

# Proposal of Amendments to the Labour Law of FBiH

To improve the protection of gender equality,  
rights related to maternity and paternity,  
and the rights of children

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## SUMMARY

This policy document presents proposals of amendments to the Labour Law of the Federation BiH which should be implemented to improve the protection of rights related to maternity, paternity, and the care of children, i.e. rights related to family life, and to create better conditions for the achievement of gender equality in family and social life in BiH.

All the recommendations have been formulated as responses to identified problems that occur in practice in these respective areas and that have an unfavourable effect on the smooth implementation of the gender equality principle in the private and professional domain, as well as on the protection of the fundamental values of family life. The recommendations thus focus on the improvement of the protection of relevant human rights, relying on the relevant international and European Union standards and the good comparative practice, as well as the need to harmonise standards of protection provided by various sources of labour legislation within BiH and relevant gender equality documents.

We here present a number of key interventions needed in the Labour Law of FBiH:

1. Introduce gender a neutral term “parental leave” and provide an adequate definition of this right, making it possible for parents to share the leave or take it in several parts, which would encourage the practice of the equal exercise of this right by both parents.
2. Introduce additional stimuli for fathers to take the parental leave: If a father takes a month of a 12-month parental leave, the leave should be prolonged to 13 months.
3. Introduce a separate legal category of the special right to paternal leave and stipulate its duration of up to 10 working days.
4. Harmonise the terminology in order to ensure equal protection of rights related to dismissal in the context of pregnancy and parenting for both parents.
5. Stipulate automatic extension of definite-period employment contract until the exercise of the right to parental leave expires.
6. Ensure the right of all employees to keep their position and work conditions, i.e. the same status, during and after the parental leave (or maternity/paternity leave).
7. Stipulate principles of special protection during pregnancy, after delivery and for childcare.
8. Prohibit requesting of information not only about pregnancy but about marital status or family planning in general, and extend this prohibition beyond the already employed women to those applying for a job.
9. Stipulate that women can only exceptionally, upon their own request and with the consent of the employer, take a shorter maternity leave.
10. Reclaim in the legal text the extended parental leave of 18 months in case of twins, third child and every subsequent child.
11. Stipulate appropriate sanctions that would have a deterrent effect from violation of fundamental rights related to parenting.

## 1. Introduction

In the context of the existing problems, the purpose of this policy document is to propose amendments to the Labour Law of FBiH which go in the direction of improving the protection of rights associated with maternity, paternity and child care, i.e. with family life, as special social values to be protected by the society and the state.

A particularly important task in this regard is to provide adequate responses to the existing practice of discrimination that women feel in relation to pregnancy and maternity, in the context of their biological predetermination to become pregnant and mothers. This document, however, is not reduced to the standard public discourse about the rights related to giving birth and child care, it also offers proposals to grant and improve the rights of fathers both as a response to the discrimination of men when it comes to child care rights and to the unequal division of family duties which results in women bearing the greatest burden and therefore facing obstacles in the full enjoyment of their rights in line with their needs and desires. The final goal of the proposed amendments is to contribute in the long term to the fight against stereotypes and improvement of the gender equality principles. This effort relies on numerous recommendations of international human rights protection mechanisms issued to BiH, including the recommendations of the UN Committee on the Elimination of Discrimination against Women.<sup>1</sup> Although there are several international standards that can apply to the subject matter of this analysis, the proposed solutions in the greatest part rely on the well-developed standards in the European Union law, as the relevant source of inspiration for BiH in light of its European integration, and on the best comparative practices adopted in other legal solutions in BiH, regional countries and European Union member states. The proposed solutions definitely constitute an important step forward in the harmonisation of the Labour Law of FBiH with the Gender Equality Law in BiH which lays down the important anti-discrimination standards in the employment of parents and balancing professional and family life duties,<sup>2</sup> and their adoption would mean also the implementation of the part of measures that the legislator, according to the BiH Gender Action Plan, must implement in the period 2013-2017.<sup>3</sup>

In addition to having the goal of improving the protection of parenting-related rights and gender equality, it is important to mention that adequate legal protection and supporting conditions for the roles of mothers or fathers or adequate

1 The CEDAW Committee, in its 2013 Concluding Observations on Bosnia and Herzegovina, urged the State party to, inter alia, develop a comprehensive strategy with proactive and sustained measures to overcome patriarchal and gender-based stereotypical attitudes about the roles and responsibilities of women and men in the family and in society, in particular in areas where women are in the most disadvantaged position, such as employment. The Committee also issued other relevant recommendations. Doc. no. CEDAW/C/BiH/CO/4-5, item 20 b) and item 34.

2 *Gender Equality Law in BiH*, Official Gazette of BiH, no. 16/03 and 102/09, Arts. 12-16.

3 In this context, particularly important is the measure: "Improving measures to harmonise professional and private life, including protection of maternity and paternity, improvement of provisions on paid maternity leave, paid parental leave for both parents, as well as special measures that facilitate the balancing of professional and private responsibilities to employed persons"; as well as the measure: "Identifying priority laws, strategies, action plans, programs and other acts in the area of labour, employment and access to resources with the aim of introducing international and local gender equality standards"; *2013-2017 Gender Action Plan* (Official Gazette of BiH, no. 98/13), I.3.8. and I.3.1.

child care have a direct effect on birth rate and demographic trends<sup>4</sup>, as we find young people in BiH reluctant to start a family or extend it due to, *inter alia*, lack of financial certainty, employment guarantee and adequate child care options compatible with work and professional duties.

What this analysis will not tackle is the reorganisation of the maternity benefits allocation system. Although it is a burning issue which constitutes a key structural obstacle to full enjoyment of parenting-related rights, it falls out of the scope of this analysis and deserves full attention as such. It is a subject of a number of initiatives aimed at the adoption of new regulations on maternity benefits to be equally applied to all persons in FBiH.<sup>5</sup>

### 1.2 Labour legislation and the social context in the Federation of BiH; European Union standards

Generally speaking, it may at first glance seem that the protection of mothers and maternity for employed women, as stipulated by the Labour Law of the Federation of BiH, is to a great extent harmonised with the relevant human rights protection standards – as was recognised also by the Institution of Human Rights Ombudsman of BiH.<sup>6</sup> But still, looking at a wider social context, it becomes clear that the time has come to introduce certain safeguards and incentives that will lead to multiple positive impacts.

It is necessary to take into account the fundamental fact that obstacles to full gender equality are deeply rooted in the structure of social relations in BiH, visible in the real or perceived division of roles between men and women when it comes to family responsibilities and professional lives.<sup>7</sup> Such strong cultural perceptions and social stereotypes in any society have the capacity to prevent equal participation of persons from certain social groups in social trends, systematically placing them in a disadvantaged social position.<sup>8</sup> To address this problem, it is necessary to combat this type of structural inequality by creating systemic preconditions for a maximum possible reduction of the existing unequal division of social roles and their unequal valuing.<sup>9</sup> In BiH, this can primarily be achieved by amending the legislative framework to create the needed systemic prerequisites for efforts directed at achieving this goal and this, in the long-term, has the potential to bring about,

4 A demographer and statistician, prof. Hasan Zolić underlines that the western countries that stimulate natality managed to achieve a positive population growth rate thanks to the adopted national strategic measures, and that Bosnia and Herzegovina is lacking some uniform guidelines for the whole country when it comes to natality. “*Negativan prirodni priraštaj u BiH: Rode odnose djecu*”, available at <http://novovrijeme.ba/negativan-prirodni-prirastaj-u-bih-rode-odnose-djecu/>, accessed on April 27, 2016.

