitled to maternity leave from

¹⁴⁷ See Article 2 of the Law on Amendments to the Law on Maternity Leave for Self-Employed and Unemployed Mothers (Official Gazette No.109/1997).

¹⁴⁸ See Article 3 of the Law on Amendments to the Law on Maternity Leave for Self-Employed and Unemployed Mothers (Official Gazette No. 109/1997).

¹⁴⁹ Law on Amendments to the Law on Maternity Leave for Self-Employed and Unemployed Mothers (Official Gazette No. 82/2001). Art. 1, paragraphs 1 and 2.

¹⁵⁰ Law on Amendments to the Law on Maternity Leave for Self-Employed and Unemployed Mothers). Art. 2, paragraph 2.

¹⁵¹ Law on Amendments to the Law on Maternity Leave for Self-Employed and Unemployed Mothers (Official Gazette 82/2001). Art. 2, paragraph 3.

¹⁵² See the Law on Maternity Leave for Self-Employed and Unemployed Mothers, which will be cited below in the original text. (Official Gazette No. 24/96), Art. 3, paragraph 3.

¹⁵³ Law on Amendments to the Law on Maternity Leave for Self-Employed Mothers and Unemployed Mothers (Official Gazette No. 82/2001). Art. 1, paragraph 2.

the child's birth until the child reaches the age of six months.¹⁵⁴ Furthermore, the right to maternity leave was also available to unemployed mothers who were entitled to a disability pension due to professional incapacity for work based on the decision of the Croatian Institute for Pension Insurance (Article 1, paragraph 4). However, with this Law, self-employed mothers and unemployed mothers were not equal to the employed mothers/parents according to labour regulations. Some issues of adoption leave, working part time, leave for the nursing of a child until it reaches the age of three, leave or part time work until the child reaches the age of seven, and the rights of guardians are still not governed by a regulation.¹⁵⁵

The Law on Amendments to the Law on Maternity Leave for Self-Employed and Unemployed Mothers (Official Gazette 30/04) amended and supplemented the provisions of the Law on Maternity Leave (24/1996, 109/1997, 82/2001), and the very title of the law was changed into the Law on Maternity Leave for Self-Employed and Unemployed Mothers.¹⁵⁶ Bearing in mind the unfavourable demographic trends in the Republic of Croatia, the Government of the Republic of Croatia in 2004 in its report on the Final Proposal of the Law on Maternity Leave for Self-Employed and Unemployed Mothers stipulated that there is an essential need for improved family protection in the care and upbringing of children.¹⁵⁷ Therefore, the proposed law aimed at helping mothers who gave birth to twins, triplets and every subsequent child in such a way that they can use maternity leave and the right to monetary support until the child reaches the age of three.¹⁵⁸ Thus, mothers who are self-employed, if they used the mandatory maternity leave from Article 2 of this Law, could continue using maternity leave until the child reaches the age of one, that is, for twins, the third and every subsequent child until the

¹⁵⁴ Law on Amendments to the Law on Maternity Leave for Self-Employed Mothers and Unemployed Mothers (Official Gazette No. 82/2001). Art. 2, paragraph 3.

¹⁵⁵ The legislative proposal establishing maternity and parental benefits, with the Final Bill, Available at: [https://www.sabor.hr/sites/default/files/uploads/sabor/2019-04-15/122702/PZE_85.pdf], Accessed 1 March 2024.

¹⁵⁶ Law on Maternity Leave for Self-employed Mothers and Unemployed Mothers (Official Gazette 30/2004).

¹⁵⁷ As part of the changes to the positive regulations governing the maternity leave and "...maternity benefits amounts changed to the amount preceding the restrictive measures at the beginning of this decade. Since 1 July 2004, the lowest maternity allowance for all mothers was HRK 1,600.00; employed mothers were entitled to maternity benefit ranging from HRK 1,600.00 to HRK 2,500.00, depending on the basis for salary compensation for the first six months of the maternity leave, for the time of extended maternity leave until the child reaches the age of one." Draft law on maternity and parental benefits, with the Final draft law, available at [https://www.sabor.hr/sites/default/files/uploads/sabor/2019-04-15/122702/PZE_85.pdf], Accessed 1 March 2024.

¹⁵⁸ The Draft Law on Amendments to the Law on Maternity Leave for Self-employed Mothers and Unemployed Mothers, available at <https://vlada.gov.hr/UserDocsImages//2016/Sjednice/Arhiva//01-06.pdf>. Accessed: 23 February 2024.

child reaches the age of three.¹⁵⁹ On the other hand, unemployed mothers, mothers in full-time education and unemployed mothers receiving a disability pension due to professional incapacity for work had the right to maternity leave until the child reaches the age of six or for twins, the third and every subsequent child until the child reaches the age of three.¹⁶⁰

Although much has been done in the field of maternity leave regulation compared to the period at the beginning of this chapter, some questions are still open. They are reflected in the unequal treatment of leave users, which is reflected in the fact that the Labour Law allows the extension of the right to optional maternity leave until the child reaches the age of one, provided that the child's father used that leave for at least three months. In contrast, fathers of children whose mothers are self-employed did not have such an opportunity.¹⁶¹ Likewise, the laws do not stipulate the same rights of parents who are self-employed in cases where the child has severe developmental disabilities. In such a case, working parents are granted the right to childcare leave, i.e. the right to part-time work until the child is seven years old, unlike self-employed parents.¹⁶² An example of unequal treatment is that an adoptive mother, who is self-employed, according to the current provisions of the Law, is only entitled to maternity leave if it is a younger child for whom the leave can still be used, but she has no right to adoptive leave if the child is older than one or three years, unlike an employed adoptive parent (worker) who can exercise this right even after that age. The question of recognizing the right to work part-time for the mother or father, who is self-employed, is still open.¹⁶³

