

European Standards Regarding Paid Parental Leave in EU States in the Light of Examples of Good Practice for Ukraine

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Summary: Equality and non-discrimination are key values of EU law, and they are also linked to work-life balance for working parents, which includes minimum EU parental leave requirements. The paper outlines the essential benchmarks for developing EU standards on parental leave, as well as the diversity of national methods of regulating parental leave remuneration in EU Member States in light of the new Directive 2019/1158. Special emphasis is also placed on the examination of parental leave requirements, including the mandatory remuneration for lost income, outlined in the European Social Charter, which has been adopted by more than 40 nations, including all EU members and Ukraine. In March 2024, the European Committee of Social Rights announced its most recent conclusions on the status of parental leave policy in States Parties. In this context, comparative scrutinization of EU and ESC standards is provided in the paper with special attention and analysis of the national regulation of parental leave remuneration in states, which obtained negative conclusions on the issue, including Ukraine. Moreover, the paper analyses both the negative assessments regarding the situation on work-life balance for working parents and compensation of lost income for those who take parental leave in Ukraine given in the ECSR conclusions and the documents of the European Commission regarding the approximation of Ukrainian legislation to the EU acquis. Using examples of good practice in EU countries, particularly the Czech Republic, Poland, and Lithuania, the authors seek to provide ideas for revising Ukrainian national legislation to bring it in line with European provisions on this issue.

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1. Introduction

The regulation of leaves related to the birth and upbringing of children has always been a part of modern national labour and social law. The types and criteria of such leaves, their duration, remuneration basis, and beneficiaries, as well as protection from dismissal or receipt of appropriate assistance for self-employed or unemployed parents, are enshrined in the legislation of every European state. Considering the uniqueness of the labour and social law systems of each state, the regulation of parental leaves varies tremendously. In conjunction with parental leave, the mandatory compensation for the lost income during leave periods has become increasingly crucial for gender equality, women’s employment in the labour market, and men’s involvement in the childcare responsibilities, creation of a family-friendly environment, and even positive affection for the demographic situation.

The vital role of remuneration of parental leave in the take-up of childcare leave, in particular for fathers or lone parents, was repeatedly emphasised by the European Committee of Social Rights, the monitoring body of the European Social Charter. In its Conclusions 2023, the Committee reiterated that “the adequate

compensation for an employed parent's loss of earnings during the parental leave must be ensured by States.”¹ It was also stressed that the States have a broad discretion on providing the compensation and introducing paid leave, a social security benefit, any alternative benefit from public funds, or a combination of such compensations, the level of which must be adequate. The Committee directly noted that irrespective of the chosen model of payment, unpaid parental leave would not be in conformity with the European Social Charter.²

Notwithstanding the fragmentation of EU labour law and the lack of significant powers of the EU in the field of social and employment policy, sufficient attention has always been paid to parenthood within the framework of the European Union. The increased attention of both states and the EU institutions to the protection of parents is associated with a number of problems, the main of which, according to the authors, is not only the development of the protection of labour and social human rights and anti-discrimination legislation but also the demographic crisis in Europe, the aging of the population, and low birth rates throughout Europe. In the last decades, the EU and its member states launched efforts to return women with children to the labour market, tackle unpaid childcare, lower men's engagement in it, and establish necessary conditions for work-life balance for both parents. Consequently, a number of standards have been developed that have significantly influenced national legislation on maternity and childcare leave, where the payments for parental leave play an extremely significant role.

The evolution of EU legislation and the Court of Justice of the European Union case law on this issue as well as the development of national legislation of EU states, have been scrutinised by numerous scholars, e. g., R. Brazienė, F. Davidson, A-Z. Duvander, S. Klein-Jahns, A. Kosłowski, T. Larsen, M. Latos – Miłkowska, É. Lukács Gellérné, L. Matějka Řehořová, Á. Mészáros, P. Moss, B. Pircher, C. Porte C, A. Ristovski, K. Štěpánková, D. Szelewa, S. Vyšniauskienė, R. Zapletal.

For instance, according to descriptive data Corinna Frodermann, Katharina Wrohlich and Aline Zucco declare that mothers' re-entry into the workforce and consequently their income may have been enhanced by the dads' greater involvement, which was encouraged by the “daddy months”³. Some scholars draw attention to the parental leave regulation at national level (Rūta Brazienė,

¹ European Committee of Social Rights, Conclusions 2023. Ukraine. March, 2024. P. 37. <https://rm.coe.int/conclusions-2023-ukraine-en-2771-3525-8889-1/1680aedd20>

² Ibid.

³ FRODERMANN, C., WROHLICH, K. and ZUCCO A. Parental Leave Policy and Long-run Earnings of Mothers. *Labour Economics*. 2023, Volume 80, January, 102296. DOI: <https://doi.org/10.1016/j.labeco.2022.102296>

Sonata Vyšniauskienė. in their paper “Paid Parental Leave Policies and Parental Leave Choices in Lithuania”⁴, Lara Bister, Peter Eibich and Roberta Rutigliano in “Who is affected by parental leave reforms? Women’s selection into different parental leave lengths across recent policy reforms in Germany”⁵ or Anna Wieczorek-Szymańska in “Work engagement and work life balance across European Union countries”⁶), others analysed general aspects of parental leave issues (A Koslowski, A-Z Duvander, P. Moss “Parental Leave and beyond: recent international developments, current issues and future directions”⁷). B. Bednarowicz⁸ addresses the impact of the EU standards on work-life balance on decent working and employment conditions, as well as social protection, and delves deeper into their scope and potential limitations.