5 Currently, the most significant is the initiative of several non-governmental organisations lead by Žene Ženama - (Ne) Diskriminacija porodilja u FBiH. More info at: [www.porodiljskenaknade.com](http://www.porodiljskenaknade.com)

6 Institution of Human Rights Ombudsman of BiH, *Specijalni izvještaj o stanju zaštite majke i materinstva na području Federacije BiH*, 2015., pp. 19-20, available at: [http://www.ombudsmen.gov.ba/documents/obmudsmen\\_doc2015102111102085bos.pdf](http://www.ombudsmen.gov.ba/documents/obmudsmen_doc2015102111102085bos.pdf), accessed Feb 2, 2016.

7 See in this context the study tackling this issue both in Republika Srpska and in BiH and the neighbouring countries: *Rodna ravnopravnost u Republici Srpskoj; Istraživanje javnog mnjenja*, Gender Centar – Centar za jednakost i ravnopravnost polova Republike Srpske, 2012, pp. 48-73; See also “*Porodiljsko odsustvo za muškarce?*”, Dec 12, 2012, available at <http://diskriminacija.ba/porodiljsko-odsustvo-za-mu%C5%A1karce>, accessed April 30, 2016.

8 *Analiza zakona o ravnopravnosti spolova*, CESI/ Goran Selanec, 2008, p. 19

9 *Ibid*, p. 18

in addition to other awareness raising activities, a gradual change in the sharing of parental and family duties of men and women and in the existing perceptions of the society on their assumed roles, capabilities, and preferences. In addition, this goal can primarily be achieved through full and consistent protection of women who are or can become pregnant or mothers so that they do not suffer the negative consequences in their social life, primarily employment.

It has been established a long time ago in the European Union that legal measures promoting the balancing of professional, private and family life (which in itself is one of the EU social policy objectives<sup>10</sup>) are of key importance for the practical implementation of gender equality. The link between these measures and gender equality principles has been explicitly recognised by the EU law<sup>11</sup> as these measures allow primarily women, who as a rule carry the disproportionate burden of caring for children, household, and other family members, to balance these responsibilities with the paid work they perform – which carries the potential to reduce the opportunities for their discrimination in the professional life. These measures should also support the gradual transfer of the above responsibilities to men and should positively influence the social perception of gender roles by countering stereotypes – making thus a significant impact on gender equality. The legislation which promotes the balancing of professional and private lives (labour legislation being one of the key areas) is therefore of crucial importance in the context of gender equality promotion.<sup>12</sup>

There are a number of European Union labour-related documents that promote the gender equality principle, maternity and paternity related rights, and the rights of children. The most important European Union directives which focus on the harmonisation, i.e. balancing of professional, private and family life (in addition to inclusion of this right into the European Union Charter of Fundamental Rights (Article 33/2)) are the Parental Leave Directive 2010/18/EU and the Pregnant Workers Directive 92/85/EEC (currently under revision)<sup>13</sup>, providing the minimum level of standards to be met in the context of childbearing and early child care. In addition, Directive 2006/54<sup>14</sup> refers to issues of indirect discrimination of women, and the Directive 97/81/EC<sup>15</sup> concerning part-time work regulates discrimination of those working part-time, which often refers to women who in that way try to balance professional, private and family life.<sup>16</sup>

10 The implementation of *Parental Leave Directive 2010/18 in 33 European countries*, 2015, European network of legal experts in the field of gender equality/ Burri et al., p. 1, available at: [http://ec.europa.eu/justice/gender-equality/files/your\\_rights/parental\\_leave\\_report\\_final\\_en.pdf](http://ec.europa.eu/justice/gender-equality/files/your_rights/parental_leave_report_final_en.pdf), accessed Jan 12, 2016.

11 In this regard - recitals 4 and 8 and clause 2 paragraph 2 of the Parental Leave Directive 2010/18/EU

12 *Measures to address the challenges of work-life balance in the EU Member States, Iceland, Liechtenstein and Norway*, 2015, European network of legal experts in gender equality and non-discrimination/ Aileen McColgan, pp. 23-24, available at: [http://ec.europa.eu/justice/gender-equality/files/your\\_rights/11-1-2016\\_reconciliation\\_final.pdf](http://ec.europa.eu/justice/gender-equality/files/your_rights/11-1-2016_reconciliation_final.pdf), accessed Jan 12, 2016.; *The implementation of Parental Leave Directive 2010/18 in 33 European countries*, op.cit. pp. 1-2.

13 Directive 92/85/EEC 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.

14 Directive 2006/54/EEC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).

15 Council Directive 97/81/EC concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC.

16 An excellent summary of relevant regulations and case law in the European Union on balancing

## 2. Labour Law of the Federation BiH – The way forward?

### 2.1 Introducing parental leave

The Labour Law of the Federation BiH stipulates that *during pregnancy, childbirth and child care, the mothers shall have the right to maternity leave for a period of one year without interruption*. Based on the findings of a licenced physician, a woman can commence her maternity leave 28 days prior to the expected date of childbirth. It is also stipulated that a woman may take shorter maternity leave, but not shorter than 42 days after childbirth.<sup>17</sup> This solution is known also from the old Labour Law of the Federation BiH.<sup>18</sup>

The new Labour Law of the Federation BiH introduces the possibility of using parental leave for fathers of children, provided that the parents agree so, only 42 days after childbirth as these are still reserved for the mother of the child.<sup>19</sup>

The old Labour Law of FBiH provided that the father of the child, except for up to 7 days of leave due to wife's childbirth, marriage or other grounds (more on that below), can exercise the right to parental leave only *in case of death of the mother, if the mother leaves the child or if she is prevented from exercising the right for justified reasons*. Thus restricted requirements for the father's leave have been subject to criticism also by the Institution of Human Rights Ombudsman of BiH, as they are deemed discriminatory for making it impossible for fathers to independently enjoy their parental right, i.e. for not allowing the parents to decide themselves who will take the leave once their child is born.<sup>20</sup>

In light of the above, the Ombudsmen in their *2015 Special Report on the Protection of Mothers and Maternity on the Territory of the Federation BiH*, drafted upon initiative of the House of Representatives of the Parliament of the Federation BiH, concluded that it is necessary for the purpose of harmonisation with the non-discrimination principle *to amend parts of the Labour Law and regulate the right to maternity leave as an exclusive right of women and parental leave as the right of both parents*.<sup>21</sup>

The amendment introduced in the new Labour Law in the spirit of these recommendations should as such be welcomed. Namely, although the right to maternity leave is maintained (even the part before the expiration of 42 days, otherwise reserved for mothers) in situations such as the death of the mother, abandonment of the child by the mother or failure to take the leave by the mother for

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family and professional and the related gender equality principle can be found in the report: The implementation of Parental Leave Directive 2010/18 in 33 European countries, 2015, op.cit., pp. 2-6.

17 Article 62, paragraphs 1-3.

18 *Labour Law of the Federation BiH*, Official Gazette of the Federation BiH, no. 43/99, 32/00 and 29/03.

19 *Labour Law of the Federation BiH*, Official Gazette of the Federation BiH, no. 26/16, Art 62, para 4.

