

# SUPPORTIVE AND OBSTRUCTIVE JUDICIARY INSTITUTIONS OF THE LABOUR LAW REGARDING WORK- FAMILY BALANCE

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“Although more and more women work, their obligations at home have not decreased. In many cases men in the family are not very much involved in family tasks. In fact the changes in the composition of families- the increase of single parent, maternal households in particular and the decrease of extended families – and changes of other social and economic factors, often causes reduction in informal care. In some cases family responsibilities have intensified for women”

(Work and family: A way to arrange for the share. ILO.)

## Introduction

Our research concerns the harmonisation of family and work responsibilities. It explores concepts, including the Hungarian labour legislation, the labour legislation for the protection of maternity including related social benefits. We analyze those labour and social security rules, which have significant influence on the financial situation of families and on the internal family life as a whole. Furthermore, we examine the related international and European Union standards, recommendations and initiatives.

The European Commission drew attention to the importance of the reconciliation of family and working life, the work-life balance. In particular, the demographic development and its impact on social security systems require improvements in the employment conditions of women. According to the European social partners, the harmony among profession, family and private life represents an important contribution to the economic growth, prosperity and competitiveness.<sup>1</sup> In their opinion, the harmonization of work and family life, as well as equal opportunities for women and men in the workplace, must be given a central role to the political debate because of their important roles in demographic development. A great emphasis must be put on overcoming stereotypes of gender roles. Without this the expected results are hardly achievable. According to European surveys, child rearing has much larger impact on the employment prospects of women, than on of men. The employment rate for women with dependent children is only sixty-five percent, while this rate for men is more than 90 percent.

Women still suffer from stereotypical assumptions about their motherhood and their ability to work. This in turn may lead to fewer returns to labour market by women after

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<sup>1</sup> The Economic and Social Committee (2007/C 256/19.)



giving birth.<sup>2</sup> The responsibility for reconciliation of work and parental occupation is still mostly of women. The Hungarian society, as is the case in many other countries, follows the traditional family patterns. That means discrimination against women in the labour market still exists, both in terms of access to employment and in working conditions. The researchers defined several family models, based on the role of women and the work division within the family. In general, traditional societies are strongly committed to following the model of ‘the male breadwinner and woman as the traditional housewife roles’.<sup>3</sup> To the contrary of that there is the model of the ‘dual earner’ family in which both women and men participate in keeping the family. In this model state benefits are aimed at individuals, rather than families, and in the tasks of care there is a significant social role.<sup>4</sup> In addition, there is a market-oriented family model, when the roles of state in supporting families are insignificant and the level of social children care services is low.<sup>5</sup>

On this basis, a joint model can be observed in Hungary, that we can call “dual earner model with traditional approach”. In the Socialist period, “dual earner” model has been developed, although the roles of women have not changed in the family. Thus women are subjects to a “double burden” style of model. The hypothesis of this research is that equal treatment of men and women in work cannot be achieved till the work in the family, especially in children’s care, are not equally distributed. However, significant changes in the behaviour of large social groups, by purely legal means are not achievable. For the right approach, other instruments are also needed. The mindset of the society related to parental tasks depends on the cultural and historical heritage of the society. Societies tend to see the origin of gender roles natural, not social.

In most European countries the role model is the breadwinner husband and father and the caring wife and mother.<sup>6</sup> In this model, mothers are responsible for the emotional and physical developments of children. This approach examines the bonding relationship only in the mother-child dimension. The father's role concentrated solely on the breadwinner function, he is not involved in caring roles. According to Clare McGlynn, there is a great need for changing this approach by leaving the ideology of classical motherhood and fatherhood independent parental role. These new kinds of parents would be free to choose their roles in work, in the society and in the family as well, based on the needs of the family and the individuals. The research of the “Future

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<sup>2</sup> The Economic and Social Committee (2010/C 339/01).

<sup>3</sup> SURÁNYI, Éva: Historical view: Welfare systems and ideas around the world. In SURÁNYI, Éva – DANIS, Ildikó – HERCZOG, Mária (eds.): *Family matters can have a different eye*. Different viewpoints, approaches, with varying practices in the domestic and international family politics. Budapest, 2010, Gazdasági és Szociális Tanács, p. 38.