In 2019, the new Directive on work-life balance for parents and caregivers was enacted, greatly improving prior standards, providing answers to questions left unanswered by the previous Directive 2010/18/EU and including the provision on the mandatory minimum paid part of parental leave. The vast majority of EU member states were required to amend their national legislation in order to implement the new directive. All of the aforementioned, as well as future developments, have already been subject to analysis, including by some of the aforementioned authors. However, the process of proper implementation has been ongoing since the general transposition period ended two years ago, and some laws for parental paid leave went into effect in August 2024. At the same time, the European Commission filed three lawsuits against some states. As a result, new issues, the importance of continuing the successful implementation of the Directive for EU States, require additional research, especially taking into account that improved minimum standards for parental leave in EU member states had no impact on the diversity of national systems of parental leave. This reveals a variety of choices for candidate EU member states in the context of the approximation of their national legislation to EU law on the path to membership.

⁴ Brazienė, R., Vyšniauskienė, S. Paid parental leave policies and parental leave choices in Lithuania. *TILTAI*. 2020, 2, pp. 28–45. DOI: <http://dx.doi.org/10.15181/tbb.v85i2.2189>

⁵ Bister, L., Eibich, P., Rutigliano, R. Who is affected by parental leave reforms? Women’s selection into different parental leave lengths across recent policy reforms in Germany. *Genus* 80. 15 (2024). <https://doi.org/10.1186/s41118-024-00221-4>.

⁶ WIECZOREK-SZYMAŃSKA, A. Work engagement and work life balance across European Union countries. *Scientific Papers of Silesian University of Technology – Organization and Management Series*. 2024. No. 195, pp. 617–629.

⁷ Moss, P, Duvander, A.-Z., Koslowski, A. (eds.). *Parental Leave and Beyond: Recent International Developments, Current Issues and Future Directions*. Bristol University Press; 2019:353-370.

⁸ Bednarowicz, b. The tale of transparent and predictable working conditions intertwined with work-life balance: Assessing the impact of the new social policy directives on decent working conditions and social protection. *European Journal of Social Security*. 2020. Volume 22. Issue 4. P. 421–433.

In addition, in 2024 many non-EU States Parties to the European Social Charter, namely Armenia, Azerbaijan, Cyprus, Georgia, Moldova, Türkiye, and Ukraine⁹, received negative conclusions from the European Committee of Social Rights based on states' obligations regarding parental leave under revised Article 27 of the Charter, which corresponds to the current EU standards.

In the context of the abovementioned situation and the adoption of the negotiating framework for Ukraine and Moldova in 2024, the approximation of their national legislation to EU *acquis* becomes crucial, including the sphere of parental leave. However, despite some publications on parental leave prepared by Ukrainian scholars, e. g., N. Bolotina, G. Chanysheva, M. Inshin, O. Rudnytska, M. Shumylo, I. Vetuhova, V. Zhernakov etc., analysis of the vital role of the European standards on parental leave and bringing national legislation and practice into compliance with them remains underestimated in Ukraine. Indeed, reforming national legislation requires a comprehensive understanding of not only relevant minimum EU standards but also the national approaches to their implementation. New updated comparative studies of EU standards and national legislation of EU states with clear proposals for necessary national legislative amendments are in high demand nowadays.

Therefore, this study attempts to close this gap by identifying the main EU requirements for paid parental leave, its correlation with the standards of the European Social Charter, and emerging European trends in order to identify examples of good practice in the sphere of parental leave compensation for the approximation of pertinent Ukrainian legislation to the EU *acquis* on this issue.

Therefore, the key aim of this paper is to analyse the EU standards on remuneration of parental leave and the current situation of the compliance of the Ukrainian legislation with them through the lens of the legislation of EU states and to outline the necessity of reforms and elaboration of the new national legislative models for parental leave. Within the indicated aim of the article, the authors drew attention to the Demographic Strategy of Ukraine for the period until 2040, which highlighted the importance of the creation of an environment favourable for the birth and upbringing of children, ensuring the economic self-sufficiency of families, and parental leave as a proper guarantee of parents' income, and simultaneously stimulation of earlier return to the labour market should be an integral part of the realisation of the Strategy.

The research is based on EU directives, national legislation of EU member states, and the legislation of Ukraine, as well as the European Social Charter

⁹ Council of Europe, Press briefing elements: Conclusions 2023 by the European Committee of Social Rights. P. 16. <https://rm.coe.int/press-briefing-elements-conclusions-2023-eng-to-publi-sh-2/1680aefdbb>

and the case law of the European Committee of Social Rights. Providing the analysis of parental leave regulation in the EU and Ukraine, the authors use the historical method to obtain a comprehensive understanding of its establishment, development, and conversion of mostly unpaid nature to adequate compensation of income lost during, at least, the indicated minimum period of time. The methods of legal analysis and comparison allowed for outlining the main gaps and incompatibilities between EU standards and Ukrainian legislation and elaborating the proposals for reforming.

The terms parental leave and childcare leave are used interchangeably in this article. There are various reasons for this, both historical and linguistic. It should be noted that for a long time, only mothers were allowed to take parental (childcare) leave after maternity leave, which explains the mention of childcare leave while examining the evolution of parental leave regulation in Ukraine. Furthermore, in Ukrainian, the words “*батько*” (father) and “*батьки*” (parents) are consonants. This is why the terms “parental leave” and “paternal leave” might be rendered as “*батьківська відпустка*,” which could signify both. As a result, the current Ukrainian legal acts provide childcare leave, which is equivalent to parental leave.

