

“Challenges for civil society organizations in Kosovo in implementing Labour Law provisions on maternity leave”



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Introduction

According to the Labour Law, employed women in Kosovo are entitled to twelve (12) months of maternity leave. This right is enjoyed by women employed in public and private sector, including those working in the civil society sector. Three years after the adoption of the Law, provisions on maternity leave are not fully and properly applied, mainly by non-public sector employers. Based on such reports, the Ministry of Labour and Social Welfare has begun proceedings to amend the Law, and more specifically, the maternity leave provisions.

While it is reported that private sector is faced with difficulties in implementing the legal provisions¹, an even more problematic situation is found in the civil society sector, due to the specific nature of work and funding of civil society organizations in Kosovo. Considering recent media reports on problems related to the right of maternity leave for the women employed in civil society organizations², and aiming to fostering a constructive debate which will influence the process of amendment of the Labour Law, the Kosovar Civil Society Foundation (KCSF) below aims to raise a few specific issues of the civil sector in Kosovo related to the rights and entitlements in maternity leave.

Description of the situation

According to Article 49 of Labour Law No. 03/L-212³, women employed in Kosovo are entitled to twelve months of maternity leave, from which, the first six months salaries are paid by the employer at a rate of 70% of the base salary, the next three months are paid by the Government of Kosovo at the amount of 50% of average salary in Kosovo, and the last three months are unpaid leave.

¹ Zeka & Hapçiu, 2011 Kosovo Business Agenda (“Agjenda e Biznesit të Kosovës 2011”), American Chamber of Commerce in Kosovo, 2011

² <http://zeri.info/artikulli/19769/clard-nuk-paguan-pushimin-e-lehonise>

³ Adopted by the Kosovo Assembly on 1 November 2010, published in the Official Gazette on 1 December 2010, taken from [http://gazetazyrtare.rks-gov.net/Documents/Ligji%20i%20Punes%20\(shqip\).pdf](http://gazetazyrtare.rks-gov.net/Documents/Ligji%20i%20Punes%20(shqip).pdf)

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Article 49

Maternity Leave

1. An employed woman is entitled to twelve (12) months of maternity leave.
2. On production of a medical certificate, woman may commence the maternity leave up to forty-five (45) days before the expected date of birth. In the period from twenty-eights (28) days before expected child birth, the employer, with the consent of pregnant woman, may request her to begin the maternity leave if the employer finds that the woman is not able to perform her functions.
3. First six (6) months of maternity leave, the payment shall be done by the employer with the compensation of seventy percent (70%) of basic salary.
4. The following three (3) months, the maternity leave shall be paid by the Government of Kosovo with the compensation of fifty percent (50%) of average salary in Kosovo.
5. The employed woman shall have the right, upon this Law, to extend her maternity leave for additional three (3) months without payment.
6. If woman not want to use the right to maternity leave from paragraph 4 and 5 of this Article, she shall notify the employer at latest fifteen (15) days before the end of leave prescribed in 3 of this Article.
7. The father of the child may assume the rights of the mother if the mother dies or abandons the child before the end of the maternity leave.
8. The rights from paragraph 4 and 5 of this Article may be conveyed to the father of the child in agreement with the mother.

These provisions are in compliance with international standards, as set forth by the Convention No. 183 of the International Labour Organization (ILO)⁴, which provides that states must provide a maternity leave period of not less than 14 weeks, and at least 2/3 of the basic salary in compensation for the mothers.

Since during maternity leave, someone else must perform her work, and be paid for that work, the practical implementation of the law implies that each employer must hold available an additional fund, which would allow for the disbursement of 70% of base salary during the first six months. Public institutions funded by the state budget can allocate such funds through budget planning or review. Private businesses are established and operate to obtain profits, and they can make available such additional funds from their profits.

⁴ International Labour Organization (ILO) C183 - Maternity Protection Convention, 2000 (No. 183) - Convention concerning the revision of the Maternity Protection Convention (Revised), 1952 (Entry into force: 07 Feb. 2002) – Adopted in Geneva, 88th ILC session (15 Jun 2000)

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Compared to public institutions and private businesses, civil society organizations do not generate any profit, and a vast majority of them do not have free funds that could be used to cover salary reimbursements for mothers. This happens amongst others due to the nature of funding of civil society organizations in Kosovo.