20 *Institution of Human Rights Ombudsman of BiH, Analiza usklađenosti zakonodavstva Bosne i Hercegovine sa Konvencijom o pravima djeteta*, 2009, p. 33, available at: [http://www.ombudsmen.gov.ba/documents/obudsmen\\_doc2013032607124915bos.pdf](http://www.ombudsmen.gov.ba/documents/obudsmen_doc2013032607124915bos.pdf), accessed Jan 12, 2016; *Institution of Human Rights Ombudsman of BiH, Specijalni izvještaj o stanju zaštite majke i materinstva na području Federacije BiH*, op. cit., p. 20.

21 *Institution of Human Rights Ombudsman of BiH, Specijalni izvještaj o stanju zaštite majke i materinstva na području Federacije BiH*, op.cit., p. 43.

other justified reasons,<sup>22</sup> the father can now exercise this right without any additional requirements, based on the agreement with the mother.

In addition to removing the discriminatory effects, this change contributed also to the harmonisation of the approach at the territory of BiH, as the Labour Law of Republika Srpska and Labour Law of the Institutions of BiH already have the institute of transferable parental leave. More importantly, in this way the fathers in the Federation BiH are provided equal opportunity as mothers to take the leave – by which the legislator supports the idea that it is socially acceptable and desirable for men to take the leave and take care of children on equal terms as women beyond situations of utmost emergency where men would be replacing mothers – as was the case so far. Now, parents are given the freedom to choose how they wish to divide parental duties beyond the entrenched patriarchal attitudes, which is an important step in gender equality promotion.

However, to actually achieve the effect of encouraging fathers to truly exercise this right in practice and thus create preconditions for a brave step forward of certain families in the direction of changing the division of family responsibilities and socially perceived roles of men and of promoting gender equality, there should more steps forward.

1. Terminologically speaking, **the term “maternity leave” (literally *childbirth leave*) used in the new law also for the leave of the father of the child should be replaced with a more adequate, gender neutral term “parental leave”, in accordance with the recommendation of the Ombudsman Institution.** There are two options for this – to name the overall period *parental leave*, within which the 42 days are mandatory for the mother, or to differentiate the mandatory mother’s leave of 42 days as *childbirth, delivery or maternity leave*, while the other part of the leave should be taken as an independent right to a leave by both parents after the expiration of the maternity leave and should be called *parental leave*.

In addition to terminological clarity, it is most important that the overall concept of parental right is formulated, taking into account the gender equality principle and, *inter alia*, European Union standards as in majority of European Union members states, including the neighbouring Croatia: **parental leave should be treated as a right of both parents.** The current legal concept in FBiH,<sup>23</sup> but also Labour Law of the Institutions of BiH and Labour Law of Republika Srpska, both in terms of terminology and content, denotes that this is still a priority right of women – mothers (perceived as a *rule*), which may be, in case the parents agree so (perceived as an *exception*) be transferred to the father of the child. As such, this concept is, *inter alia*, contrary to the definition of the right to parental leave in the European Union law<sup>24</sup> as an individual right of all citizens. To avoid this terminological and conceptual trap, **it is necessary to define parental leave as a right of both parents to a leave during child care and in line with their mutual agreement, and where the mandatory first 42 days after childbirth and**

<sup>22</sup> Article 62, paragraph 5.

<sup>23</sup> Art. 62, para 1: (1) During pregnancy, childbirth and child care, a woman shall be entitled to maternity (*childbirth*) leave for a period of one year without interruption. Art. 62, para 4: “Once the 42 days after childbirth expire, the right to maternity (*childbirth*) leave may be exercised by the employee – father of the child, if the parents so agree.”

<sup>24</sup> Clause 2 of the Parental Leave Directive 2010/18/EU.

**a possible period during pregnancy are reserved for women.**

In this regard, the labour legislation of Montenegro defined parental leave as the right of one of the parents to a leave for the purpose of child care (Art. 111), within which the leave taken by the mother 28 days before childbirth and 45 days after it is defined as *childbirth leave* (Art. 111a).

2. In addition, the current formulation in the labour legislation of the Federation BiH<sup>25</sup> implies a choice that the parents must make after the initial 42 days – that only one parent is to take the legally provided leave without interruption. Therefore, the legal text **should be more precise and stipulate the possibility of parents sharing the parental leave so that the father can take a part of the childbirth leave**, as is regulated in the Labour Law of the Institutions of BiH which stipulates that parents can agree for the father to take the full or just a part of the leave. By this, various combinations of their agreement are possible, harmonised with the professional, child-related and personal needs of both parents. This flexibility would be exactly one of the steps towards enabling a successful balancing of professional and private life. One of the imaginable scenarios would thus be for the mother to spend the first 9 months with the child and then return to work, while the remaining leave would be taken by the father.

3. Furthermore, with the aim of promoting flexible solutions adapted to the needs of parents but also work responsibilities, **it should be made possible that every parent can take the parental leave in several parts, i.e. more than one period with the possible limitation that, if taken in parts, parental leave cannot be taken more than twice in a year**. This would enable parents to take parts of parental leave alternately and then return to work, and then take parental leave again when the other parent returns to work, adjusting thus to parents' wishes and the needs of the workplace – ultimately having the potential of facilitating the reintegration of women at the workplace once the parental leave ends for those who are ready for such an organisation of parental leave. This solution is known in the comparative practice, which includes Croatia, Austria, Germany, Greece, and Island.<sup>26</sup>

4. In addition to the above measures to make the law more precise, a necessary key step in the context of improving the labour legislation for the above purposes is **the introduction of the additional key stimuli for the take of parental leave by fathers**,<sup>27</sup> following the standards stipulated by the European Union law and relying on comparative solutions, including those of Slovenia and the neighbouring Croatia, that will be presented below. In this regard, it would be necessary in BiH to **foresee a privilege of extending the parental leave for parents (and children) for a month as a response to the take of parental leave by fathers in the duration of at least one month**. To make sure that the father of the

<sup>25</sup> Art. 62, para 4: "Once the 42 days after childbirth expire, the right to maternity (childbirth) leave may be exercised by the employee – father of the child, if the parents so agree."

<sup>26</sup> *The implementation of Parental Leave Directive 2010/18 in 33 European countries*, 2015, op.cit., p. 13.

<sup>27</sup> Several comparative and international studies show that majority of men take parental leave only when such a right is non-transferable and when it is paid well in comparison to their usual income. In Sweden, the introduction of the non-transferable month reserved for fathers, the so-called "daddy month" in 1995 lead to a rise in the taking of at least one month leave by fathers from 9% to 47%; "Shared parental leave to have minimal impact on gender equality", available at: <http://www.tavinstitute.org/news/shared-parental-leave-minimal-impact-gender-equality/>, accessed March 20, 2016.

child is really taking over the role of the primary caretaker of the child, this right would have to be enjoyed separately not simultaneously. Therefore, to illustrate, it would be possible, after using a month before and 11 months after childbirth, for the mother to continue working while the father would take over full care of the child in the 12<sup>th</sup> month or the parents would get an additional month for child care due to the fact that the father took several months of the parental leave and the mother returned to work much earlier. If the fathers would fail to take the month or the longer period of parental leave, that additional month would be lost, i.e. it could not be transferred to the mother.