When it comes to standardizing monetary benefits in accordance with the amendments to the Law on Maternity Leave for Self-Employed and Unemployed Mothers, there were also changes to the Health Insurance Law, which regulated the issue of compensation for the duration of the leave.¹⁶⁴ Furthermore, the amount of

¹⁵⁹ Law on Amendments to the Law on Maternity Leave for Self-Employed Mothers and Unemployed Mothers (Official Gazette No. 30/2004). Art. 1, paragraph 1.

¹⁶⁰ Law on Amendments to the Law on Maternity Leave for Self-Employed Mothers and Unemployed Mothers (Official Gazette No. 30/2004). Art. 1 paragraph 2.

¹⁶¹ Assessment of the situation and the basic issues to be regulated by this law as well as the consequences that will result from passing the law: in the Draft Law on Maternity and Parental Support, with the Final Draft Law, available at https://www.sabor.hr/sites/default/files/uploads/sabor/2019-04-15/122702/PZE_85.pdf], Accessed 1 March 2024.

¹⁶² *Ibid.*

¹⁶³ *Ibid.*

¹⁶⁴ The Law on Amendments to the Law on Health Insurance (Official Gazette No. 30/04), Art. 1 changed the content of the earlier regulation (Law on Health Insurance Official Gazette No. 94/01, 88/02 and 149/02) and from the day of entry into force of the changes in item 8, Article 23, the right to salary compensation was granted for the time of taking the maternity leave until the child is one year old, or

compensation is regulated by the Law on the Execution of the State Budget for the Republic of Croatia for the year 2004.¹⁶⁵ There were discussions in legal science on the amount of compensation depending on the positive regulations that regulated this issue, and as the amount of compensation changed depending on social and economic circumstances and the approach to family policy, herewith a reference to some sources is indicated.¹⁶⁶

7. MATERNITY LEAVE IN THE PROVISIONS OF THE LAW ON MATERNITY AND PARENTAL BENEFITS OF 2008

In July 2008, the Law on Maternity and Parental Benefits¹⁶⁷ was adopted and it entered into force on 1 January 2009. It regulates the rights of parents related to the birth of a child, which until then were governed by the provisions of two laws, i.e. the Labour Law and the Law on Maternity Leave of Self-Employed and

for twins, triplets, quadruplets, or for more children of the same age the maternity leave was used until child is two years old, taking „maternity leave“ pursuant to Article 58, paragraph 9 of the Labor Law, adoption leave, right to work part time for one or two years of age of the child pursuant to Article 59 paragraph 1 of the Labor Law and the right to work part time until the child reaches the age of three pursuant to Article 59 paragraph 3 of the Labor Law. Furthermore, a provision was added to the Law on the right to compensation for the salary of an employee who is temporarily prevented from working due to the use of maternity leave and the right to work part-time in accordance with the law governing maternity and parental benefits and defining who is temporarily unable to work due to taking the leave for the death of a child, a stillborn child or the death of a child during the use of maternity leave in accordance with the law governing maternity and parental benefits. See: Art. 23. item 1 a of the Law. See more in: Đukanović, Lj., *Rodiljni dopust- pravo i naknada*, Suvremeno poduzetništvo, Vol. 4, 2004, pp. 150-151. More on amendments that followed in 2004 in: Knežević, N. *Ponovno povoljniji uvjeti za porodni (rodiljni) dopust*, Računovodstvo, revizija i financije, Vol. 4, 2004, p. 149.

¹⁶⁵ The Budget provides funds for exercising rights from basic health insurance according to Article 68, paragraph 1 of the Health Insurance Law, which include: 1. salary compensation for the period of maternity leave until the child reaches the age of one, maternity leave until the child reaches the age of two years in case of twins, triplets, quadruplets, or more children of the same age, maternity leave according to Article 58, paragraph 9 of the Labour Law, adoption leave, rights to work part time for the time until the child reaches the age of one or two years pursuant to Article 59 paragraph 1 of the Labour Law and the right to work part time until a child reaches the age of three pursuant to Article 59 paragraph 3 of the Labour Law. Law on the Execution of the State Budget of the Republic of Croatia of 2004 (Official Gazette 31/2004) Art. 15, paragraph 1, item 1.

¹⁶⁶ Đukanović, Lj., *Rodiljni dopust- pravo i naknada*, Suvremeno poduzetništvo, Vol. 4, 2004, p. 151. Knežević, N. *Ponovno povoljniji uvjeti za porodni (rodiljni) dopust*, Računovodstvo, revizija i financije, 04/2004, p. 149. A detailed calculation of the amount of maternity leave from 2004 until 2007 in: Bartulović, N., *Pravo na rodiljni dopust i naknadu plaće*, Financije i porezi, Vol. 3, 2007, pp. 87- 90. On maternity leave allowance amount after the Law on Maternity and Parental Benefits is in force (NN, 85/08, 110/08) please see: Sirovica, K., *Rodiljni i roditeljski dopust*, Računovodstvo i financije, 2010, pp. 62- 63; Turković-Jarž, L., *Novosti o rodiljnom i roditeljskom dopustu*, Računovodstvo, revizija i financije, Vol. 5, 2011, pp. 84- 85.

