

How to Enable Fathers Easier Access to the Right to Use Maternity Leave?

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Introduction

The aim of this policy paper is to analyze the existing and develop new practices that will enable fathers to have easier access to the legally guaranteed right to use maternity leave.¹ The analysis and recommendations will be based on the research we conducted last year, concerning the obstacles to the use of maternity leave by fathers. We analyzed the existing laws that govern this area, surveyed 500 fathers who had a child in the period from 2016 to 2021, and conducted interviews with six fathers who used maternity leave, in order to obtain first-hand information about their experiences in exercising this right.

Labor laws at the entity and District Brčko levels guarantee the right to use maternity leave by fathers after the period of 42 or 60 days from the birth of the child, because it is a mandatory period in which the mother must take maternity leave. However, 57.8% of fathers stated they were not familiar with this legal possibility, of which 73.4% said they would have used maternity leave if they had known they were entitled to it. Those who used maternity leave encountered certain ambiguities that slowed down the process of exercising this right. This may further discourage fathers from taking maternity leave, which can ultimately lead to not making progress in terms of care distribution for family members, that is, all the burden of care will fall on mothers who must therefore balance private and professional life.

We will present some of the key observations made as a result of the conducted research in this policy paper, and proposals for applicable solutions aimed at informing the public about the possibility of using maternity leave and facilitate access, that is, communication, with the institutions and establishments involved in the procedures for exercising this right.

¹ We will use the term maternity leave in this document, considering that same is used in the existing legislation that governs this area.

The Right to Private and Professional Life in B&H and the EU

The B&H Law on Gender Equality guarantees gender equality in all areas of life. In terms of the Law, gender equality means that men and women are equally present in all areas of public and private life, have equal status and equal opportunities to exercise all rights, as well as equal benefits from the achieved results.²

The area of employment-related rights is governed by the Labor Law in B&H Institutions, RS Labor Law, FB&H Labor Law and District Brčko of B&H Labor Law. All these laws guarantee fathers the right to use maternity leave, but under different conditions. Men employed in the institutions of Bosnia and Herzegovina, as well as men working in the territory of the Republika Srpska, have the right to use maternity leave after the expiration of 60 days from the birth of the child, while in FB&H and District Brčko they can use maternity leave after 42 days following the birth of the child. None of the mentioned labor laws allow parents to use maternity leave at the same time, nor oblige fathers to use maternity leave, while the use of maternity leave in case of unemployment of the mother is possible only in exceptional situations such as serving a prison sentence, serious illness, continuing education, preparation for employment, etc.

The right to respect for private and family life is guaranteed by the European Convention on Human Rights, and secures the enjoyment of this right to all persons regardless of sex, race, skin color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.³ Signatory countries to the European Social Charter must ensure the enjoyment of the right to just conditions of work, which, among other things, includes informing workers in writing about the most important aspects of the employment contract or relations,⁴ while the same obligation is contained in the Charter of Fundamental Rights of the European Union.⁵

Bosnia and Herzegovina is not a member state of the European Union, but has been trying to get a candidate status for a long time. Accordingly, it is to be expected that the B&H national legislation will be harmonized with the European Union standards, in order for the country to progress on its way to obtaining the status of the EU member state. The Union is obliged by the Treaty on the Establishment and Functioning of the European Union to undertake all the necessary activities to support the equality between men and women with regard to labor market opportunities and treatment at work.⁶ The Charter of Fundamental Rights of the European Union obliges member states to ensure equality between women and men in all areas, including employment, work and pay, and to protect workers from dismissal for reasons connected to maternity, maternal and parental leave, in order to reconcile family and professional life.⁷

² Article 9 of the B&H Law on Gender Equality.

³ Articles 8 and 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

⁴ Article 2, paragraph 6 of the European Social Charter.

⁵ Chapter IV, Article 27 of the Charter of Fundamental Rights of the European Union.

⁶ Title X, Article 153, paragraph 1, point (i) of the Treaty on the Functioning of the European Union.