2. The Foundations of Parental Leave Remuneration in the European Union and its National Transposition

In 1983, the European Commission proposed the first directive to regulate parental leave for childcare and family purposes. This proposal was not implemented due to the disagreement from the UK. However, the idea of regulating this issue at the EU level was further developed in the Commission’s proposals, and it was enshrined as the principle of equal treatment of women and men at work in the Community Charter of the Fundamental Social Rights of Workers in 1989. The first Framework Agreement on Parental Leave was approved in 1995 through the social dialogue mechanism as part of the Protocol on Social Policy, which was an annex to the Maastricht Treaty. The Agreement, which was put into effect by the relevant Directive in 1996¹⁰, helped to create an equitable distribution of childcare duties among parents and encouraged women to engage actively in the labour market and return to the workforce.

¹⁰ Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996L0034:EN:HTML>

Due to the uncertainties surrounding numerous concerns, the social partners simultaneously agreed on a new agreement that made only modest progress for example, extending parental leave from three to four months – while ignoring the payment issue. By virtue of Directive 2010/18/EU¹¹, the revised Agreement came into effect.

These directives underscored the significance of this issue for the EU and established the path for future development.

The need to further encourage women with children to return to the workforce, the development of EU acts on gender equality and non-discrimination, the pursuit of a work-life balance, and important case law from the Court of Justice of the European Union have all influenced the emergence of a new Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU¹².

According to the provisions of the Directive (EU) 2019/1158, childcare and professional activities are the responsibility of each parent; therefore, it aims to maintain gender equality in the labour market and workplace treatment across the EU by making it easier for workers who are parents or carers to manage work and life. It lays out the minimal standards for flexible work schedules and family-related absences, such as paternity, parental, and caregivers' leave. By establishing paid paternity and parental leave, it encourages men to take on an equal portion of caregiving duties, which helps explain why fathers take so little time. Gender stereotypes and distinctions between work and care are reinforced by the unequal design of work-life balance programs for men and women. Stereotypes in the roles and leaves of males and females should be addressed by equal treatment policies.

Considering the case law of the Court of Justice of the European Union, the Directive applies to all men and women who have an employment contract, or an employment connection as defined by the laws, collective bargaining agreements, or customs that are in effect in each EU Member State¹³.

¹¹ Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC (Text with EEA relevance), <https://eur-lex.europa.eu/eli/dir/2010/18/oj/eng>

¹² Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU, <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32019L1158>

¹³ *XI v Caisse pour l'avenir des enfants* (C-129/20), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62020CJ0129>; *Commission of the European Communities v Grand Duchy of Luxembourg* (C-519/03): <<https://curia.europa.eu/juris/showPdf.jsf?jsessionid=3553E414B5706B701D88BF8EB9C022F0?text=&docid=66472&pageIndex=0&doclang=en&mode=req&di r=&occ=first&part=1&cid=3096259>>; *Österreichischer Gewerkschaftsbund, Gewerkschaft der*

Minimum individual rights regarding paternity leave, parental leave, and caregivers' leave are outlined in the Directive. It also offers flexible work schedules for employees who are parents or caregivers, as well as legal protection for those who apply for or use family-related leave and flexible work schedules. However, this paper focuses on parental leave and mainly remuneration for it.

According to the Directive, each worker has an individual entitlement to four months of parental leave, two of which cannot be transferred to the other parent. Such leave may be taken until the child reaches a specific age determined by national law and practice, but no later than the age of eight (Article 5 of Directive 2019/1158). The Directive permits states to set a minimum experience requirement of one year to obtain parental leave, as well as the option to postpone the start of the leave in the event of urgent production needs and to give the employer a reasonable amount of notice before taking such leave. States have generally taken different stances on the length of parental leave; the laws of the great majority of states set a lengthier period than that required under the Directive.

The creation of a paid minimum leave duration of four months, without specifying the type and amount of such payment, is one of the primary accomplishments of the 2019 Directive. "Such payment or allowance shall be determined by the Member State or the social partners and shall be set in such a way as to facilitate the use of parental leave by both parents," states Article 8 (3).

Member States' interpretations of this duty vary because of the absence of a precise definition for the amount of leave compensation. However, Member States may choose to keep such a system in place instead of offering the payment or allowance mentioned in Article 8 (2) (Article 20 (7) of the Directive) if they provide, subject to limitation, a payment or allowance equal to at least 65% of the worker's net salary for at least six months of parental leave for each parent.

Apart from the payment of the final two weeks of parental leave, which had a deadline of August 2, 2024, Directive 2019/1158 has been in effect since August 1, 2019, and it must have been enacted into law in EU nations by August 2, 2022.

So, the focus for analysing the implementation status of Directive 2019/1158 in this paper is such dimension as the remuneration of parents during parental leave. It has several aspects: individual or family entitlement as well as qualification requirements. As it was above mentioned, EU member states must establish a paid part of parental leave for each parent. The distribution of leave between parents may differ depending on the part that is transferred and the duration for each parent. Some EU member states entitle the parents to use the parental leave concurrently, while others impose criteria that limit the simultaneous use

Privatangestellten und Wirtschaftskammer Österreich (C-220/02): https://gendjus.it/sites/default/files/attachments/CJEU_C_220_02_EN.pdf

of parental leave (or even at the same time by the mother and father or one of the grandparents who cares for the child if authorized by state legislation).

As for the issue of qualification requirements, it should be borne in mind that the parental leave (paid and unpaid) is provided to the child's biological or adoptive parents.