¹⁶⁷ Official Gazette No. 85/2008.

Unemployed Mothers. The Law on Maternity and Parental Benefits sets out the purpose of the Law in Article 1 as “protection of motherhood, care and rearing of a new-born child, and harmonisation of family and business life”. In this regard, the Law stipulates “the right of parents and persons exercising one of the rights equal to parental rights taking care of the child to temporal and monetary benefits, the conditions and the ways of their realization and financing.”¹⁶⁸

Pursuant to Article 12 maternity leave as temporal benefit is taken by an employed or self-employed mother¹⁶⁹ during pregnancy, childbirth and childcare until the child reaches six months of age. Premature birth of a child affects the length of maternity leave and in that case, the maternity leave is extended for the equivalent of time in which the child was born prematurely. The law also provides for the institution of compulsory maternity leave, which an employed or self-employed mother should use for an uninterrupted period starting from 28 days before the due date of the expected birth to the 42nd day after the birth of the child. Exceptionally, maternity leave can start 45 days before the due date of the expected birth, if indicated by the findings and the gynaecologist. Therefore, in accordance with the aforementioned Law, the mother of the child uses compulsory maternity leave for the period of 70 or 87 days. After the compulsory maternity leave, i.e. from the 43rd day after giving birth until the child reaches 6 months of age, an optional maternity leave is used.¹⁷⁰ Moreover, while compulsory maternity leave is an exclusive right of the mother and non-transferable¹⁷¹, optional maternity leave is transferable, i.e. it can be used by the child’s father, provided there is an agreement between the parents.¹⁷² As regards the monetary component of the maternity leave, in accordance with the provisions of Article 24 of the aforementioned Law, it should be pointed out that an employed or self-employed parent is entitled to 100% salary compensation of the basis for compensation determined by the regulations on compulsory health insurance, and paid at the expense of the Croatian Health Insurance Fund.¹⁷³ In order that an employed or self-employed parent

¹⁶⁸ Article 1 of the Law on Maternity and Parental Benefits.

¹⁶⁹ The right to “maternity leave” is the right of an employed or self-employed mother. On the other hand, parents who earn other income, farmers and unemployed parents have the right to “maternity and parental exemption from work”, in accordance with Articles 27 and 28 of the Law on Maternity and Parental Benefits.

¹⁷⁰ Pursuant to Article 15, paragraph 2 of this Law, an employed or self-employed parent has the right to take the remaining part of the maternity leave as a right to work half time after the expiration of the compulsory maternity leave.

¹⁷¹ Exceptionally, in special situations, it can be used by the father (e.g. in the case of the death of the mother). According to: European Commission, *Benefits for maternity/paternity/parenthood*, [<https://ec.europa.eu/social/main.jsp?catId=1104&contPageId=4454&langId=hr>], Accessed 25 February 2024.

¹⁷² Art.12 para 5 of the Law on Maternity and Parental Benefits, Official Gazette No. 85/2008.

¹⁷³ *Ibid.* Art. 24 para.1.

may receive the above-mentioned monetary compensation, they should fulfil the requirement of an insurance period of at least 12 uninterrupted months. Failure to meet this requirement results in the right to salary compensation of 50% of the budget base.¹⁷⁴

The Law on Maternity and Parental benefits was first amended in 2011, and the changes affected the temporal component of maternity leave as well as the insurance period requirement for the right to monetary compensation. In accordance with the aforementioned amendments, an employed or self-employed pregnant woman, i.e. an employed or self-employed mother during pregnancy, delivery and care of a new-born child, has the right to maternity leave for the period of 28 days before the due date of the birth until the child reaches the age of 6 months, consisting of compulsory and optional maternity leave.¹⁷⁵ It should be pointed out that the duration of the compulsory maternity leave has been extended and that an employed or self-employed pregnant woman or mother should use it for an uninterrupted period of 98 days, i.e. 28 days before the due date and the remaining 70 days after the birth of the child.¹⁷⁶ Exceptionally, maternity leave can be used 45 days before the due date of childbirth, if required by the condition and the health of the employed or self-employed pregnant woman, as confirmed by the findings by a gynaecologist.¹⁷⁷ Thus, compulsory maternity leave can last 98 or 115 days. After the compulsory maternity leave, i.e. from the 71st day after the birth of the child until the child reaches 6 months of age, optional maternity leave follows. The child's mother can transfer this leave to the child's father by means of a written statement, completely or partially with his prior consent.¹⁷⁸ The same as the aforementioned amendments to the Law, the compulsory maternity leave remains the exclusive right of the mother and is non-transferable, whereas the optional maternity leave is transferable, i.e. it can be used by the child's father in accordance with the previously mentioned requirements. As regards the monetary component of the maternity leave, the provision according to which an employed or self-employed parent has the right to a 100% salary compensation of the basis for salary compensation determined according to the regulations on compulsory health insurance fund has remained unchanged. However, the condition of the insurance period for exercising the right to monetary compensation has been changed so that it should now last for an uninterrupted period of 12 months or

¹⁷⁴ *Ibid.* Art. 24 para 9.

¹⁷⁵ Art. 6 of the Law on Amendments to the Law on Maternity and Parental Benefits, Official Gazette No. 34/2011.