<sup>4</sup> SURÁNYI: p. 38.

<sup>5</sup> SURÁNYI: p. 39.

<sup>6</sup> MCGLYNN, Clare: Work, Family, and Parenthood: The European Union Agenda. In. CONAGHAN, Joanne – RITTICH, Kerry: *Labour Law, Work, and Family*. New York, 2005, Oxford University Press, p. 218.

insights” Committee of the Hungarian Academy of Sciences – which aims to make predictions on the future of the Hungarian Society prognoses significant changes in family roles.<sup>7</sup> Mrs *Pongrácz Tiborné* notes that in today's Hungarian families the traditional approach is prevalent in relation to gender roles. The latest research also confirmed that in this area there has been no change during the last years. Despite of the traditional model which held to be ideal, in reality the "dual earner" family model lives. Moreover, needs for employment of women, in these uncertain economic and labour market conditions, got even more emphasis.<sup>8</sup> A new, more equal division of work, acceptable to both sides will develop as a result of a longer conflict process, in which the main issue is the change in men's role, even more so because this question is rather neglected.<sup>9</sup> There are several researches dealing with women's family, maternal and working roles but there are very limited discussions about how men can adopt to the new social and family roles.<sup>10</sup>

Our objective is: to uncover the past, discover the history of the development of Hungarian legal instruments regarding women's labour status. During the analysis, it cannot be overlooked that the legislation is essentially influenced by the era's characteristic mindset, ideology and the economic and social environment. We take the position that the history of women's work greatly differs from the history of men's work, although the process is similar to the development of both force. Both men and women knew about slavery, bondage, handicrafts, the industrial revolution and the conflicts of the working class for better conditions, reduction of working time and higher wages. Nevertheless, the situation is that neither social history nor the development of production and work organization methods explain the deep differences of working problems of genders.<sup>11</sup>

Women have always had a different relationship with work, there had always been different conditions, than for men. The professionals' analyses of the human work could never be deemed for women's work fully.<sup>12</sup> While in socialist regimes, the dual role of women was the basis of gender inequality in western democracies the family itself was responsible for women's subordinate roles in society. In western democracies feminists are looking for new privacy by escaping from the old family model.<sup>13</sup> Western feminists intended to enforce their interests as common interests. While socialist

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<sup>7</sup> NOVÁKY, Erzsébet (eds.): *Magyarország 2025*. 1-2. kötet. Tanulmánykötet a Magyarország 2025 című akadémiai kutatás alapján. Budapest, 2010, Gazdasági és Szociális Tanács.

<sup>8</sup> PONGRÁCZ, Tiborné: A magyar családok jellemzői demográfiai sajátosságai 2025 körül. In NOVÁKY: pp. 77–178.

<sup>9</sup> PONGRÁCZ: p. 177.

<sup>10</sup> PONGRÁCZ: p. 177.

<sup>11</sup> SULLEROT, Evelyne: *A nő munka története és szociológiája*. Budapest, 1971, Gondolat Kiadó, pp. 13–14.

<sup>12</sup> SULLEROT: p. 14.

<sup>13</sup> EINHORN, Barbara: *Cinderella goes to market. Citizenship, Gender and Women's movements in East Central Europe*. London, 1993, Verso, p. 39.

emancipation forced women to sacrifice privacy for family and social interests.<sup>14</sup> Simone de Beauvoir was one of the first Western feminists who first idealised the socialist emancipation, but soon recognized its contradictions. Feminism is not an ideology, which treats women as an asset, but is used as a means for enforcing women's interests. In a civil society this is based on the civil activity, which includes not only the harmonization of legal rights, but the choice of rights assumed. Different feminist movements perceived maternity differently. According to some views, the fulfilment of motherhood hurts women's independence. Others said that maternity fulfil women's life. However all agreed that except for pregnancy and breast feeding fathers are capable to do the reproductive work of childcare.<sup>15</sup>