The European Social Charter and the Directive 2019/1158 enshrine the requirement to establish paid leave for employees, so EU Member States choose varied approaches to extending leave to other types of parents. For instance, self-employed people do not receive childcare payments in Belgium, while self-employed and jobless parents are not covered in Estonia. In France, all parents receive care benefits, regardless of employment status or seniority (various sizes). Self-employed parents in Italy are entitled to three months of leave, which they can use within the first year of their birth. In Finland, parents on parental leave who are still enrolled in school are eligible for social benefits.¹⁴

The work and insurance experience may be required, affecting the number of benefits¹⁵.

States have the authority to increase the number of people who are eligible for paid leave. When one of the parents is not employed, states may have different policies on when and how longer leave is granted. Nevertheless, European standards do not define additional family members' rights to parental leave. The European Social Charter provisions on parental leave also apply to care for close relatives.

Parental benefits are taxed in Italy, Finland, Estonia, and Belgium. Some member states, for instance, Romania, have implemented incentive payments for parents who return to work early after taking a parental leave. However, the possibilities to dismiss such employees while they were on leave (for example, until the child reached the age of three) are restricted. In Romania, it is limited only to 6 months after returning to work ahead of schedule¹⁶.

As for the amount of payment, there is no clear rule. Although the Directive 2019/1158 does not provide for defined benchmarks regarding the amount of payment, its Article 8 (3) and Recital 31 indicate what constitutes an 'adequate' payment or allowance.

E. Caracciolo di Torella focuses on the legal nature of the parental leave payment stating that The Directive requires that a remuneration or allowance be tied to parental leave. Recital 29 supplements this provision by noting that

¹⁴ Dobrotić, I., Blum, S., Kaufmann, G., Koslowski, A., Moss P. and Valentova, M. (eds.). (2024). *International Review of Leave Policies and Research*. 2024, p. 18–21. DOI: 10.31219/osf.io/2frts http://www.leavenetwork.org/lp_and_r_reports/

¹⁵ Ibid.

¹⁶ Ibid.

in order to incentivize workers, particularly men, to take periods of leave, the payment or allowance should be established at a “adequate level.” Recital 31 further states that because parental leave frequently results in a loss of income for the family, first earners (typically men) will only be able to exercise their right if it is „sufficiently well remunerated, with a view to allowing for a *decent living standard*.”¹⁷

To determine the adequacy of compensation, a percentage of the worker’s previous wage is considered ‘adequate’ if it is 66% or more, and the ceiling (if any) covers 66% of the average monthly earnings of the country in question. A flat-rate compensation is considered ‘adequate’ if it covers 66% of the average monthly earnings of the country.

According to the European Social Charter and the European Committee of Social Rights’s practice, the payment amount will be deemed sufficient as long as it is related to the salary (though the precise percentage is not specified). However, in order to qualify as an income replacement benefit, it must be at least 50% (or 40% in exceptional circumstances) of the nation’s median income. Various EU countries have different laws governing leave remuneration.

In general, two different approaches to solving this issue may be defined, splitting the EU Member States almost equally.

The first approach is applied in 13 EU member states where compensation appears to be insufficient and not adequate, seven of which (Belgium, Bulgaria, the Czech Republic, Greece, France, Ireland, and Malta) provide for a flat-rate allowance that is less than 66% of the nation’s average monthly income. The income replacement rate in Germany, Hungary, Latvia, and Portugal is excessively low: Germany – 65%, Hungary – 10%, Italy – 30%, Latvia – 60%, Portugal – 25%. Denmark is the only state where the remuneration is 100%, but the ceiling covers only 58% of the monthly salary.¹⁸

The other approach exists in 14 EU states where the compensation could be regarded as adequate (Austria, Croatia, Cyprus, Estonia, Finland, Lithuania, Luxembourg, the Netherlands, Poland, Romania, Slovenia, Slovakia, Spain, Sweden). For instance, in Austria it is at least for the most advantageous choice, or in Sweden—during the period paid as a percentage of past salary.

The conclusion may be drawn that just ten Member States provide two non-transferable months of parental leave with adequate remuneration; this scenario

¹⁷ CARACCIOLO DI TORELLA, E. *One more step along the way: the 2019 Work Life Balance Directive*. *Revue de droit comparé du travail et de la sécurité sociale*, 2020, p. 70–81. DOI: <https://doi.org/10.4000/rdctss.803>

¹⁸ Corte-Rodríguez, M. The transposition of the Work-Life Balance Directive in EU Member States (II): Considerable work still to be done 2023. *European Commission*, 2024, p. 70. DOI:10.2838/186937

renders taking this sort of leave extremely disadvantageous for both parents, particularly fathers.¹⁹

The amount of the benefit may be the same for all parents: in Belgium it is a specific amount, and in Bulgaria, it is the minimum wage, calculated depending on the personal average earnings. In Estonia, the calculation is based on the base period of 12 months before pregnancy, taking into account the upper limit, with a minimum payment equal to the minimum wage; in Italy, 30% of earnings when providing leave for a child under six years of age, leave is unpaid if it is taken between the ages of six and twelve.²⁰

The amount of payments may vary depending on the duration of the leave: in Croatia it is 100% of average earnings that is paid for the first six months, but not more than 225.5% of the budget rate, or 8 months if both parents take parental leave; 125% of the budget base after the first six (eight) months. In Finland, it is possible to work during parental leave, but such parents receive only a minimum fixed benefit for the days worked. The amount of benefit may vary depending on whether the person is insured (Hungary).²¹