¹⁷⁶ *Ibid.*

¹⁷⁷ *Ibid.*

¹⁷⁸ *Ibid.*

18 months with interruptions for the last two years.¹⁷⁹ Failure to comply with these requirements, as before, results in the right to compensation of salary in the amount of 50% of the budget base.¹⁸⁰

The Law on Amendments to the Law on Maternity and Parental Benefits of 2013¹⁸¹ incorporated three EU Directives into the Croatian legal system, namely: Directive 92/85/EEC of 19 October 1992 on the introduction of measures to improve the safety and health of pregnant workers and workers who have recently given birth or breastfeed at the workplace (tenth individual directive in the sense of Article 16 paragraph 1 of Directive 89/391/EEC) (OJ L 348, 28 November 1992), Directive 2010/18/EU of 8 March 2010 on the implementation of the revised Framework agreement on parental leave concluded by BUSINESS-EUROPE, UEAPME, CEEP and ETUC and on the repeal of Directive 96/34/EC (OJ L 68, 18 March 2010) and Directive 2010/41 /EU of the European Parliament and the Council of 7 July 2010 on the application of the principle of equal treatment to men and women engaged in self-employment and on the repeal of Council Directive 86/613/EEC (OJ L 180, 15 July 2010). However, with regard to the temporal and monetary components of maternity leave, the conditions of the insurance period, as well as the possibility of transferring its optional part, this law does not bring any news. Neither the Law on Amendments to the Law on Maternity and Parental Benefits of 2014¹⁸² introduces news regarding the previously indicated components of maternity leave, conditions of insurance duration and transferability. The Law on Amendments to the Law on Maternity and Parental Benefits of 2017¹⁸³ harmonized with 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 female workers and female workers who have recently given birth or are breastfeeding (tenth individual directive in the sense of Article 16, paragraph 1 of Directive 89/391/EEC) (OJ L 348, 28 November 1992), Council Directive 2010/18/EU of 8 March 2010 on the implementation of the revised Framework agreement on parental leave concluded by BUSINESS-EUROPE, UEAPME, CEEP and ETUC and on the repeal of Directive 96/34/EC (Text with EEA relevance) (OJ L 68, 18 March 2010) as well as Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on

¹⁷⁹ Art. 17 of the Law on Amendments to the Law on Maternity and Parental Benefits, Official Gazette No. 34/2011.

¹⁸⁰ *Ibid.*

¹⁸¹ The Law on Amendments to the Law on Maternity and Parental Benefits, Official Gazette No. 54/2013.

¹⁸² The Law on Amendments to the Law on Maternity and Parental Benefits, Official Gazette No. 152/2014.

¹⁸³ Official Gazette No. 59/2017.

the application of the principle of equal treatment to men and women who are self-employed and the repeal of Council Directive 86/613/EEC (OJ L 180, 15 July 2010).¹⁸⁴ With the aforementioned amendments, the amount of compensation for employed or self-employed parents who do not meet the requirement of an insurance period of at least 12 uninterrupted months or 18 months with interruptions for the last two years, and who are now entitled to a monetary compensation amounting to 70% of the budget bases.¹⁸⁵ With the next amendment to the Law on Maternity and Parental Benefits, namely the one passed in 2020,¹⁸⁶ the insurance period requirement that employed or self-employed parents must fulfil in order to obtain the right to financial compensation in the amount of 100% of the salary compensation base determined according to the regulations on compulsory health insurance is now reduced to 9 uninterrupted months or 12 months intermittently for the last two years.¹⁸⁷

8. MATERNITY LEAVE IN THE PROVISIONS OF THE LAW ON MATERNITY AND PARENTAL BENEFITS OF 2022

The new Law on Maternity and Parental Benefits was adopted in 2022¹⁸⁸, and it entered into force on 1 January 2023. The purpose of the Law determined by Article 1 has been changed in relation to the Law of 2008 and now, in addition to “protection of motherhood, care of a new-born child and its rearing, harmonisation of family and business life”, it includes “equal division of the rights and obligations of child-care between both parents”. In order to achieve the stated purpose, the Law sets out “the right of parents and persons exercising one of the rights equal to parental rights to temporal and monetary benefits, the requirements and the method of their realization and financing.”¹⁸⁹ It is important to point out that the following directives are taken over by the said Law into the Croatian legislation: Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage the improvement of safety and health at work for pregnant female workers and female workers who have recently given birth or breastfeed (tenth individual directive in the sense of Article 16, paragraph 1 of Directive 89/391/EEC) (SL L 348, 28 November 1992), Directive 2010/41/

¹⁸⁴ Art.1 of the Law on Amendments to the Law on Maternity and Parental Benefits, Official Gazette No. 59/2017.

¹⁸⁵ *Ibid.* Art.3.

¹⁸⁶ Official Gazette No. 37/2020.

¹⁸⁷ Art. 1 of the Law on Amendments to the Law on Maternity and Parental Benefits, Official Gazette No. 37/2020.

¹⁸⁸ Official Gazette No. 152/2022.

¹⁸⁹ Art.1 of the Law on Maternity and Parental Benefits, Official Gazette No. 152/2022.

EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment to self-employed men and women and repealing Council Directive 86/613/EEC (OJ L 180, 15 July 2010) and Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on the work-life balance of parents and carers and repealing Council Directive 2010/18 /EU (OJ L 188, 12 July 2019).¹⁹⁰ Although all three mentioned directives are extremely important, for the purposes of this work, special reference will be made to the Council Directive 92/85/EEC of 19 October 1992, since it, among other things, regulates the issue of maternity leave, specifically its temporal component. Article 8 of the mentioned Directive sets out that: “Member States shall take the necessary measures to ensure that female workers are entitled to a continuous period of maternity leave of at least 14 weeks allocated before and/or after childbirth in accordance with national legislation and/or practice.”¹⁹¹

The applicable Law on Maternity and Parental Benefits in the context of the temporal component of maternity leave stipulates that it is used by “an employed or self-employed pregnant woman, or an employed or self-employed mother during pregnancy, confinement and care of a new-born child, for the period of 28 days prior to the due date of confinement until the child reaches the age of six months, consisting of compulsory and optional maternity leave”.¹⁹² Obligatory maternity leave is used by an employed or self-employed pregnant woman or mother for a continuous period of 98 days, of which 28 days prior to the due date of confinement and the remaining 70 days after the birth of the child. Exceptionally, maternity leave can be used 45 days prior to the due date of confinement, if the condition and health of the employed or self-employed pregnant woman so require, as determined by the selected gynaecologist of the compulsory health insurance.¹⁹³ Optional maternity leave follows after the compulsory maternity leave expires and lasts until the child reaches the age of 6 months. The child’s mother can transfer the leave completely or partially to the child’s father by a written statement, subject to his prior consent.¹⁹⁴ Optional maternity leave can be extended if the child was born prematurely or before the 37th week of pregnancy, for as many

¹⁹⁰ *Ibid.* Art. 2

¹⁹¹ 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 (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC), OJ, Chapter 05, Volume 004, pp. 73-80, Art. 8 (2), [<https://eur-lex.europa.eu/legal-content/HR/TXT/PDF/?uri=CELEX:31992L0085>], Accessed 16 February 2024.

¹⁹² Art. 15 of the Law on Maternity and Parental Benefits, Official Gazette No. 152/2022.

¹⁹³ *Ibid.* Art.15, para. 3 and 4.

¹⁹⁴ *Ibid.* Art.15, para. 5.

days as the child was born prematurely.¹⁹⁵ In conclusion, considering the above, the current law also distinguishes between compulsory and optional maternity leave, which differ in duration but also in the degree of flexibility, i.e. the possibility of transfer. Obligatory maternity leave is used by the pregnant woman or the mother of the child for a period of 98 days or 115 days and cannot be transferred to the father. On the contrary, optional maternity leave, which starts on the 71st day after the birth of the child and lasts until the child reaches six months of age, can be transferred by the mother of the child to the father, completely or partially, with her written statement, subject to the father's prior consent. Furthermore, the Law provides for the possibility of an employed or self-employed mother to use optional maternity leave as a right to work part-time.¹⁹⁶ In the context of the monetary component of maternity leave, the current Law on Maternity and Parental Benefits stipulates that "during the exercise of the right to maternity leave, the salary compensation amounts to 100% of the salary compensation base determined according to the regulations on compulsory health insurance".¹⁹⁷ In order to be entitled to the salary compensation in the specified percentage, employed or self-employed parents must meet the requirement of previous insurance of at least 6 uninterrupted months or 9 months with interruptions for the last two years. Failure to fulfil the stated condition results in monetary compensation in the amount of 125% of the budget base for full-time work.¹⁹⁸

9. MATERNITY LEAVE IN THE EUROPEAN UNION

Taking into account the fact that the Republic of Croatia as of 1 July 2013 became a member of the European Union, the paper deals with the issue of maternity leave in some of the EU member states through the prism of its time and money components as well as with the possibility of its transfer. It should be noted that in accordance with Council Directive 92/85/EEC, female workers have the right to uninterrupted maternity leave of at least 14 weeks distributed before and/or after childbirth. According to European Parliament data for the year 2023, the EU member states with the shortest duration of maternity leave, where the leave lasts 14 weeks, are Sweden and Germany.¹⁹⁹ In other countries, maternity leave lasts longer, for example in Finland 21 weeks, in Cyprus 25 weeks, in the Republic of

¹⁹⁵ *Ibid.* Art.15, para 6 and 7.

¹⁹⁶ Art. 19, para.1 of the Law on Maternity and Parental Benefits, Official Gazette No. 152/2022

¹⁹⁷ *Ibid.*, Art. 32, para. 1

¹⁹⁸ *Ibid.* Art. 32, para. 8

¹⁹⁹ European Parliament, *Maternity and paternity leave in the EU*, 2023, [[https://www.europarl.europa.eu/RegData/etudes/ATAG/2023/739346/EPRS_ATA\(2023\)739346_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2023/739346/EPRS_ATA(2023)739346_EN.pdf)], Accessed 15 February 2024