In our opinion, certain feminist movements' trap is that their thinking is not based on cooperation of men and women, rather they see them in conflicts. According to Maria Kopp instead of 'feminist' movements, 'familist' movements are needed, which strengthen the unity of family, man, woman and children.<sup>16</sup> However, this approach also raises the question as how to reconcile family life to the broader social role of women. "Child bearing is a non transferable role of women and also establishing a secure mother-child relationship. In parallel, the interest of society is that their efforts, invested in their professional and social roles should not be wasted. For women the key issue is to be able to make use of their studies and also to have as many children as they wish."<sup>17</sup> In addition to the historical analysis, the other point is the consideration of whether the regulation of labour law, concerning the role of women in the workplace carries stereotypes or not. Whether they are hidden by the individual provisions and how they are linked to certain prejudices.

The third question to be answered, what is the needed level of protection for pregnant women and women with small children. What limit is neither too low, to expose women, nor excessively high, which can strike back in the labour market and result in discrimination. We try to find answer for the question, whether the provided benefits help equal participation in work or not? In this regard, we pay particular attention to the fact the extra benefits, coming from the socialist labour law, resulted in high extra costs for new capitalists companies, which led to negative discrimination of women in the marketplace. However, we know that in practice, formally equal rules can cause serious inequalities, and therefore the correct legal framework must rely on countervailing rules. The question arises, whether the legal concepts designed to coordinate work and family life, only for women or they mean support for both parents and the whole family? Why do women need equal rights at all? Naturally women and

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<sup>14</sup> EINHORN: p. 6.

<sup>15</sup> TÓTH, Zsófia Eszter: *Kádár daughters. Women in the Socialist period*. Budapest, 2010, Nyitott Könyvműhely, p. 80.

<sup>16</sup> KOPP, Mária – SKRABSKI, Árpád: Women's roles in today's Hungarian society. *Vigilia*, 2007. sz. p. 513.

<sup>17</sup> KOPP – SKRABSKI: p. 514.

men are born equal, or not? The basis for this issue is, that the concept of biological and social gender should be separated and they need to be considered differently in legal rules.

### Problem of Identification

Child rearing is an important factor of economic activity of women. For men, child rearing role is independent from their job market activity. Women with small children are much less active on job market than women with no children or older children. According to surveys, the chances of employment for women with small children decrease by 37 per cent, while for men it increases by eight percent.<sup>18</sup>

In Hungary the proportion of inactive women are extremely high. The 2005 data shows the inactivity rate for women in the 15-64 age class reached 46 per cent.<sup>19</sup> The inactivity rate of men and women are the closest in Hungary among EU countries which means quite high inactivity level for men as well.<sup>20</sup> Those people on child care benefits are among the inactive and almost half of the women in inactive status, are on child care benefits. In 2005, thirty-two percent of women with small children were employed. In the case of other women this ratio was more than double, seventy-six percent.<sup>21</sup> In our country, such a low participation in work of women with small children is due to the fairly long stay home childcare system.<sup>22</sup> Child rearing means more financial support needs for the family, therefore men tend to go for employment. While the value of child care role increases for women, they rather tend to stay at home. As men earn more, that solution is more economical for the family.<sup>23</sup> Sociologists draw attention to the inflexibility of the labour market. That means that women do not have the opportunity to choose clearly between work and family, thus, their role remains two-fold. There is usually a financial constraint in the background.<sup>24</sup> Family ties are disadvantages for women in the labour market. Employers would require full attention and time from the worker. However, women in dual earner families are compounded to meet these expectations.<sup>25</sup> This approach was based on the traditional family, therefore contends that the choice between work and family is only a problem to be solved by women.

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<sup>18</sup> KOLTAI, Luca – VUCSKÓ, Bernadett: *Supporting and hindering factors of work – family life balance in Hungary*. Prepared by the Fővárosi Esélyegyenlőség Módszertani Iroda Műhelyében, a Szociális és Foglalkoztatási Minisztérium megbízásából. Budapest. 2007, p. 4.