The sources of funding parental leave in general are social insurance or general taxation. For instance, it is funded by general taxation in the Slovak Republic, Croatia, the Czech Republic, Estonia, and Denmark. However, in the latter 50% of the funding for the first eight weeks of parental leaves comes from the municipal budget. Social insurance benefits cover remuneration for lost earnings in Latvia. In Bulgaria and Cyprus, parental leave benefits are funded by both contributions of employers and employee payments to social insurance accounts. In Finland it is funded jointly by employers, employees, and the government.²²

As it was mentioned above, the Directive's 2019/1158 provisions had to be transposed into national law by August 2, 2022. 19 Member States that had not yet communicated the full transposition of the Directive received letters of formal notice from the Commission in September 2022. 11 Member States who had not yet notified full national transposition measures received reasoned opinions from the Commission in April 2023. These nations had two months to implement the required changes in order to conform to the well-reasoned conclusion. Transposition measures had not been conveyed by Spain, Ireland, and Belgium. The Commission requested the Court of Justice of the European Union to impose

¹⁹ Ibid., p. 71.

²⁰ Dobrotić, I., Blum, S., Kaufmann, G., Koslowski, A., Moss, P. and Valentova, M. (eds.). (2024). *International Review of Leave Policies and Research*. 2024, p. 18–21. DOI: 10.31219/osf.io/2frts http://www.leavenetwork.org/lp_and_r_reports/

²¹ Ibid.

²² Ibid.

financial fines on those Member States because the instances involve the failure to transmit transposition measures of a legislative directive and on January 30, 2024, the European Commission brought an action to the Court.²³

3. The Legal Regulation of Parental Leave Remuneration in Ukraine

3.1. The evolution of Ukrainian legislation on paid parental leave

The childcare leave as additional leave for mothers after maternity leave has been enshrined in Ukraine for the first time in 1956 in the times of the Soviet Union. Women were entitled to the unpaid leave of up to three months after the end of their maternity leave that had to be given by the employer upon women's request²⁴. In 1968, the duration of the child care leave was increased to one year without any changes to its unpaid nature²⁵.

During a long period of time, the provision on the possibility of taking after maternity leave at the woman's request an additional unpaid leave until the child reaches the age of one year had been in force and included in the Labour Code of Ukraine, adopted in 1971²⁶. The amendments regarding the introduction of the partially paid character of parental leave until the child reached the age of one year upon a total of at least one year of work experience and payment of state social insurance benefits for these periods, and the possibility of unpaid leave until the child reached the age of 1.5 years, was provided in 1983.

When Ukraine attained independence in 1991, the length of parental leave was once more extended. Working mothers are entitled to partially paid leave to care for their children until the child turns two years old, at which time they

²³ Work-life balance: Commission decides to refer Belgium, Ireland and Spain to the Court of Justice of the European Union for failing to fully transpose the Work-Life Balance Directive, https://ec.europa.eu/commission/presscorner/detail/en/ip_23_5372

²⁴ Vetuhoa, I. Legal regulation of childcare leave under Ukrainian legislation: theoretical and practical issues. *Law and Innovation*. No. 2 (22) 2018, p. 13–22 [Pravove rehulyuvannya vidpustky po dohlyadu za dytynoyu za zakonodavstvom Ukrainy: teoretychni ta praktychni pytannya pravo ta innovatsiyi № 2 (22) 2018]. https://dspace.nlu.edu.ua/bitstream/123456789/15603/1/Vetuhoa_va_13-22.pdf

²⁵ Ibid.

²⁶ Labour Code of the Ukrainian Soviet Socialist Republic. The Code was put into effect on June 1, 1972 by the Law of the Ukrainian SSR of December 10, 1971 No. 322-VIII. <https://ips.ligazakon.net/document/Z710322>

will receive state social insurance benefits²⁷. Furthermore, unpaid leave was available until the kid reached the age of three years, and unpaid leave could be taken for a period of up to six years if a child required home care due to medical reasons²⁸. The most recent increase took place in 1998, when the duration of partially compensated parental leave was increased until the child turned three years old. The child's father, grandmother, grandfather, or other relatives who care for the child can now take both paid and unpaid parental leave in full or in part. Furthermore, it was determined that persons who stayed on parental leave might work part-time or from home while still receiving benefits during the period of partially paid childcare leave. Pregnant women and women with children are protected while hiring, and dismissal is prohibited under particular provisions of the Code. At this point, the guarantees offered to mothers were eventually extended to parents raising children without a mother (including in cases where the mother was in a medical institution for a lengthy period of time) and guardians.

A variety of changes were made, even if the strategy stayed the same. Despite the reserve of the provision on part-time and at-home work during the leave, the right to benefits during parental leave was revoked in 2015²⁹. The most recent revision addressed terminology: in 2021, the terms “mother, father of the child, or one of the child's parents” are currently used in place of the word “woman,” primarily in Article 179 (leaves pertaining to pregnancy, childbirth, and childcare).