Croatia 30 weeks²⁰⁰, in Ireland 42 weeks.²⁰¹ The EU member state with the longest duration of maternity leave is Bulgaria, where the leave lasts 58 weeks, and Portugal is the only EU member state that does not differentiate the term “maternity” from “paternity” leave, but speaks only of parental leave.²⁰² For the purposes of this work, the temporal and monetary components of maternity leave will be analysed in Germany and Bulgaria as a country with the shortest and the country with the longest duration of maternity leave in the EU. Mothers in Germany are allowed 14 weeks of maternity leave, which is the minimum stipulated by the Directive. Maternity leave in Germany, specifically its temporal component, is governed by the Law on the Protection of Mothers at Work, in Training and at the University²⁰³ (hereinafter: the Law on the Protection of Motherhood). The Section 1 of the Paragraph 3 of the aforementioned Law under the heading “Protection periods before and after childbirth” regulates the “protection period before childbirth” stating that the expectant mother may work for the last 6 weeks before childbirth only if she expressly consents to such work.²⁰⁴ Furthermore, section 2 of the same paragraph regulates the “period of protection after childbirth”, which states that the employer must not employ a woman until eight weeks after childbirth. The period of protection after childbirth is extended to 12 weeks in the event of premature birth, multiple births and if the child is diagnosed with a disability.²⁰⁵ Only mothers are entitled to this leave, whereas fathers in Germany can use the right to parental leave. When it comes to maternity benefits, it should be pointed out that the Law on Maternity Protection in paragraph 19, section 1, stipulates that a woman with the status of insured in the state/compulsory health insurance receives maternity benefits for the period of protection before and after childbirth,

²⁰⁰ According to the current Croatian legislation, maternity leave is not expressed in weeks but in days and months. Namely, the applicable Law on Maternity and Parental Benefits stipulates the duration of maternity leave to 28 days before the day of the expected birth until the child reaches the age of six months, and comprises compulsory and optional maternity leave. Compulsory maternity leave is taken for a continuous duration of 98 days, of which 28 days are taken before the day of the expected birth and 70 days are taken after the birth of the child. Exceptionally, maternity leave can be taken for 45 days before the day of the expected birth, if the pregnancy and health condition of the employed or self-employed pregnant woman so require, as determined by the selected women’s health care doctor of the compulsory health insurance. Optional extended maternity leave follows the expiration of the compulsory maternity leave period and lasts until the child reaches the age of 6 months.

²⁰¹ European Parliament, *op.cit.*, note 33.

²⁰² *Ibid.* Parental leave lasts for 120 or 150 days. Reimbursement of the earning in case of a 120-day leave is 100%, whereas in case of a 150-day leave it is 80%.

²⁰³ The Law to protect mothers at work, in training and at university (Gesetz zum Schutz von Müttern bei der Arbeit, in der Ausbildung und im Studium - Mutterschutzgesetz - MuSchG) [https://www.gesetze-im-internet.de/muschg_2018/MuSchG.pdf], Accessed 03 February 2024

²⁰⁴ *Ibid.*

²⁰⁵ *Ibid.*

as well as for the confinement date in accordance with the provisions of the Social Security Law or the Farmers' Health Insurance Law. On the contrary, a woman who does not have the status of insured person in the state/compulsory health insurance receives maternity benefits at the expense of the federal state for the period of protection before and after childbirth and for the day of confinement, in accordance with the provisions of Book Five of the Social Code on Maternity Benefits, but not exceeding the total of 210 euros.²⁰⁶ The net salary paid to the worker in the last 3 months before the start of the protection period, i.e. 6 weeks before the date of confinement, is relevant for the amount of maternity benefits. The maternity benefit amounts to a maximum of 13 euros per day.²⁰⁷ A female worker who has the status of the insured in the state/compulsory health insurance, the employer pays the difference between the maximum amount of compensation of 13 euros per day and the net salary as a maternity benefits subsidy.²⁰⁸ A female worker who does not have the status of the insured in the state/compulsory health insurance, but is privately insured, receives a one-time maternity benefit of a total of 210 euros, which is paid by the Federal Office for Social Insurance. If the average daily net salary of a female worker exceeds 13 euros per day, the employer pays the female worker a subsidy.²⁰⁹ Female workers with family insurance and those employed in "mini-jobs" receive a one-time maternity benefit of a total of 210 euros, which is paid by the Federal Office for Social Insurance. It should be pointed out that a worker who works on "mini-jobs" receives maternity benefits of a total of 13 euros per day from her health insurance funds. In both cases, female workers are entitled to a subsidy from the employer if the average daily net salary of the female worker exceeds 13 euros per day.²¹⁰

The EU member state with the longest duration of maternity leave is Bulgaria with 58 weeks or 410 days for each child, of which 45 days are used before the due date of confinement.²¹¹ If the child is stillborn, dies or is placed in a childcare institution or is given up for adoption, the mother has the right to use the leave

²⁰⁶ *Ibid.* paragraph 19, section 2.

²⁰⁷ The Fifth Book of the Social Security Code (Das Fünfte Buch Sozialgesetzbuch - SGB V), Art. 24i, [https://sozialversicherung-kompetent.de/index.php?option=com_content&view=article&id=578:mutterschaftsgeld&catid=14:leistungsrecht-gkv], Accessed 07 February 2024.

²⁰⁸ The Law to protect mothers at work, in training and at university (Gesetz zum Schutz von Müttern bei der Arbeit, in der Ausbildung und im Studium -Mutterschutzgesetz - MuSchG), *op.cit.*, note 37.

²⁰⁹ Beta Institut gemeinnützige GmbH, *Maternity benefit (Mutterschaftsgeld)*, [betanet.de/mutterschaftsgeld.html], Accessed 03 February 2024.