This is in fact a reflection of the rule from the EU Parental Leave Directive<sup>28</sup> which stipulates that, to encourage a more equal take-up of leave by both parents, the states should stipulate that at least one month of the parental leave shall be provided on a non-transferable basis, i.e. reserved for just one parent. In line with this, the majority of EU member states, but also wider, apply the principle of non-transferability of at least one part of the parental leave.<sup>29</sup> Legal experts underline that, although there still exists a disproportion in the taking of parental leave by mothers and fathers, where an independently paid paternity leave exists, i.e. leave taken exclusively by fathers or where a non-transferable part of parental leave exists – reserved just for fathers and paid, the fathers take the leave (e.g. Germany, Finland, Norway, Portugal) which points to significant consequences of the individualisation of the right to leave for parental duties.<sup>30</sup> In this context, the examples of positive action measures that promote better sharing of child and family care duties between women and men are: a month provided exclusively for the father's leave and the so-called bonus period, i.e. extension of parental leave just for fathers (Finland); providing for longer periods of non-transferable leave for each parent within the overall parental leave (Norway – three months); increased payment of the parental leave in a certain period if taken also by the other parents (Germany); and other similar solutions.<sup>31</sup>

As a result of such progressive legislative solutions, of all the regional countries, **Croatia** made the biggest progress when it comes to parental leave for fathers, although this practice is often disapproved in the countries of the region due to the prevailing patriarchal cultural attitudes.<sup>32</sup>

It is interesting that the Croatian Law thus says that the right to parental leave is enjoyed, as a rule, by both parents in equal shares, i.e. each taking half of the total number of months provided for parental leave.<sup>33</sup> This is a very commendable solution which clearly shows the intention of the legislator to set the rule of an equal sharing of child caring tasks by equal taking of the parental leave by both parents, influencing thus the social awareness in the direction of improving

28 See clause 2 para 2 of Parental Leave Directive 2010/18/EU.

29 For a detailed overview of the regulation of this issue in EU member states and those with candidate status see *The implementation of Parental Leave Directive 2010/18 in 33 European countries*, op.cit. p. 12.

30 *Ibid.* p. 26.

31 *Ibid.* p. 26.

32 More on regional experiences and different approaches, and on prejudices faced by fathers because of using this right: "Očevi na porodijskom odsustvu", Aljazeera Balkans, 2014, available at: <http://balkans.aljazeera.net/vijesti/ocevi-na-porodiljskom-odsustvu>, accessed March 4, 2016.

33 Article 13, para 3 and Article 14, para 3 of the Law on Maternity and Parental Benefits.

the perceived or actual gender equality and encouraging parents to organise the taking of parental leave in that manner.

If it is furthermore provided that the parental leave will be 2 months shorter if taken by just one parent, i.e. the two months are non-transferable to the other parent – if not taken, the right is lost.<sup>34</sup> These commendable solutions encourage in the most efficient way both parents to take the parental leave. It is also possible to take the parental leave as one period or in parts.<sup>35</sup> If taken in parts, it is provided that the parental leave can be taken twice a year at for a duration of at least 30 days.<sup>36</sup>

European Union member states apply similar approaches to encourage men to enjoy the right to parental leave. In **Germany**, for instance, parental leave lasts for 14 months provided that the other parent takes 2 months of the non-transferable leave. If they fail to do so, the parental leave lasts for 12 months only.<sup>37</sup> In **Scandinavian countries** non-transferable months of parental leave for fathers are foreseen in the duration of two, three or several months.

In **Portugal**, after six weeks of the mandatory maternity leave, the parental leave can be shared among parents, where taking at least 30 days has the positive effect of extending the overall leave for 30 days.<sup>38</sup> In addition, a father in Portugal, in the first month of the child's life has the mandatory paternity leave of two weeks and a possibility of using additional 10 days.<sup>39</sup>

The majority of EU member states stipulate this obligation or a possibility of using short and non-transferable periods of the so-called paternity leave (in majority of cases two to four weeks after the child is born)<sup>40</sup> – where this right is available to fathers irrespective of and parallel with their right to agree with the mother to later take a part of the parental leave.<sup>41</sup>

In the context of Bosnia and Herzegovina, an analogy can be found with the option of taking a paid **leave of a man in the duration of not more than 7 days annually in the case of child birth**, but also other cases such as marriage, serious illness or death of a family member.<sup>42</sup> As this right refers also to a number of different personal or family situations outside of the child birth context, this right cannot be called paternity right in the sense it exists in comparative practice. It would therefore **be very much recommended to separate it in the Labour Law of the Federation BiH as a special right to paternity leave and extend it to two weeks**, in accordance with the average duration of this right in comparative practice. In this way, fathers would have the possibility of taking a leave immediately after child birth (in parallel with the leave reserved just for mothers in the duration of 42 days), in the times when they are often most needed and

<sup>34</sup> *Ibid.* Article 14, para 4.

<sup>35</sup> *Ibid.* Article 14, para 5.

<sup>36</sup> *Ibid.* Article 14, para 6.

<sup>37</sup> *Measures to address the challenges of work-life balance in the EU Member States, Iceland, Liechtenstein and Norway*, op.cit., p. 73.

<sup>38</sup> *Measures to address the challenges of work-life balance in the EU Member States, Iceland, Liechtenstein and Norway*, op.cit. p. 62.

<sup>39</sup> *Ibid.* p. 67.

<sup>40</sup> *Ibid.* p. 65.

<sup>41</sup> *Ibid.* p. 64.

<sup>42</sup> Art. 53, para 1 of the Labour Law of FBiH.

in the key moment of setting the foundations for the reorganisation of child and household related duties. The father's active participation in this period carries the potential of introducing equal sharing of responsibilities with regard to the household and children in the coming months and years.<sup>43</sup>

Finally, it is important to note that the overview of the situation taken from various studies indicates that the progressive approaches to organising parental leave, characterised by the care of the legislator to enable prerequisites for a certain level of flexibility in the taking of parental leave and for encouraging it being taken by men, as is the case e.g. in Scandinavian countries, are in direct correlation with a high percentage of women in the labour market – unlike in other EU states where such solutions are missing, e.g. in Hungary, Romania and Poland, and where we find exactly the reverse.<sup>44</sup>

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<sup>43</sup> In Norway, the studies have confirmed this thesis in case in which the legislation stipulated a 4 week leave exclusively for fathers, irrespective of the mother's leave. Such couples, in the long-term, share household duties equally and have 11% less conflicts about these. "The State intervenes in the Battle of the Sexes: Causal Effects of the Daddy Quota", Kotsadam&Finseraas.

<sup>44</sup> *Measures to address the challenges of work-life balance in the EU Member States, Iceland, Liechtenstein and Norway*, op.cit. p. 97.

### 3. Additional positive advancements in the new LL FBiH and incomplete solutions needing precision

#### 3.1 Termination of employment contract in the context of pregnancy and parenting

The progress made by amendments to previous legal solutions is commendable when it comes to more precise prohibition of termination of employment contracts. The previous law stipulated *a prohibition to deny a women employment due to her pregnancy, as well as the prohibition of termination of the employment contract due to that state*; now, this prohibition is extended to *explicitly prohibited termination of contract also during maternity leave, exercise of the right of parents to work part-time under certain conditions and exercise of the right of the women to a leave of absence for breast-feeding*.