However, the 2003 shift in the principle of payment during parental leave from state social security to the more expansive formula “in accordance with the legislation” created the significant fallout that later permitted the conversion of paid (partially paid) parental leave into an unpaid one³⁰. This provision enabled the combination of a child allowance and social benefits until the kid reached the age of three into a single type of allowance. The 2014 Law “On Preventing Financial Catastrophe and Creating Prerequisites for Economic Growth in Ukraine” repealed the Law “On State Assistance to Families with Children,”

²⁷ In accordance with Section II of the Law of the Ukrainian SSR No. 871-12 of March 20, 1991 (Vedomosti Verkhovnoi Rada of the Ukrainian SSR, 1991, No. 23, p. 267), partially paid leave is granted to women from January 1, 1992 until the child reaches the age of three. <https://zakon.rada.gov.ua/laws/show/871-12#Text>

²⁸ Law of Ukrainian SSR “On amendments and additions to the Labour Code of the Ukrainian SSR during the republic's transition to a market economy”, N 871-XII, adopted 20 March 1991, <https://zakon.rada.gov.ua/laws/show/871-12#Text>

²⁹ Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Regarding the Improvement of Certain Provisions of Social Policy”, № 120-VIII, 15.01.2015. <https://zakon.rada.gov.ua/laws/show/120-19#n8>

³⁰ Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Regarding Compulsory State Social Insurance”, N 429-IV, adopted 16.01. 2003, <https://zakon.rada.gov.ua/laws/show/660-15#Text>

which provided for the kid to receive social support until the age of three. As a result, in 2014, the Law of Ukraine “On State Assistance to Families with Children” established a single unified birth allowance of 41280 UAH³¹, which has never been altered since, despite a decade of high inflation. Following the childbirth, one of the parents has the right to the birth allowance, regardless of their working situation, whether the parental leave is awarded, the duration, etc.

The birth allowance is divided into two parts: a one-time payment of approximately one-quarter of the total amount (10320 UAH – 237 Euro as of the end of 2024) upon the birth of a child, and the remainder of the amount paid monthly for 36 months – equivalent to three years—in equal amounts of roughly 20 Euro. According to the authority, this merger was established to improve family social protection and payment of the benefit (parental leave payments) until the child reaches the age of three, which has since been abolished³².

3.2. The State of Play in the Sphere of Parental Leave Remuneration in Ukraine

Therefore, as of the end of 2024, the parental (childcare) leave is regulated in Ukraine by several laws: the Labour Code, the Laws of Ukraine “On Leaves” and “On State Assistance to Families with Children,” and can be granted after the end of maternity leave (leave due to pregnancy and childbirth) to one of the parents until the child reaches the age of three. This leave can be taken for the full period or partially with no limitations on the number of parts or not used at all. Considering the division of the leave into the parts, some states fix a maximum amount of them, e. g., 5 parts under the Polish legislation³³, while the majority enshrines only the maximum duration of the leave, e. g., in Lithuania. The grandmother, grandfather, or other relatives who actually care for the child, or a person who adopted or took into custody a child, one of the adoptive parents or foster parents, are also entitled to parental leave in part or in whole³⁴. The provision about the opportunity to take three more years of unpaid leave in exceptional

³¹ As of the end of 2024 it is approximately 950 EUR.

³² Letter of the Ministry of Social Policy of Ukraine on the Application of the Ukrainian Helsinki Society regarding Procedure for Assigning and Paying Childbirth Benefits as of 22.05.2014. № 744/5/75-14, https://vk24.ua/regulations_and_jurisprudence/listi/vidpustki/list-minsocpolitiki-ukraini-vid-22052014-r-no-744575-14

³³ Kodeks pracy, Ustawa z dnia 26 czerwca 1974. Opracowano na podstawie: t. j. Dz. U. z 2023 r. poz. 1465, z 2024. r. poz. 878, 1222 [Labour Code. Act of 26 June 1974. Prepared on the basis of: consolidated text Journal of Laws of 2023, item 1465, of 2024, item 878, 1222]. Kancelaria Sejmu, 2024-11-15. <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19740240141/U/D19740141Lj.pdf>

³⁴ The Labour Code of Ukraine, art. 179, Law of Ukraine “On Leaves”, art. 18.

circumstances remains in force. Thus, when the child reaches the age of three and requires home care, unpaid leave for a duration determined in a medical opinion can be provided, but no longer than until the child reaches the age of six,

As previously stated, since 2014, parental leave has been granted with payment of benefits in compliance with the law (Article 179 of the Ukrainian Labour Code). According to Article 21 of the Law of Ukraine “On Leaves”³⁵, employees who are entitled to leave for pregnancy and childbirth (maternity leave) and childcare leave (parental leave) will be paid state assistance in accordance with the Law of Ukraine “On State Assistance to Families with Children”³⁶ and other regulatory legal acts of Ukraine. Such references to another legal act for payment specifics on parental leave are employed by several states; for example, according to the Labour Code of Poland, “a benefit for a period of absence from work due to the need to take care of the child is regulated by separate provisions.”³⁷; according to Article 134 of the Lithuanian Labour Code, a reward for time spent on leave to care for a child is provided under the criteria and procedures established by the Law on Sickness and Maternity Social Insurance.³⁸

In accordance with the preceding Law “On State Assistance”, “all women who are pregnant and give birth but are not included in the system of mandatory state social insurance are entitled to state assistance of the amount 100% of the average monthly income (scholarships, cash benefits, unemployment benefits, etc.) and in any case not less than 25% of the statutory subsistence minimum.”³⁹ Maternity payments are governed by another legal act – the Law of Ukraine “On Mandatory State Social Insurance” – and are paid at 100% of the average salary, regardless of the social insurance period⁴⁰. As a result, based on social insurance status, the different rules of payment for maternity leave are incorporated in Ukrainian legislation, which is similar to many other states.