According to the recent data of the Kosovo Civil Society Index⁵, vast share of funding for the civil society in Kosovo is provided by foreign donors with 74.0%, while local and central institutions provide 20.5% of civil society funds in Kosovo. Only 0.2% of civil society funds are obtained from the services these organizations provide. The most frequent funding forms are the project grants, mostly with a duration of one year (56.6%), or two years (36.8%). As a result, the duration of employment in an organization is shorter than 2 years in 49.5% of cases. Furthermore, more than half of civil society organizations pertain to the category of organizations with annual turnover of less than EUR 50,000 (half of which under EUR 10,000), which are provided their funding through small project grants, or state funds, mainly from municipalities.

As a rule, project grants are allocated to fulfil a certain goal, and as such, they cover expenses for specific activities and work done in undertaking such activities. Concretely, for each project, there is a contract between the organization and the donor, specifying on expenditure allowed for specific budget lines, including individual compensations for each employee working in such activities. Furthermore, each project has a set duration, and at the conclusion of a specific project, the payment of staff ends, unless the organization has other projects financed, and hires the same staff members. Although the contracts are signed by the organization and the employee, in fact, the majority of employees in the civil sector have their contracts linked to the project, and not the organization. This means that the staff members are paid for the work done in specific project activities, and not the organization itself. As a result, the vast majority of civil society organizations are unable to pay staff members not undertaking the work and activities under the grant conditions, including mothers. Due to matters beyond their control, this renders civil society organizations unable to guarantee all rights for women employed, who may give birth to a child during the employment period in the organization.

Also, this problem has implications for the civil society organizations themselves, in terms of retaining qualified and professional staff members. While in a large number of CSOs, people are engaged on voluntary basis, and in the majority of cases, as a secondary activity, an increasingly larger number of civil society organizations of Kosovo have taken steps in profiling, and hiring professional staff members with extensive experience and expertise. Hiring professionals requires, amongst others, for the employer to provide a longer employment perspective, and a competitive compensation package in terms of rights and benefits of an employee. When women professionals planning to give birth are involved, civil society organizations find themselves in a weaker competitive position in comparison to public and private sector.

⁵ The Kosovo Civil Society Index is a regular study on the civil society sector in Kosovo, undertaken by the Kosovo Civil Society Foundation (KCSF). The 2013 edition is expected in December 2013.

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Conclusion

This situation involves a legal gap, and places organizations in a “lose-lose” position in terms of maternity leave compensation. Similar to other employers in Kosovo, civil society organizations are also bound to implement Labour Law provisions on maternity leave. On the other hand, contractual obligations against donors funding their projects do not leave room for any legal solution in performing upon such legal obligation. Currently, in the majority of cases, organizations either need to violate the Labour Law, or violate the donor agreement on specific lines of budget financed. If violating the Labour Law, besides having to pay the unpaid salary, the organizations may risk of additional sanctions - while having no line to pay neither for the salary, nor indemnity. This may render organizations insolvent and obsolete. Similarly, by violating the donor agreement, organizations may be faced with termination of funding, and risk further project financing, thereby endangering the sustainability of their organizations.

In this situation, civil society organizations are left with the most undesirable option of all, the hesitation of involving pregnant women, or women that may decide to give birth in a near future. This potential discrimination of such a category of people may result into consequences countering the true purpose of the Law, namely the rights of mothers.

Way Ahead

None of the above should occur, and avoidance of such options requires full engagement of state institutions, civil society and donor community in Kosovo. Constructive and inclusive debate is required for finding the best solution, in which every sector would identify and present the ways in which it could contribute.

Donor community is a community with a specific role to play in development and operations of civil society in Kosovo, in due account of obligations of civil society organizations in terms of domestic legislation, including the matter of maternity leave.

In fostering a debate, which would ultimately produce favourable solutions for all, the KCSF believes the following elements are to be taken into account:

- In its policy-making and legislative activities on employment, the Government of Kosovo must consider the civil society as a sector affected by such policies, and a sector that must be involved in developing and implementing such policies in partnership with public and private sectors;
- Civil society donors and, specifically foreign donors, in programming and implementation their financial assistance, must be flexible in allocating free funds for civil society organizations, for necessary maternity leave compensations, whenever needed;
- Civil society organizations, and specifically those aiming to transform into professional and specialized organizations, must be acting in raising funds from services provided, with a view of establishing unallocated funds for the cases in which women employed in such organizations are to enjoy maternity leave;
- Until a legal solution to the problem is found, the Ministry of Labour and Social Welfare, and its Labour Inspectorate must take account of the specific nature of civil

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society organizations, and the real inability of such organizations to properly apply the Labour Law provisions on maternity leave, and thereby allow for specific treatment of this sector.

The first possibility of addressing these items is the amendment process for the Labour Law. In parallel, the Government, the civil society and the donor community must engage into thorough discussions, and come out with concrete solutions to address the specifics of the civil sector, and to eliminate the potential for discrimination of women employed with the sector.