It is important to recognise the importance of these amendments provided in Article 60 entitled *Prohibition of Unequal Treatment*. This in fact underlines the link between such a treatment (refusing employment and termination of employment contract in the given circumstances) and the violation of the equal treatment principle, i.e. anti-discrimination, which is in line with the European Union legislation and case law and the practice of majority of EU member states where dismissal and other less favourable treatment of a worker on the grounds of an application for, or the taking of, parental leave is considered discrimination – which implies the reversal of the burden of proof, compensations for and similar positive protective measures.<sup>45</sup>

As the power of the legal prohibitions and their deterrent effect are in direct correlation with the stipulated sanctions, we should commend *the introduction of financial sanctions for the violation of this prohibition* (Article 171, item 39).

The described amendments constitute a big step forward in the harmonisation of the labour legislation of FBiH with EU standards. Among others, one of these standards is laid down in Clause 5 of the Parental Leave Directive 2010/18/EU which protects workers from dismissal or less favourable treatment on the grounds of an application for or the taking of parental leave.

However, this provision of the Federal law should be **terminologically harmonised** with the above terminological changes in relation to parental leave – instead of using childbirth leave which implies its taking by mothers not fathers, **the protection of the right not to be dismissed should be clearly provided for both parents**.

In addition, FBiH labour legislation requires a few additional interventions for a more complete protection of parenting-related rights.

#### 3.2 Extension of a definite-period employment contract until the expiration of the right to parental leave

In BiH, and thus in the Federation of BiH, it is a common practice to conclude employment contracts for a definite period and too keep extending them, which

<sup>45</sup> See *The implementation of Parental Leave Directive 2010/18 in 33 European countries*, op.cit. p. 17.

provides more freedom to employers in terms of rights guarantees, primarily the guarantee of the workplace. In such an environment, it is highly likely that an employment contract will expire during pregnancy leave or parental/maternity leave and this especially affects women as their employment contracts do not get extended or new contracts concluded. In such a situation, women (but also men) can *de facto* be placed in an unequal position in comparison to other employees due to the fact that they took a leave to care for their child or protect pregnancy and can lose their job. For this reason, many women (and men) will be forced, among other things, to take a shorter parental leave in order to secure the chance to return to work with the same employer once their employment contract expires. This is something they should not be forced to face and it is a practice which should be prevented by ensuring adequate protection of their rights. Among the many examples, a good illustration of this can be found in the case of Belma Klokić whose definite-period employment contract was not extended – as was the case for a number of other colleagues who were not pregnant, during the time she took a sick leave to protect her pregnancy – she lost her job and another person was employed in her place, and the same thing happened to her colleague during the time she was on parental leave.<sup>46</sup> In a court proceeding at the Municipal Court in Zenica, the court found in a non-final decision that this is a case of discrimination and that the employer must restore the employment status, ensure all employment rights and indemnify the damaged party.<sup>47</sup>

In this regard, we should underline the positive and commendable examples of the Labour Law of Montenegro (Art. 108) and Labour Law of Serbia (Art. 187, para 2) that provide attempts of response to this danger. They stipulate that in the case of expiration of the definite-period employment contract during the right to a leave, the time limits provided in that contract shall be extended until the right to parental leave expires.<sup>48</sup>

Unlike these progressive solutions directed at the protection of these categories of employees, the FBiH Labour Law foresees a step back, even in Article 60, para 2, regulating explicitly that the termination of the definite-period employment contract shall not be considered termination of the employment contract in light of paragraph 1 of the Article, i.e. in the sense of prohibited termination of employment contract during pregnancy or maternity leave. This in fact means that the legislator finds it allowed to terminate an employment contract concluded for a definite period during pregnancy and maternity leave.

In light of the above examples, the failure to extend an employment contract in these situations can, in the given circumstances, represent gender based and /or pregnancy based discrimination, and can qualify as such at courts with all the relevant consequences. Having in mind the awareness of the importance of

46 "Slučaj Belme Klokić: Trudnoća kažnjena otkazom", Article dated Oct 16, 2014, published at: <http://diskriminacija.ba/slu%C4%8Daj-belme-koki%C4%87-trudno%C4%87-ka%C5%BEjvena-otkazom>, accessed April 30, 2016. Other examples can be found in "Kažnjavanje materinstva: Zbog čega se trudnice bespravno otpuštaju s radnog mjesta", of Feb 6, 2013, available at: <http://diskriminacija.ba/ka%C5%BEjvanje-materinstva>, accessed April 30, 2016.

47 "Sud odlučio: Trudnica koja je dobila otkaz vraća se na posao u Grijanje Zenica", Article dated Jan 22, 2016, published at: <http://www.nap.ba/new/vijest.php?id=20611>, accessed April 30, 2016.

48 Another step forward is the solution implemented in e.g. Austria, according to which, if a worker gets pregnant, a definite-period employment contract is, according to the law, automatically extended until the start of the period of maternity protection.

protecting pregnant women, mothers and fathers from being placed in an unequal position and applying comparative examples, **the provision from Article 60, para 2**, which in any case should not be placed under the title "Prohibition of Unequal Treatment" (because its consequence most often is unequal treatment) **should be abolished**. In addition, with the purpose of avoiding legal uncertainty, **a provision should be introduced providing for an automatic extension of employment contracts during the exercise of the child birth related rights**.

### 3.3 Obligation of return to the same workplace

Clause 5 of Parental Leave Directive 2010/18/EU furthermore stipulates, with the aim of preventing discrimination on the grounds of child care leave, *the right of workers, at the end of parental leave, to return to the same job or, if that is not possible, to an equivalent or similar job consistent with their employment contract*. This is a generally accepted rule in EU member states.<sup>49</sup> Similarly, Directive 2006/54/EEC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation stipulates that the workers *are entitled to return to their jobs or to equivalent posts on terms and conditions which are no less favourable to them, and to benefit from any improvement in working conditions to which they would have been entitled during their absence* (Article 16).

Such explicit provisions are missing in the FBiH legislation, although the problem of degradation of working conditions for women due to pregnancy and maternity leave or breastfeeding leave exist.<sup>50</sup> It is foreseen in Article 61 that a woman may be deployed during pregnancy and breast-feeding to other tasks or other workplace provided that certain requirements are met and exclusively with her consent. This solution requires further elaboration and expansion of scope as it may prove to be problematic in practice for several reasons.

One of them is that it is limited to women, specifically pregnant or breast-feeding women. In fact, the purpose of this provision is making it possible for pregnant and breastfeeding women, provided that an adequate professional opinion thereon exists, to be deployed to a different workplace for their own protection and in their interest, which is as such commendable. However, comparative practice indicates that it is exactly the reasons of protection of health and safety of pregnant women and mothers that are sometimes used as a justification to remove them from a workplace.<sup>51</sup> It is therefore necessary **to stipulate, in addition to the consent of the worker, also the initiative of the worker to be deployed to a different position**, to provide an additional guarantee of avoiding an imaginable situation in which a worker would be placed in a situation of giving her

<sup>49</sup> *The implementation of Parental Leave Directive 2010/18 in 33 European countries*, op.cit. p. 17.

<sup>50</sup> See, in this regard, the statement by psychologist Ivana Dračo, who confirms the specific susceptibility of pregnant women and new mothers to workplace mobbing and discrimination, which include, inter alia, changes of job descriptions and transfers to other positions. "*Slučaj Belme Klokic: Trudnoća kažnjena otkazom*", op.cit.