Many states also apply the same approach for the regulation of payment for parental leave. For instance, Lithuanian Law on Sickness and Maternity Social

³⁵ Law of Ukraine “On Leaves” No. 504/96-BP, adopted 15 November 1996 with amendments. <https://zakon.rada.gov.ua/laws/show/504/96-%D0%B2%D1%80#Text>

³⁶ Law of Ukraine “On State Assistance to Families with Children”, № 2811-XII, adopted 21 November 1992. <https://zakon.rada.gov.ua/laws/show/en/2811-12?lang=uk#Text>

³⁷ Labour Code of 26 June 1974 (Dz.U. 1974 Nr 24 poz. 141). Poland. https://natlex.ilo.org/dyn/natlex2/r/natlex/fe/details?p3_isn=45181

³⁸ Law on the Approval, Entry into Force and Implementation of the Labour Code of the Republic of Lithuania. 14 September 2016 No. XII-2603 with amendments. <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/10c6bfd07bd511e6a0f68fd135e6f40c/asr>

³⁹ Law of Ukraine “On State Assistance to Families with Children”, № 2811-XII, adopted 21 November 1992. <https://zakon.rada.gov.ua/laws/show/en/2811-12?lang=uk#Text>

⁴⁰ Law of Ukraine “On Mandatory State Social Insurance”, № 1105-XIV, adopted 23 September 1999. <https://zakon.rada.gov.ua/laws/show/1105-14?lang=en#Text>

Insurance regulates payment of childcare allowance only to persons insured at the State Social Insurance Fund resources and for other case the Law stipulates that the allowance are paid according to the different legal act – the Law on Benefits to Children⁴¹. However, the Ukrainian Law “On State Assistance to Families with Children” makes no mention of parental leave. The aforementioned birth allowance is the only compensation parents receive while on parental leave. It should be noted that, in spite of the government’s justifications for optimizing social protection, it is highly questionable why the laws pertaining to parental leave benefit in the state contest made reference to another law that did not mention it. Only one of the child’s parents (guardian) who lives with the child permanently, receives the birth allowance; this does not match the list of people eligible for parental leave, and it may be revoked, especially if there is abuse of this allowance. All of the aforementioned supports the claim that the child is the recipient of the birth allowance and that its primary objective is to meet the child’s needs rather than to make up for the leave-taker’s salary. As a result, other than noting the possibility of voluntary payments based only on collective agreements, employment contracts, or the employer’s will—all of which are not applicable in practice – no legislation enshrines any compensation for lost salary (income)⁴².

The ability to work part-time or from home during parental leave is a crucial option for those who are eligible for it, especially since there is no reimbursement for lost income or salary during this period. In accordance with EU Directive 2019/1158, parents have the right to take alternating periods of full-time or part-time leave, which ought to be governed by national laws.

In Ukraine, despite the positive goal of this rule, the lack of its specification can transform it into a provision with questionable efficacy that guarantees the reservation of the workplace due to the period of necessity for childcare with simultaneous full-time employment at home or nearly full-time part-time work at the same position, another position with the same employer, or with another employer. Indeed, Ukrainian legislation specifies neither where a person on parental leave has the right to work part-time or at home—to retain the current employment connection or to begin working for another employer—nor the maximum number of hours for part-time work.

Despite the widespread approach, many states limit the opportunity to work during parental leave. For example, under the Polish Labour Code, parental

⁴¹ Law on the Approval, Entry into Force and Implementation of the Labour Code of the Republic of Lithuania. 14 September 2016 No. XII-2603 with amendments. <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/10c6bfd07bd511e6a0f68fd135e6f40c/asr>

⁴² Law on the Approval, Entry into Force and Implementation of the Labour Code of the Republic of Lithuania. 14 September 2016 No. XII-2603 with amendments. <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/10c6bfd07bd511e6a0f68fd135e6f40c/asr>

leave can be combined with part-time work, but not more than for half of the total working time. In this instance, remuneration is paid in proportion to the number of hours spent, and leave is extended proportionally up to 82 weeks⁴³. Furthermore, several states have various procedures in place to reduce the amount of parental leave benefit available if a parent works. For example, in Estonia, parental payments will be lowered if the salary exceeds the top limit on parental benefits.⁴⁴

Considering the approximation of Ukrainian legislation to the EU social acquis and the obligations under the European Social Charter revised, the scrutinization of the implementation of European standards of parental leave and benefits during this period by Ukraine will have drastic importance for the national reforms.

4. The Remuneration Character of Parental Leave according to European Standards and Variety of National Models: the Best Solutions for Ukraine

4.1. The State of Compliance with European Standards Regarding Parental Leave by Ukraine

Considering Ukraine's ratification of the European Social Charter revised in 2006, the Conclusions of the European Committee of Social Rights on the fulfilment of the commitments on parental leave under its Article 27 by Ukraine could demonstrate the level of compliance of national legislation of Ukraine with European standards. Analysing the birth allowance, the Committee reiterated its position on the importance of the compensation of the income lost due to an employee's absence from work to take care of a child and emphasised that multiple childbirth and childcare allowances, benefits, or other payments could not be such a replacement remuneration⁴⁵. Consequently, the situation in Ukraine was found not in conformity with Article 27 (2) on the ground that "the compensation

⁴³ Kodeks pracy, Ustawa z dnia 26 czerwca 1974. Opracowano na podstawie: t. j. Dz. U. z 2023 r. poz. 1465, z 2024 r. poz. 878, 1222 [Labour Code. Act of 26 June 1974. Prepared on the basis of: consolidated text Journal of Laws of 2023, item 1465, of 2024, item 878, 1222]. Kancelaria Sejmu, 2024-11-15. <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19740240141/U/D19740141Lj.pdf>

⁴⁴ European Committee of Social Rights. Conclusions. 2023. Article 27. 2. Estonia. <https://hudoc.esc.coe.int/eng?i=2023/def/EST/27/2/EN>