<sup>19</sup> DRJENOVSKY, Zsófia: *The absence of women in the labour market after childbearing*. PhD értekezés. Budapest, 2009, p. 31.

<sup>20</sup> Drjenovszky: p.31.

<sup>21</sup> Drjenovszky: p.33.

<sup>22</sup> DRJENOVSKY: p.33.

<sup>23</sup> DRJENOVSKY: p.33.

<sup>24</sup> DRJENOVSKY: p.33.

<sup>25</sup> DRJENOVSKY: p.35.

It should also be taken into account that a number of different family types emerged as a result of social changes. The regulations must be valid for all family types. (ex.: educators of their children alone, new families after divorce, parents and adoptive parents, working students). In addition, the proportion of elderly people is increasing therefore both in the family and outside it will increase the demand for care services.<sup>26</sup> In contrast to men women are still take a major part of the house work. For this reason, they are in stress, and suffer from constant overload. In such circumstances, women often feel that they forced to accept part-time jobs with lower income, with worse pension options and és worse career opportunities.<sup>27</sup> We agree with the European economic and Social Committee opinion on the positions according to which the decision of having a child is a private issue and also for taking care of the elderly, however the consequences of such decisions effect the society as a whole. The decreasing number of children means shrinking number of future employees, consumers and so on.

This Thesis is built up with eight chapters that are built on the following structural units. The first chapter is the historical background, which examines the participation of women in work, the protection of maternity and the labour and social security instruments from the end of the 19 Century till the end of the Second World War. The second chapter of the historical background examines the time of state socialism, in particular, the rules of labour law and childcare institutions.<sup>28</sup> We agree with Ferenc Glatz's position according to which the scientific research is desirable after the 1945 era. We also want to apply his guidelines, and be factual in the research. In connection with the assessment of the era, the research should recognise the contemporary realities.<sup>29</sup> In the evaluation of the era, in addition to the situation in Hungary, we included the findings of the Czech, which was based on the summary of interviews of Czech women.<sup>30</sup>

The next two chapters analyse labour and social security provisions after the change of regime. With regard to labour law concepts the act of I. / 2012. is also under examination. In examining the legislation after 1992, analytical method has been applied, in the course of which we took the perspective of our hypothesis. We examined the protective institutions and child care solutions. In our research we did not take the position of the traditional family. On the contrary, we took the approach of those families in which the father would like to share child bringing tasks equally. In

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<sup>26</sup> See European economic and Social Committee views on the profession, in reconciling the family and private life. 2007/C 256/19.

<sup>27</sup> See European economic and Social Committee views on the profession, in reconciling the family and private life.

<sup>28</sup> KÉRI, Katalin: *The situation of women in Hungary during the first half of the 1950s.* p. 2 In <http://kerikata.hu/publikaciok/text/nok50ben.htm>. (date of download: 15.07. 2011)

<sup>29</sup> GLATZ, Ferenc: *About the researches of the Kádár Era* In. *História*, 1991. vol. 4. p. 2.

<sup>30</sup> HEITLINGER, Alena – TRNKA, Susanna: *Young Women of Prague*. London, 1998, Macmillan.

addition, based on the sociological and economic researches, we examined whether the given standards support or hinder the work of women.

The other backbone of the presentation is the review of international regulations. We have examined the international conventions adopted by the ILO, the European Social Charter, as well as the policy of the European Union legislation in relation to the support of child rearing families. The last chapter of the paper deals with the maternity and parental protection regulation of Germany. A critical analysis of the international norms relating to the positions elaborated on the basis of foreign language studies. We focused on analysing both the legislative practice and the low enforcement practice, the latter was found rather in Union law. That suggests that the ability of women to get support in advocacy and law, are weak. It also shows that the traditional family model is still adopted by most women. That means, with regard to the division of labour within the family, there have been no significant changes in the past twenty years.