<sup>51</sup> *Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood, The Application of EU and national law in practice in 33 European countries*, 2012, European network of legal experts in the field of gender equality/ AnnickMassetot et al., str. 14, available at: [http://ec.europa.eu/justice/gender-equality/files/your\\_rights/discrimination\\_\\_pregnancy\\_maternity\\_parenthood\\_final\\_en.pdf](http://ec.europa.eu/justice/gender-equality/files/your_rights/discrimination__pregnancy_maternity_parenthood_final_en.pdf), accessed Jan 12, 2016.

consent because of the initiative of and pressure by the employer.

Also, **it is necessary to ensure the right of all workers (both male and female) to not be deployed to a different position against their will during and after the parental leave (either maternal or paternal), i.e. to keep their job and working conditions, i.e. the status they have had.** Now, only the title of Article 61: “Temporary Deployment of Women during Pregnancy” indicates that this has been envisaged as a temporary solution for the time of pregnancy. In practice, however, we can imagine that this solution can become a permanent one, to the damage and against the interest of the given person. Therefore, with the aim of full protection of workers and harmonisation with EU standards, it is necessary to stipulate, analogous to the existing solution, that the worker, after the temporary inability to work, is entitled to return to the tasks he/she performed previously (from Art. 72, para 2), an equivalent solution for person taking the parental leave, without limiting this right to pregnant and breastfeeding women.

The Labour Law of **Montenegro**<sup>52</sup> stipulates in this regard that the employer must ensure to the person taking maternity or parental leave, once the maternity or parental leave expires *the return to the same position or another appropriate position with at least the same pay*. Labour Law of **Croatia** (Art. 36, paras 1 and 2) stipulates a similar solution for workers who took the leave or exercised other rights related to child care – *the right to return to tasks performed prior to the exercise of the right* (within a month of the day he/she informed the employer that the exercise of the rights has stopped); if there is no more need to perform those tasks, the employer shall offer a conclusion of employment contract for the performance of other appropriate tasks, whose *working conditions may not be less favourable than the working conditions related to tasks performed by the person prior to the exercise of the given right*.

### 3.4 Unequal rights in FBiH labour legislation in comparison with the RS and BDBiH

Finally, with the purpose of ensuring equal protection of rights and equality of citizens before the law all over BiH, it is necessary to make certain amendments to the FBiH Labour Law based on the comparative analysis with the legislation of Republika Srpska and Brčko District BiH. The comparative analysis leads to a conclusion that there is a significant discrepancy in the level of protection of rights.<sup>53</sup> There are theories according to which unequal level of guaranteed rights in different entities (but also cantons and municipalities) may have the potential of discriminating those citizens affected by it on the grounds of their residence.<sup>54</sup> Differences in defining standards of labour relationships are especially visible in the context of consequences felt by persons moving between the entities for

<sup>52</sup> Article, 111b, Official Gazette of MN, no. 49/2008, 26/2009, 59/2011 and 66/2012.

<sup>53</sup> It is thus interesting that the new Labour Law of Republika Srpska even introduces that a woman-mother is entitled to a year less of insurance required for pension for every child she gives birth to, in relation to the pension requirements provided by the Law on Pension and Disability Insurance (LL RS, Art. 107, para 4).

<sup>54</sup> See the analysis of this issue in the comment: “Diskriminacija na osnovu mjesta prebivališta: Koliko razlike u tretmanu je dozvoljeno?”, Aleksandra Ivanković-Tamamović (Centar za društvena istraživanja Analitika), 2015, available at: <http://www.analitika.ba/bs/publikacije/diskriminacija-na-osnovu-mjesta-prebivalista-koliko-razlike-u-tretmanu-je-dozvoljeno>, accessed April 30, 2016.

economic reasons. The Venice Commission, in its 2012 opinion on legal certainty and the independence of the judiciary in BiH, recognised the need to harmonise laws within BiH also for the purpose of improving legal certainty.<sup>55</sup> Specifically, in the context of regulating the rights of parents in labour laws, the Institution of Human Rights Ombudsman of BiH, tackling the improvement of the rights of children, indicated to the problem of the unequal approach of different government levels and the need of their harmonisation.<sup>56</sup>

#### **3.4.1 The principle of special protection during pregnancy, child birth and child care**

Unlike the Labour Law of the Federation BiH, Labour Law of Republika Srpska in its initial provisions that define the rights of workers (Art. 12, paras 2-4) emphasises the need for a special protection in the context of pregnancy, child birth and child care.<sup>57</sup> Thus paragraph 2 stipulates that “a woman worker shall have the right to special protection for the purpose of child care, in accordance with this Law”.<sup>58</sup> These are general principles which are later elaborated in the Law in its normative part, but their importance lies in the fact that the legislator laid down in a single place and in a general manner the principles that apply to workers in this situation, and by this underlined the significance of the careful treatment of their needs and rights.

#### **3.4.2 Prohibition of requesting information on family/marital status or family planning**

Looking for a job in Bosnia and Herzegovina, women are constantly exposed to discriminatory questions about their family status and family planning. It is also known that based on their answers or the arbitrary assessments of employers, decision are often made not to employ young women in her reproductive age or the one perceived as potentially future or present mother. New FBiH Labour Law stipulates two new commendable mechanisms for the protection of women – *the employer cannot reject to employ a woman due to her pregnancy* (Art. 60, para 1), and *prohibition of requesting any information on pregnancy, except when the worker is asking for a certain rights provided by the law or other regulation in relation to protection of pregnant women*, but it might seem unclear from the text of the law whether this prohibition refers not only to the already employed women, but also women looking for a job (Art. 60, para 3).

The 2016 Labour Law of Republika Srpska made another important step forward by stipulating a very important, widely set provision which prohibits the employer to request any data on family or marital status or family planning, i.e. to request any documents or other evidence not of direct importance for the performance of the tasks on which the employment is based, as well as to condition

<sup>55</sup> Venice Commission, Opinion on Legal Certainty and the Independence of the Judiciary in Bosnia and Herzegovina, CDL-AD(2012)014, 102, f.

<sup>56</sup> Institution of Human Rights Ombudsman of BiH, *Analiza usklađenosti zakonodavstva Bosne i Hercegovine sa Konvencijom o pravima djeteta*, op.cit. p. 85.

<sup>57</sup> Paras 3 and 4 of this Article stipulate special protection of juvenile workers and workers with disabilities.

<sup>58</sup> Labour Law of the Republic of Serbia regulates this in a similar manner, Art. 12, paras 2 and 3, as well as the Labour Law of Montenegro, Art. 11, paras 2-4.

the employment on the pregnancy test (Art. 28, paras 2 and 3).<sup>59</sup> This legislative solution, which **should be taken over in the FBiH context**, thus **prohibits requesting information not only about pregnancy but in general about the marital status or family planning, and does not limit this prohibition only to the already employed women workers but explicitly refers to those applying for a job**. In this way, a more comprehensive response is created to the social reality of threatening the gender equality principle by limiting the access of women to all the opportunities offered by the society just because of their biological predisposition to bear children. For this prohibition to truly have a deterrent effect in practice, after it is introduced, *the existing penal provisions should be extended to include relevant sanctions for violations*.