²¹⁰ *Ibid.*

²¹¹ Art. 163, para 1 of the Bulgarian Labour Code, SG No. 109, [<https://www.mlsp.government.bg/uploads/37/politiki/trud/zakonodatelstvo/eng/labour-code.pdf>], Accessed 20 February 2024

until 42 days after confinement.²¹² However, if the mother is not able to work after the aforementioned 42 days, the leave is extended in accordance with the assessment of the competent health authorities.²¹³ After the child reaches six months of age, the remaining leave of up to 410 days can be used by the child's father instead of the mother, with the consent of the mother.²¹⁴ It is important to emphasize that in Bulgaria, in addition to the child's father, the parents of the child's mother or father can also use the leave. Thus, the Labour Law in Art. 163, paragraph 10, stipulates that in the event when the child's father is unknown, leave can be used by either of the mother's parents, while in case of death of the child's father, the leave can be used by either of the child's father's or mother's parents. It should be noted that in Germany, fathers can use parental but not maternity leave.

The monetary component of maternity leave in Bulgaria is regulated by the provisions of the Social Security Law.²¹⁵ In accordance with the provisions of this Law, the daily monetary compensation for pregnancy and childbirth amounts to 90% of the average daily gross salary or average daily salary. The aforementioned compensation can be obtained under the condition of payment of insurance contributions, and in the case of self-insured persons, under the condition of payment of contributions in case of illness or maternity and for the period of 24 months preceding the month in which temporary incapacity for work occurred due to pregnancy or childbirth.²¹⁶ A mother who is insured in case of illness and maternity has the right to financial compensation for a period of 410 days, of which 45 days before childbirth.²¹⁷ If the child is stillborn, or dies, is placed in a childcare facility financed by the state budget, or if it is given up for adoption, the mother receives financial compensation for up to 42 days after the confinement. However, if, due to childbirth, the working capacity of the mother has not been restored 42 days after confinement, the mother is entitled to this compensation until she restores her working capacity by the decision of the competent health authority.²¹⁸ The analysis of maternity leave on the example of Germany and Bulgaria supports the existence of significant differences between these two analysed countries in the context of its duration, its monetary component, but also the possibility of its transfer.

²¹² *Ibid.* Art.163 para. 4.

²¹³ *Ibid.*

²¹⁴ *Ibid.* Art.163 para. 10.

²¹⁵ Bulgarian Social Insurance Code, SG No. 67/2003, [<https://www.mlsp.government.bg/uploads/37/politiki/trud/zakonodatelstvo/eng/social-insurance-code-title-amended-sg-no-672003.pdf>], Accessed 24 February 2024.

²¹⁶ *Ibid.* Art. 49 para.1 and 2.

²¹⁷ *Ibid.* Art. 50 para. 1.

²¹⁸ *Ibid.* Art. 50 para. 3.

In addition to the significant differences between EU member states regarding the temporal component of maternity leave, the available data show that there are also differences when it comes to its monetary component. Thus, in 12 EU member states, the salary compensation amounts to 100% (Estonia, Austria, Germany, Malta, the Netherlands, Luxembourg, Greece, Cyprus, France, Croatia, Slovenia and Estonia).²¹⁹ On the other hand, Hungary and the Czech Republic (70%) and Slovakia (75%) have the lowest wage compensation.²²⁰

The possibility of transferring maternity leave to fathers in EU countries, in most countries, as well as in Germany, is only available to mothers. However, in the Czech Republic, Croatia, Spain and Bulgaria, the mother can transfer part of the leave to the father in the event of no exceptional circumstances such as a serious illness of the mother. In other countries, maternity leave can be transferred to fathers only if there are exceptional circumstances such as the death or serious illness of the mother.²²¹

10. CONCLUDING REMARKS

The area of the former Yugoslavia was characterized by an early state intervention in the area of maternity leave. In 1927, the then Kingdom of Serbs, Croats and Slovenes ratified the Convention of the International Labour Organisation on the Employment of Women Before and After Childbirth of 1919, according to which women were entitled to 12 weeks of paid maternity leave. Maternity leave became more important during the socialist period, when both parents were expected to work. At that time, marked by a sudden and strong increase in number of factories and industry, and need for workers, many women started to work. The paid maternity leave for working mothers was considered a prerequisite for women's entry into the labour market. In this way, through framework laws applicable throughout Yugoslavia, the right to paid maternity leave was gradually extended, and by the end of the socialist period, it amounted to 180 days. Namely, as the former Yugoslav republics were allowed to develop their own legislation, Croatia was in the 1970s one of the first republics in Yugoslavia to pass a new law stipulating a longer paid parental leave of 180 days, compared to the 105 days stipulated as a minimum at the federal level. In addition, at that time, Croatia, along with Slovenia, was the only republic that introduced the so-called optional maternity leave

²¹⁹ European Parliament, *op.cit.*, note 33.

²²⁰ *Ibid.*

²²¹ International Network on Leave Policies and Research, *14th International Review of Leave Policies and Related Research 2018*, [https://www.leavenetwork.org/fileadmin/user_upload/k_leavenetwork/annual_reviews/Leave_Review_2018.pdf], Accessed 22 February 2024

that allowed fathers to use the leave to a certain extent. Since fathers could use optional maternity leave, instead of mothers, only if the parents agreed, i.e. if the mother agreed to it, the leave therefore still remained the mother's primary right and thus a more equal application of the right to maternity leave was not achieved.