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In Hungary there is a long history of legal and social instruments protecting women and mothers. Legal norms focused on keeping women at home during pregnancy and after the birth to ensure safety and health for both women and children. The government provided the necessary labour instruments and also the social security benefits for women. There was a tendency of granting longer and higher-paid benefits to the parent women. Hungary has already acted as a lead before the period of socialism in consideration of the interests of women, providing, among others, the possibility of higher education of women. In the period before the Second World War, traditional family model was dominant. Women worked only temporarily, because they discontinued work after wedding or giving birth. Despite this, in legislation, special attention has been given to protect the rights of women working. Risks associated to pregnancy and giving birth were also in focus. We found that the development of international law, and in particular the Hungarian labour law have historical similarities. The fully-paid maternity leave or the breastfeeding time off, are not guaranteed even today in some countries.

The historical period of socialism could not be ignored, since today's child support scheme, a large part of the protective standards of pregnant women and parent women are the same today. We considered important to analyse the effects of the Socialist heritage. It was found that the involvement of women in the labour market has led to the dual-earner family model, creating women's double burden of work and family responsibilities. The introduction of childcare benefits has made it possible for women to be involved in child care only. The 'GYES' Child Care Benefit still only a concept for women in the eyes of the society. The 'GYES' and the Socialist Labour legislation have strengthened the perception of women's traditional role, in addition to the role of women in the working world. Father's responsibility in child care was simply ignored, which suggested that the responsibility of child rearing is only for the mother. Fathers have no role in that and this is not even expected from them. Therefore, the working



women scheme has not resulted in real economic independence for women but instead, women and men were consigned to the system and to each other.<sup>31</sup>

Full-time equivalent employment became dominant, and there was little possibility of part-time work. Women's full-time employment in addition to the traditional maternal role caused significant stress for women. This has led to the reality of phenomena called working mother.<sup>32</sup> Stress arising from the dual responsibility caused underperformance, and constant 'sense of guilt' in both roles. These ruined the career opportunities of women and they stayed at the lower level of the career ladder.<sup>33</sup>

In this context we tried to get answers to the question, whether the legal legislation of work and social security still based on stereotypes regarding child bringing responsibilities? In our opinion the norms, after the changes of regimes, have not changed and the legal instruments are still built on the historical family model. Our determination is confirmed by the roundtables of the UNITED NATIONS Commission on eliminating discrimination against women.

The Committee expressed its concern over the fact that regarding the roles of women and men in the family and society, patriarchal attitudes are still prevalent. The deeprooted stereotypes persist, which are reflected in the decisions relating to women's education, their situation in the labour market and their underrepresentation in decision making positions. A further question was where the protection level should be for pregnant and parent women? We expressed our opinion on the need for change at each rules. It should be noted, however, that if the legal regime concerning responsibility for the men in childcare was mirroring any change, discrimination against women would be reduced. According to some researchers, gender equality, the time spent with the family, quality care for children may improve side by side, without reducing women's choice.<sup>34</sup> The solution should be the dual-earner, dual-care family in which both women and men take equal responsibility for family and for work.<sup>35</sup>

For us, Gornick and Meyers's vision of equal norms' society is the model to be followed. Decision makers should also retain in mind this model, in order to make real change in women's equality. The real social system based on equality in which both parental care and market work are valuable. The involvement in family and work, for women and men are symmetric; parents have the right to care for their children themselves, or they can entrust someone to do it. For mothers and fathers alike there are realistic options for child care and coordination of the work.<sup>36</sup> This kind of family model optimizes the childcare leave system, so both the mother and the father are

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<sup>31</sup> LEHOCZKYNÉ, Kollonay, Csilla: *The Significance of Existing EU Sex Equality Law for Women in the New Member States. The Case of Hungary*. In. *Maastricht Journal*, 2005, vol. 4., p. 471.

<sup>32</sup> LEHOCZKYNÉ: *The Significance of Existing EU Sex Equality Law for Women*, p. 471.

<sup>33</sup> *Ibidem*

<sup>34</sup> NEMÉNYI: p. 96.

<sup>35</sup> *Gornick és Meyers family policy model*. ivi., NEMÉNYI: p. 99.