### 3.4.3 Exceptional taking of a shorter maternity/child birth leave

The new FBiH Labour Law, as well as the RS Labour Law, stipulates the possibility of a woman taking a shorter maternity leave than the one provided by the Law, provided that there is a minimum number of days for which that is not possible (42 days in FBiH and 60 days in RS). The RS legislation (Art. 108, para 1) is however different from FBiH (Art. 62, para 3) and says that this possibility exists *upon the request of the woman, with consent of the employer*, which underlines that this situation may not happen as a result of pressures exercised by the employer and is only acceptable if it is a result of the will of a woman and proposed upon her request. This right is similarly regulated in Croatia where it is stipulated that a woman may use this possibility *exceptionally and upon her own request*.

Therefore, it **should be included in the FBiH legislation that a woman may exceptionally, upon her own request, with the consent of the employer, take a shorter maternity leave**, but not shorter than 42 days after child birth. In this way, the text of the law will underline that this should be an exception rather than a rule, and that this option can only be used as a response to the free will of the woman, without any pressure by the employer.

To provide guarantees that a woman will not take maternity leave shorter than the one stipulated by the law, the current **penal provisions** must be made more precise (Art 171, para 1, item 42) and sanctions stipulated for situations in which a woman takes maternity leave of shorter duration and/or contrary to the manner prescribed by law, upon request of the employer and not by her free will. The existing definition of misdemeanour may imply liability only in the case of deprivation of the right to take maternity leave as such,<sup>60</sup> but not in case a woman is deprived of the right to take it in the manner stipulated by relevant legal provisions. With the aim of meeting the deterrence purpose of this provision, it is important to explicitly emphasise that employers who against the woman's free will impose the taking of maternity leave in the duration and manner contrary to the

<sup>59</sup> Labour Law of the Republic of Serbia regulates this in the same manner, Art 26, paras 2 and 3, as well as the Labour Law of Montenegro, Art. 18, paras 2 and 3. These solutions are in compliance with the Maternity Protection Convention of the International Labour Organisation, 2000, number 183, Art. 9.

<sup>60</sup> If the employer “fails to enable a woman, an employee – father of the child or an adoptive parent and/or person who has been entrusted with childcare by virtue of a decision by the competent authority, to use maternity/paternity leave (Article 62)”.

legal intention shall be subject to sanctions. Otherwise, the numerous situations in which women, fearing negative consequences, comply with the pressures, expectations or needs of employers in relation to their maternity leave duration, will remain unpunished and frequent.

#### **3.4.4 Eighteen month leave for twins, third and every subsequent child**

An example that the Institution of Human Rights Ombudsman gives in the context of unequal access of different government levels in regulating the rights of parents in labour legislation is the duration of maternity leave for mothers of twins, third child and every subsequent child – RS Labour Law provides for a leave of 18 months,<sup>61</sup> and FBiH 12 months, which results in “level of possibility of ensuring joint liability is lower in FBiH than in RS and BDBiH although they are in the same country which is obliged to implement the Convention on the Rights of the Child at its overall territory and equally for all children”.<sup>62</sup> In line with that, the Ombudsman Institution established that the competent authorities should take measures to harmonise labour legislation in BiH, and harmonise it also with the Gender Equality Law of BiH, Anti-Discrimination Law and the international standards.<sup>63</sup>

This solution of the prolonged leave in the given cases is not unknown in the labour legislation of the Federation BiH, as the initial text of the old 1999 Labour Law of the Federation BiH stipulated the same solution for the territory of the Federation BiH and it was only subsequently abolished by amendments. Therefore, it is necessary in the Federation of BiH, **to reinstitute the extended parental leave of 18 months in case of birth of twins, third child and every subsequent child.**

61 Labour Law of the Republic of Serbia even stipulates the right to maternity leave in the duration of two years for the third and every subsequent child (Art. 94a, para 1).

62 Institution of Human Rights Ombudsman of BiH, *Analiza usklađenosti zakonodavstva Bosne i Hercegovine sa Konvencijom o pravima djeteta*, op.cit. p. 85.

63 Institution of Human Rights Ombudsman of BiH, *Analiza usklađenosti zakonodavstva Bosne i Hercegovine sa Konvencijom o pravima djeteta*, op.cit. p. 85.

#### 4. Additional space for improvement

An important solution is provided in Croatia, which is missing in BiH, according to which **maternity leave in case of premature child birth is extended for as long as is the time of premature birth.**<sup>64</sup> In fact, Croatia regulated all issues related to rights of pregnant women, new mothers and parents in a special law – the Law on Maternity and Parental Benefits, which commendably, concisely and precisely defines in a single place a range of other rights related to employment, which create a sort of a legal vacuum in the BiH context. Thus, for instance, **the right of a woman worker to one free day a month for prenatal examinations** is stipulated, as well as modalities to enjoy this right (Article 20a of the Law). It would definitely be desirable to introduce the two examples into the FBiH Labour Law, or consider in the long-term the possibility of detailed regulation of these rights in a *lex specialis* regulation on the protection of families with children. Although it is not the subject of this analysis, it is important to underline that in this context it is necessary to commence the harmonisation of the overall body of regulations in the areas of social protection with the FBiH Labour Law, especially those adopted at the cantonal level. Some cantonal laws which regulate social protection and protection of families with children (including of Sarajevo Canton) fail to provide for fathers' entitlement to a salary compensation during their absence from work for pregnancy, child birth and child care.

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<sup>64</sup> Law on Maternity and Parental Benefits, Article 12, paras 6 and 7.

## 5. Concluding observations – Sociological reasons for the proposed amendments

The BiH society is still to a great extent marked by a patriarchal order and the perceived, traditional, disproportionate divisions of male and female duties, which also include the upbringing and care of children. The final result is the endangering of the gender equality principle, reflected primarily in the limitations imposed on women in the full enjoyment of their rights and using the valuable opportunities the society offers. Numerous proposed and thoroughly described solutions attempt to provide a systemic response to such a social reality. In addition, the labour and social legislation, in accordance with the European Union standards and international human rights protection standards, and with the purpose of protection of interests of women, men and children, points to an evident need to create the best possible prerequisites for an efficient balancing of family and professional responsibilities, without the negative impacts of one sphere of life upon the other. Finally, it is necessary to ensure prerequisites for the freedom of women, but also men, to be protected in their decision to devote a part of their life to either child care or professional life, but to be able at the same time to do both of these things without any obstacles in either field.

One of the reasons, though secondary, to devote special attention to this issue is the systemic addressing of the problem of low birth rate in BiH<sup>65</sup>. The amendments of labour and family legislation are also recognised as one of the potential ways to improve the demographic situation in the long-term, as this primarily requires a safe space for the creation of family and having children.<sup>66</sup> The amendments should, in the best possible manner and modelled on comparative solutions, create prerequisites to reduce possibilities of arbitrary dismissals or deployments of pregnant women and mothers, to ensure sufficient income during the leave of absence, and to provide other forms of protection of pregnant women, mothers, parents and children.