Along with the development of family policy through norms that regulated the issue of maternity leave in the period between 1990 and 2008, when the Law on Maternity and Parental Support entered into force, the regulation of maternity leave changed as well in terms of the expansion of users of the right, but also its duration in accordance with the intensity of the changes in the normative acts. In the observed period, the right to leave and parental benefits became a universal right of all parents, parents of both sexes, both employed and unemployed. Although general principles of the universal maternity leave are defined by the Labour Law of 1995 and subsequent amendments to the Law, the regulation within the framework of special regulations, primarily the Law on Maternity Leave for Self-Employed Mothers and Unemployed Mothers expanded the number of beneficiaries of the right to maternity leave and to unemployed mothers, mothers in full-time education and unemployed mothers receiving a disability pension due to professional incapacity for work. Although the affirmed principles in the field of institution regulation in the late 1990s were in accordance with the state family policy, the restrictive measures of 2001 were a strong blow to the previously promoted and generally accepted measures. Namely, with the Amendments to the Labour Law and the Law on Maternity Leave for self-employed mothers, the right to maternity leave for mothers/parents in the period until the child reaches the age of three was reduced from three to two years, together with the amounts of monetary compensation for the period in which the right to maternity leave was exercised. These measures were corrected in 2004 by amendments to the analysed regulations in the field of maternity leave when the legal regulations re-adopted the principles and norms regulated by the earlier legislation, which coincided with the political change in power, leading to the affirmation of the family policy that had begun to develop in the mid-90s.

At the end of the observed period, and in accordance with the needs of harmonisation of Croatian legislation in the field of labour law with EU legislation, significant advances were made in terms of extending the duration of maternity leave. However, as Dobrotić claims, it should be researched more closely whether the measures that in the post-war period aimed exclusively at pro-natal policy, such as a three-year parental leave and pro-natal allowance, resulted in negative consequences for parents in terms of their status on the labour market.

Analyzing the issue of maternity leave in the Act on Maternity and Parental Support from 2008 until today, it can be concluded that maternity leave is the right of an employed or self-employed mother, which she uses during pregnancy, childbirth and child care.

In the context of the time component of maternity leave, the aforementioned Law distinguishes between compulsory and additional maternity leave. The difference between compulsory and additional maternity leave is not only in duration, but also in the possibility of their transfer. In the observed period, i.e. from 2008 until today, the duration of compulsory maternity leave changed, more precisely its duration was extended from 42 days after childbirth to 70 days after childbirth. It is important to point out that the Law from 2008 still considered compulsory maternity leave as the exclusive right of the mother and as such non-transferable. On the contrary, there was a possibility of transfer for additional maternity leave. Namely, the child's mother could transfer this leave to the father in whole or in part with a written statement, of course, the father's consent was also required. This solution has been maintained even today and clearly follows from the provisions of the Act on Maternity and Parental Support from 2022.

Regarding the monetary component of maternity leave, it should be emphasized that throughout the observed period, an employed or self-employed parent has the right to salary compensation during maternity leave in the amount of 100% of the salary compensation base determined according to the regulations on mandatory health insurance. This is the average amount of salary that was paid in the last 6 months before the month of starting maternity leave. It is important to emphasize that the 2008 Act on Maternity and Parental Allowances prescribes the condition of insurance years as a special condition for obtaining the aforementioned compensation. In the observed period, i.e. from 2008 to the present day, the insurance length requirement was changed so that from the initial 12 months continuously (in 2008) it has been gradually reduced and today, in accordance with the valid Maternity and Parental Support Act, it amounts to 6 months continuously or 9 months intermittently for the last 2 years. In the entire observed period, failure to meet the special condition of insurance length of service resulted in the right to salary compensation for the duration of maternity leave in a reduced amount.

If the state of maternity leave in the Republic of Croatia is compared with that in the European Union, it should be noted that there are significant differences between EU member states. There are differences regarding the time component of maternity leave (from 14 to 58 weeks), but there are also differences when it comes to its monetary component. In 12 EU member states, including the Republic of Croatia, the salary allowance is 100%. On the other hand, there are also countries

where the salary compensation amounts to only 70%. Regarding the possibility of transferring maternity leave to fathers, it should be noted that in most EU countries it is only available to mothers. However, in the Czech Republic, Croatia, Spain and Bulgaria, the mother can transfer part of the leave to the father without exceptional circumstances such as a serious illness of the mother.

Therefore, taking into account all the above, it can be concluded that the Republic of Croatia has made significant positive changes in the area of maternity leave. A particularly important step is that the insurance period requirement for exercising the right to salary compensation during maternity leave has been significantly eased, so that it now amounts to 6 months continuously or 9 months with interruptions in the last 2 years. This kind of condition, in our opinion, will be easier to achieve for all those numerous parents who work in the Republic of Croatia on the basis of a fixed-term employment contract. A step forward towards gender equality and harmonizing the family and professional life of parents is certainly the possibility of transferring additional maternity leave to the child's father. However, the question arises here, what if the father of the child dies during the pregnancy of the mother or during the mandatory maternity leave? In accordance with the provisions of the current law, which foresees the possibility of transferring additional maternity leave only in relation to the father, it can be concluded that in such an assumed situation, additional maternity leave would become practically non-transferable. Taking into account the positive effects that the possibility of transferring additional maternity leave has on the harmonization of family and professional life, we are of the opinion that the above should be changed and in such exceptional situations it should be possible for the mother of the child to transfer the additional maternity leave, under certain conditions, to other persons, for example to her or the parents of the child's father. Such a solution already exists in Bulgaria.

Furthermore, in the Republic of Croatia, according to the available data, a special problem is the fact that only a small number of fathers use the aforementioned leave. There are many reasons for this state of affairs, ranging from those of a financial nature to traditional social beliefs about gender roles in the family. Changes are necessary, and we consider raising the level of awareness about the importance of involving fathers in a child's life in the first years of life to be a good start.

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