⁷ Article 23 and Article 33, paragraph 2 of the Charter of Fundamental Rights of the European Union.

In addition to the above, it is significant to mention directives of the European Union, which are binding for member states, but are also a recommendation for countries that strive to become members of the European Union. Such is the Directive of the European Parliament and the Council on Work-Life Balance for Parents and Carers, which grants parents an individual right to non-transferable parental leave of at least four months for the birth or adoption of a child, and protects workers from discrimination and dismissal due to the use of maternity leave.⁸ Employers are obliged to provide workers with flexible working arrangements in order for them to be able to take care of their children.

In addition to parental leave, member states are obliged to provide workers with the right to use paternity leave for a duration of at least 10 working days.⁹ The use of both forms of leave must not depend on marital or family status, as defined by national law.¹⁰

⁸ Articles 5 and 12 of the Directive on Work-Life Balance for Parents and Carers.

⁹ Article 4 of the Directive on Work-Life Balance for Parents and Carers.

¹⁰ Ibid.

Why are Women Underrepresented in the Labor Market?

According to the Agency for Statistics data, the employment rate of men aged 20 to 64 is 65%, while for women that percentage is 40%. Given that these percentages are inversely proportional when it comes to the education level, lack of education or ambition cannot be the causes of this state. Through the conducted research, we've tried to determine whether it is true that men use maternity leave to a lesser extent and whether this can have an impact on women's employment.

Unfortunately, more than half of fathers stated that they were not familiar with this right, and 11.2% of fathers believe that women are the ones who take care of children. Therefore, the mere existence of a legal right is not enough to encourage fathers to use maternity leave, so it is necessary and possible to achieve that through different strategic documents. Five cantonal gender action plans are in force in Bosnia and Herzegovina, representing strategic plans for achieving gender equality at the cantonal level. Only three gender action plans envisage measures to promote the use of maternity leave by fathers – gender action plans of Sarajevo Canton, Tuzla Canton and Bosnian-Podrinje Canton. Tuzla Canton and Bosnian-Podrinje Canton adopted gender action plans during the previous year, while Sarajevo Canton adopted its gender action plan at the end of 2019. No activities have yet been carried out to draw attention to the importance of the use of maternity leave by fathers.

Bosnia and Herzegovina is facing a major demographic decline, and the current fertility rate is 1.25 children per woman.¹¹ According to numerous studies, the decline in the fertility rate, which is characteristic of southern European countries, is related to the harmonization of private and professional life. Lack of effective measures for providing adequate child care, small number of fathers participating in family life and child care, weak social support and an unstable labor market, are factors that affect the balancing of private and professional life.¹² In a research conducted by Sarajevo Open Centre, 44.8% of the surveyed fathers responded they did not use maternity leave because they were employed and their wives were not, 13.1% responded that it is economically more profitable for them to work because they are paid better, 11.2% believe they do not need maternity leave because women are the ones who take care of children, 6.3% because they think that no one exercises this right.¹³ All of the above confirms the fact that motherhood puts women in an unequal position compared to men, they have less experience after the birth of a child and work in low-paying jobs.¹⁴

¹¹https://datacommons.org/place/country/BIH?utm_medium=explore&mprop=fertilityRate&popt=Person&cpv=gender%2CFemale&hl=en.

¹² The Motherhood Earnings Dip: Evidence from Administrative Records, Daniel Fernández-Kranz, Aitor Lacuesta and Núria Rodríguez-Planas.

¹³ Father on Maternity Leave: Research on Legislative and Administrative Barriers to the Use of Maternity Leave in Bosnia and Herzegovina, Sarajevo Open Centre, Sarajevo, 2022.

¹⁴ The Motherhood Earnings Dip: Evidence from Administrative Records, Daniel Fernández-Kranz, Aitor Lacuesta and Núria Rodríguez-Planas.

Problems in Practice

Although fathers' right to use maternity leave is guaranteed by law, very few fathers exercise this right in practice. 57.8% of the surveyed fathers responded that they were not familiar with the right to use maternity leave, and 73.4% responded that they would have used maternity leave if they had known that this possibility existed. 70% of respondents answered that the employer did not inform them of their right to use maternity leave.