However, special attention should be devoted to the goal that should be placed in the context of promotion of gender equality – participation of men in family responsibilities. There are structural obstacles to this, such as the lack of (according to the old law) or limited possibilities or lack of incentives (according to the new law) for men taking parental leave. It is the stereotypes and the perceived gender roles that impact the level of participation of men in child care duties. The final goal of the proposed solutions is the creation of systemic prerequisites for the transformation of average BiH men into active fathers who participate in child raising and by that also the creation of an environment for a gradual transformation of the existing attitudes and social reality. As children exposed to positive male role models from an earliest age are sensitive to a more equal

<sup>65</sup> "In comparison with 2011 when there were around 1,200 new born persons more than those who dies, data for 2015 have changed drastically. Data for FBiH, excluding December 2015, is that 17,149 babies were born and 19,155 people have died." *"Stanovništvo u BiH izumire: iz godine u godinu se bilježi pad prirodnog priraštaja"*, 14.03. 2016., available at: <http://www.klix.ba/vijesti/bih/stanovnistvo-u-bih-izumire-iz-godine-u-godinu-se-biljezi-pad-prirodnog-prirastaja/160302064>, accessed March 15, 2016.

<sup>66</sup> See *"Zakonom zaštiti porodilje i bebe na Balkanu"*, Aljazeera Balkans, 14.02.2016, available at: <http://balkans.aljazeera.net/vijesti/zakonom-zastititi-porodilje-i-bebe-na-balkanu>, accessed Feb 16, 2016.

understanding of gender roles this will in turn have a positive impact on future generations.

Stipulating better conditions for taking of parental leave by fathers though legislative amendments has proven to seriously impact the readiness of fathers to take this option. Some examples have already been given in the context of elaborating the proposed legal amendments. One of the examples is also Quebec in Canada where the percentage of fathers who have taken the parental leave increased from 27.8 % to 80.1 % after introducing the option in 2006 for fathers to take a leave in the duration of three to five weeks.<sup>67</sup>

Also, it is interesting to take note that promotion of fathers' parental leave (or indeed any form of participation child and household care) has multiple positive effects: positive impact on the existing gender conditioned division of responsibilities for children and household, i.e. on the traditional parenting model; easier employment and greater adequacy of women as workers, and their easier reintegration into the professional life after taking a leave of absence for child birth; opportunities for early bonding and strengthening of relationship between father and children which creates better foundations for fathers to actively participate in the caring of children in later periods;<sup>68</sup> proven positive impact of fathers on the development of children;<sup>69</sup> and, due to equal sharing of responsibilities, reduced parental stress and more quality marital relations.<sup>70</sup>

Of course that the introduction of incentives for fathers to take parental leave is still not a guarantee that it will finally happen in practice, particularly in certain environments and families where the patriarchal structure is very strong. Comparative experience shows that fathers who exercise this right face a form of discrimination and that the taking of parental leave by both parents is found more often in cases where the mother is highly educated and that the financial crisis negatively influenced the enjoyment of this right.<sup>71</sup> As a result, even in countries where the benefits having the aim of encouraging gender equality have been in place for a long time, the percentage of fathers exercising this right (even the one reserved just for them) is still quite low (as an illustration, in Germany, which has set up quite an advanced system of rules in this regard, only 20 % of fathers exercised this right in 2012, almost all of them limited to the non-transferable two months. In other countries, such as Lithuania and Latvia, this percentage is around 10 %, with a growth trend and accompanying positive changes in the

67 "Are men who take parental leave treated worse than women?"; 10.06.2014., available at: <http://www.moneysense.ca/save/financial-planning/men-taking-paternity-leave-suffer-career-penalties-and-social-backlash/>, accessed March 3, 2016.

68 See, among others, *Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood, The Application of EU and national law in practice in 33 European countries*, op.cit. p. 22.

69 Among other things, it has been proven that these children perform better in school. See, for instance, the study "Causal Effects of Paternity Leave on Children and Parents"; Cools, FivaKirkeboen, available at: <http://www.jon.fiva.no/docs/CoolsFivaKirkeboen.pdf>, quoted in "Are men who take paternity leave treated worse than women?", op.cit.

70 Thus some studies indicate that the taking of parental leave by fathers has a positive effect on the divorce rate. See *Domestic Equality and Marital Stability: Does Paternity Leave affect Divorce Risk?*, Steingrimsdottir & Vardardotti, available at: [http://www.iza.org/conference\\_files/EVAL2014/wardardottier\\_a7647.pdf](http://www.iza.org/conference_files/EVAL2014/wardardottier_a7647.pdf), accessed March 4, 2016.

71 In Norway, for instance: 2012 Report - *Statistic Norway Report on the parental leave and the fathers' quota*: <https://www.ssb.no/befolkning/artikler-og-publikasjoner/likere-delning-av-foreldrepermisjonen>, quoted in: *Measures to address the challenges of work-life balance in the EU Member States, Iceland, Liechtenstein and Norway*, op.cit. p. 82-83.

perceived roles of men and women in child care).<sup>72</sup> But still, in many places there is a clear indication that progress is visible, although, as with any change of social awareness, the process of changing gender based expectations of employers and governments, but also workers themselves is slow.<sup>73</sup> Therefore the introduction of legal incentives and measures to ensure harmonisation of professional and family life is an indispensable step if we wish to improve gender equality and ensure other related benefits for children and a functional family life.

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<sup>72</sup> *Ibid.*

<sup>73</sup> In this regard, see the example of Sweden, *ibid.* p. 83-84.

## About the Author

**Adrijana Hanušić-Bećirović** (Bijeljina, 1984) acquired her MA with honours in 2009 in the field of International Public Law at the Faculty of Law of the University of Strasbourg under the scholarship of the French Government. During 2008, she attended the summer semester at the Humboldt University in Berlin, and in 2007 she graduated from the University of Sarajevo. Her work experience involves practice of law, Council of Europe Venice Commission, German Bundestag, Parliamentary Assembly of BiH, UNDP BiH legal expert position, and the Institution of Human Rights Ombudsman of BiH. She is currently employed as a senior legal advisor in the nongovernmental organisation TRIAL. She provides consulting services, conducts research activities for other nongovernmental organisations, and publishes papers on international standards of human rights protection, transitional justice, constitutional and anti-discrimination law.  
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## About Sarajevo Open Centre

Sarajevo Open Centre is an independent, feminist civil society organisation which in 2016 continued working on the empowerment of lesbians, gays, bisexual, trans and intersex (LGBTI) persons, as well as women by strengthening the community and building a movement.

Over the last 6 years, SOC publicly promoted LGBTI and women's human rights and advocated the improvement of legislation and adoption of better policies in Bosnia and Herzegovina at both national and international level.

We will mention just a few achievements in gender equality and women's human rights from 2015 and 2016. Despite the non-adoption of the amendments to the Election Law of BiH and the Law on the Council of Ministers which focused on ensuring the guarantee of women's equality in political life, we placed this issue high on the priority list in terms of gender equality and we introduced this topic into the public space. In cooperation with other organisations dealing with gender based violence, we managed to do a similar thing with the issue of financing and defining the status of safe houses in FBiH as well as to propose adequate solutions thereon. We successfully advocated the regulation of equal participation of women in the Sports Council, but also gender responsive budgeting in sports through the Sports Law of BiH.

In 2016, we organised media campaigns that reached hundreds of thousands of BiH citizens. On March 8 – the International Women's Day, we organised the reading of SEVEN by MPs of the Parliament FBiH raising thus awareness about violence against women among the decision-makers. The recognised Somebody Said Feminist and Žarana Papić School of Feminism programmes have been taking place successfully for several years now.

You can find an overview of all our activities and achievements in our 2015 work report on: <http://soc.ba/o-nama/izvjestaji/>, and for news and current achievements, visit <http://soc.ba>.