<sup>36</sup> NEMÉNYI: p. 98.



entitled to six months paid leave after the birth or adoption of a child. Parental leave is non transferable for each-other. Parents are entitled for taking the leave either they are full-time or part-time workers. Agreeing with this approach as well as on the basis of sociological and economic studies, the need for changing the Hungarian child care system rules seems to be justified. According to our position, more flexible and greater choices for parents should be enacted. The child care leave without pay may be reduced. The regulations should reflect the possibility of care sharing between parents, encouraging fathers to take part in child care.

This would facilitate faster return of women to the labour market which would also reduce discrimination of women in the working world. However, for fathers, to be absent from work for a specified period, would not be a disadvantage, since there are no deep-rooted stereotypes against them. European Union Member States provide varying degrees of absence for parents to care for their children at home. However, it may be difficult to answer, what is the ideal length. Those who argue about women's greater participation at work, say that a shorter but well paid period is the best solution. In others' opinion a much longer period of care supports the development of children better.<sup>37</sup> In addition, a variety of approaches exist, but usually the economic and child development aspects are the main arguments in the course of the debates. The economic policies can also affect the question depending on whether advocating for women work, or not.

The main elements of the current child support system are the legacy of the Socialist era. Its bigger reforms were rather ideological, after the system change.<sup>38</sup> Neither those who regard child care benefits social security issues, nor those who stand for the historical family model examined what are the real effects of this unique system.<sup>39</sup> *Mónika Bálint* and *János Kölli* pointed out that from 1993 to the present, more and more people accepted child allowances, for longer and longer time. The analysis suggests that among those, who accepted the benefits, the number of women with no work experience and no higher education, increased to the multiple. According to their analysis, the current system is not serving its original reasons. Despite of all changes of motivating work, those who receive these child care benefits are not active in the workforce. According to *János Kölli*, a system which has a high preference towards cash payments of benefits cannot support work-family life balance properly. But there is no guarantee either, that it serves the high fertility and the survival of the traditional family model.

In the second half of the twentieth century, the aftermath of the massive employment of women has already brought changes to Western Europe with regard to the sharing of parental roles. In the 1970s there were already families wherefor a

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<sup>37</sup> KORINTUS: p. 67.

<sup>38</sup> BÁLINT– KÖLLI: p. 4.

<sup>39</sup> Ibidem

shorter or longer period, fathers were of children's' primary care instead of mothers<sup>40</sup>. Examining this sort of role switching effects, psychological researches brought a number of surprising results.

On the one hand, it turned out that in those families where the father participated more in actions around children, the biological differences between the educational style of mother and father disappeared. One of the surprising discoveries of research examining the "mother's substituting" role of the father was that children in almost every area exceeded the results of children of traditional families.<sup>41</sup> They achieved better study results, they had higher EQ and they were more popular in their age group.<sup>42</sup> Psychological theories of the role of the father's stress that men are capable of taking care of children in the same way as women. On the other hand, children are able to securely bind to those from whom they receive care and attention – regardless of whether it is a woman or man. Consciousness of equivalence is important for not only the single, but for those fathers who live separately. In addition, there may be situations where, in the case of any family, fathers must play the key role in child care<sup>43</sup>

The study also pointed to international rules in which the responsibility for bringing up children must be shared. We agree with the opinion of *Korintus Mihályné* according to which the reconciliation of work and family life can be successful only if there are choices for both men and women to ensure the appropriate balance. Based on the above we recommend a system transformation of maternity leave and parental leave by the coordination of the labour law and social security legislation. We propose a maternity leave for father right after the child birth, and a much more flexible system of child care leave. The allocation of child care leave between parents would have to be legally regulated. Parents should inform the employer about when and for how long they would like to be absent. The communication of the worker and the employer need legal regulation for ensuring dialogue and cooperation on setting up the best work-life solution for both the family and the employer. This would facilitate a smooth return to work for both and also it would help to take into account each other's interests.

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<sup>40</sup> BALOGH, Lídia: (eds.): *Men's in father's role*. Budapest, 2007, Magyarországi Nı Alapítvány, p. 4.

<sup>41</sup> BALOGH: p. 5.

<sup>42</sup> *Ibidem*

<sup>43</sup> *Ibidem*