Fathers with whom individual interviews were conducted¹⁵ shared their experiences when using maternity leave, that is, about the procedure they had to go through in order to exercise this right. One of the fathers stated that the procedure was quite unclear and that he himself was much more informed about the whole process than his employer was. All the steps he had to go through were very confusing, unclear and undefined. As the first man who requested the approval to use maternity leave in his company, he encountered ignorance of the persons from whom he was supposed to receive detailed information. The municipal services encountered such a case for the first time, which caused a lot of confusion, they did not know who authorizes the use of maternity leave for fathers, to whom to refer him, or what to write in the formulation of the decision. One of the steps that he, as an applicant, had to take was to visit a gynecologist who opens the sick leave, which was further confusing for both him and the doctor, but also requesting for a discharge letter from the hospital after the child was born. How rare are the situations where a man submits a request for compensation during maternity leave is illustrated by the fact that "*obtaining benefits for postpartum woman*" is written on the forms, which automatically eliminates fathers as potential beneficiaries of this right.

¹⁵ For more details, check Research on Legislative and Administrative Barriers to the Use of Maternity Leave in Bosnia and Herzegovina, Sarajevo Open Centre.

Which Steps to be Taken?

Promotion of the use of maternity leave

Given that Sarajevo Open Centre's research determined that ignorance of one's own rights is the main reason why fathers do not use maternity leave, it is necessary to oblige employers to familiarize workers with the most important aspects of the employment relation, which would also fulfill the obligations that Bosnia and Herzegovina assumed by ratifying the European Social Charter. It is necessary to implement appropriate campaigns to raise awareness, which is also provided for in the current action plan of Sarajevo Canton. The Sarajevo Canton Ministry of Labor, Social Policy, Displaced Persons and Refugees has taken upon itself the obligation to promote the use of maternity leave by fathers, which would be financed from regular funds. This activity can be carried out in cooperation with other actors, such as non-governmental organizations, and after a certain number of implemented campaigns, it is necessary to measure the percentage of fathers who used maternity leave, in order to monitor the effects of the campaign. Everyone can work on raising awareness, without being limited to institutions at all levels. A good example from practice is the case in Moldova, where the leading electricity distribution company printed information on the use of leave by fathers and the benefits of using it on the back of the electricity bills.¹⁶

Establishment of a clear procedure and guidelines for action

It is necessary to improve communication between institutions and employers in order to make it easier for parents to exercise their rights, considering that such processes take a lot of time, which parents usually have very little due to taking care of the child. This implies the abolition of unnecessary demands placed on parents, such as the father's visit to the gynecologist and the submission of a verification issued by the child's mother's employer proving that the mother has terminated her maternity leave. A unique system and database managed by social work centers or municipalities would greatly facilitate this process and increase the number of fathers who use maternity leave. On the website of the Croatian Health Insurance Fund, it is possible to find all the information about parental leave, who is entitled to it, in what period and to what extent, and what are the deadlines for submitting requests and exercising rights, which can serve as an example of how to resolve doubts regarding the exercise of this right.

Adjustment of forms

The forms filled in by fathers who wish to exercise the right to use maternity leave and to receive compensation instead of salary during the use of maternity leave were created with the assumption that maternity leave is used exclusively by mothers. Thus, the terms "postpartum woman" or "pregnant woman" are stated on the forms filled out by health insurance funds, and certain documentation is required, which can only be obtained from the gynecologist who monitored the pregnancy. Therefore, it is necessary to adjust the forms in such a way that gender-sensitive language is used, and the requirements that are put before the parents in those forms should be adjusted depending on whether the leave is used by the child's father or mother.

¹⁶ <http://menengage.unfpa.org/en/news/'fathers-have-important-role'-promoting-paternity-leave-western-balkans-and-moldova>.

Why the Proposed Policies Matter?

The use of maternity leave by both parents equally brings numerous benefits – strengthening the relations between partners, creating and strengthening the relationship with the child, higher household income, which ultimately leads to better performance in the work environment because you have a worker who is satisfied with himself/herself. 90% of men, interviewed as part of research conducted by McKinsey&Company, confirmed they have a much better relationship with their partner and feel more connected to their child. In addition, by using maternity leave, they enabled the partner to maintain her professional life, which is why household incomes are much higher than they would be if only one of the parents used maternity leave. Fathers who used maternity leave confirmed that they had much more motivation after returning to work, and one of the reasons is that they appreciate the employer who allowed them to use the leave to take care of the child much more.¹⁷ All of the above points to the fact that the use of maternity leave by fathers can bring many benefits, not only for parents and children, but also for employers, which is why it is necessary for Bosnia and Herzegovina, in addition to the law amendments, to implement public policies that would enable fathers to exercise their rights more easily. If caring for children ceases to be seen as the exclusive responsibility of women, and if more fathers decide to take care of children in their first years, we can expect greater participation of women in the labor market, reduction of the wage gap between women and men and greater participation of men in household chores.¹⁸

¹⁷ <https://www.mckinsey.com/capabilities/people-and-organizational-performance/our-insights/a-fresh-look-at-paternity-leave-why-the-benefits-extend-beyond-the-personal>.

¹⁸ <https://eige.europa.eu/publications/gender-equality-index-2019-report/parental-leave-policies>.

About the Author

Amina Dizdar (Sarajevo, 1992) graduated from the University of Sarajevo Law Faculty in 2018. She joined the team of Sarajevo Open Centre as a volunteer in March of the same year, working on the Human Rights of LGBTI Persons program. Since September 2018, she has taken the role of Project Assistant on the Initiative for the Monitoring of European Union Integrations in Bosnia and Herzegovina. Since July 2019, she is employed as a Program Coordinator on the Women's Rights program. She is the author and co-author of several researches, publications and reports in the field of gender equality and human rights. Contact:

About Sarajevo Open Centre

Sarajevo Open Centre (SOC) is working on human rights promotion, especially the position and human rights of LGBTI persons and women in Bosnia and Herzegovina, by interpreting, presenting and promoting the authentic experiences of persons suffering human rights violations and unequal position, and advocating for legal, political, economic, social and cultural changes in all spheres of life. We will set forth here only some of the achievements related to the equality of LGBTI persons and women. In addition to psycho-social and legal counseling, we continued to run the only LGBTI media in the country - the www.lgbti.ba portal. We organized trainings for the police, prosecutor's offices and courts, focusing on the topics of hate crimes, hate speech and the application of anti-discrimination law; for medical experts and health care workers, focusing on trans-specific and trans-inclusive gender reassignment; and for the LGBTIQ community. We worked intensively on creating a local institutional network to support LGBTI persons in Sarajevo Canton, improving the regulation of bio-medically assisted fertilization in the Federation of Bosnia and Herzegovina, female workers' rights in relation to discrimination based on gender and maternity leave, introducing gender-sensitive language in parliaments and universities, adoption and implementation of cantonal gender action plans, but also raising awareness on gender-based violence in Bosnia and Herzegovina. Over the past years, several of our legislative and policy initiatives have entered government or parliamentary procedure. Our advocacy focus has been placed on policy issues for women's and LGBTI persons' equality in Bosnia and Herzegovina, issues of women's and men's reproductive rights, parenthood in the context of harmonization of private and professional segments of life, freedom of assembly for LGBTI persons and improvement of the institutional framework for protection against violence and discrimination, and we intend to continue working on issues concerning transgender persons, intersex persons, same-sex partnerships, their social inclusion, but also the position of LGBTI persons in education, health, work and employment. Over the past few years, we have conducted media campaigns, which have reached over one million B&H citizens, and we also organized the LGBTI film festival Merlinka, which is known as local film festival Kvirhana since 2021, organized in cooperation with Tuzla Open Centre. You can find more about our work at www.soc.ba.

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