⁴⁵ European Committee of Social Rights, Conclusions 2023. Ukraine. March, 2024, p. 37. <https://rm.coe.int/conclusions-2023-ukraine-en-2771-3525-8889-1/1680aedd20>

during parental leave is not adequate on the ground that it does not replace the income lost due to absence from work to take care of a child.”⁴⁶ In this context, the question about the amount of the birth allowance or financial compensation or benefits during the parental leave in general as a crucial requirement is still discussible. Especially considering the mentioning in the conclusions of the information on the Draft Law of Ukraine “On Amendments to Ukraine’s Law on State Assistance to Families with Children” regarding the increase in the amount of childbirth allowance that was registered in the Parliament in 2021.⁴⁷ However, its adoption is implausible during wartime. At the same time, despite the provided information on different childbirth, maternity, and childcare allowances, benefits, and supplements, Spain obtained the negative conclusions due to not having remunerated parental leave.⁴⁸

In the general Conclusions 2023, providing the examples of positive developments and progress in the application of the European Social Charter, the Committee noted on Article 27 (2) that the parental leave is remunerated leave according to national legislation of almost all EU member states after transposition of the Directive (EU) 2019/1158 to their national legislations.⁴⁹ Some EU states only announce the legislative amendments or adopt them outside the reference period that was the reason for negative conclusions of the Committee. For example, the remunerated parental leave in Cyprus for 8 (56 days) out of 18 weeks entered into force in 2024.⁵⁰ Also in 2024, the extension of paid parent’s leave to nine weeks was announced by Ireland.⁵¹

The commitments to approximate its legislation to the parental leave standards under the initial Directive 1996 were also provided for Ukraine under the EU-Ukraine Association Agreement. Despite the quite disputable Ukrainian governmental reports on the progress of effective implementation of the two first Directives (1996 and 2010), the conformity of the Ukrainian legislation with Directive 2019/1158, especially with the EU standard on adequate compensation for at least the 2 non-transferable months at a level that will facilitate the

⁴⁶ Ibid., p. 38.

⁴⁷ Draft Law of Ukraine “On Amendments to Ukraine’s Law on state assistance to families with children” regarding the increase in the amount of child birth allowance, No. 5585, registered 28.05.2021. http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=72073

⁴⁸ European Committee of Social Rights, Conclusions 2023. Spain. 24 March 2024, p. 65 <https://rm.coe.int/conclusions-2023-spain-en-2787-1441-4345-1/1680aedd1d>

⁴⁹ European Committee of Social Rights. Press Briefing Elements. Conclusions 2023. 20 March 2024. <https://rm.coe.int/press-briefing-elements-conclusions-2023-eng-to-publish-2/1680aefdbb>

⁵⁰ Corte-Rodríguez, M. *The transposition of the Work-Life Balance Directive in EU Member States (II): Considerable work still to be done 2023*. European Commission, 2024. P. 69. Doi:10.2838/186937.

⁵¹ Ibid.

take-up of parental leave by both parents, has not been discussed in the context of EU accession.

However, the sphere of social policy and employment obtained the lowest mark (an early stage of preparation) of approximation to the relevant EU Acquis in the first Analytical Report following the Commission Opinion on Ukraine's Application for Membership of the European Union, published 1 February 2023, and the work-life balance for working parents was found not sufficiently addressed by the relevant national legislation.⁵² The following report, published in November 2023⁵³, stated that Ukrainian legislation is not aimed at introducing a balance between professional activity and family life for women and men, as required by EU standards. Unfortunately, the draft of the Labour Code of Ukraine, published by the Ministry of Economy of Ukraine in 2024⁵⁴, explicitly stated that parental leave is provided without salary compensation and can be used by parents at the same time or in another way as agreed between them, at their discretion. Therefore, the issue of the implementation of the EU standards developed in the 2019 Directive in Ukraine in this area remains open.

Alongside the continuation of the accession to the EU process, the Negotiating Framework was adopted for Ukraine in June 2024 and is aimed at integrally transposing the EU acquis by Ukraine and ensuring its full implementation and enforcement.⁵⁵ Therefore, the approximation of Ukrainian legislation with the EU acquis, including the sphere of parental leave, would have to be accomplished in the near future, which would inevitably lead to the changes of the current national labour and social provisions on parental leave.

4.2. Examples of the National Approaches to Compensation of Parental Leave Periods in European States

As it was already mentioned, states elaborated the various models of paid parental leave systems, gradually developing their national legislation or, in some cases, introducing payment, allowance for persons taking the parental leave under the

⁵² Analytical report following the Communication from the Commission to the European Parliament, the European Council and the Council, Commission Opinion on Ukraine's application for membership of the European Union, Brussels, 1.2.2023 SWD (2023) 30 final.

⁵³ Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2023 Communication on EU Enlargement policy. Ukraine 2023 Brussels, 08.11.2023.

⁵⁴ Draft the Labour Code of Ukraine published January, 2024. https://spo.fpsu.org.ua/wp-content/uploads/2024/01/1proekt_trudovogo_kodeksu_12.01.2024.pdf

⁵⁵ Ministerial meeting opening the Intergovernmental Conference on the Accession of Ukraine to the European Union (Luxembourg, 25 June 2024). Accession document. Brussels, 21 June 2024. <https://www.consilium.europa.eu/media/hzmfw1ji/public-ad00009en24.pdf>

pressure of their commitments, e. g., to comply with the provisions on parental leave of the Directive 2019/1158 for EU States. As of today, parental leave systems remain different in many aspects, such as duration, regulation, level of compensation for lost income, etc. At the same time, common approaches, principles, and tendencies can be noticed. For instance, there are 2 main models of calculation of the amount of payment of parental leave in EU States: a percentage of the worker's previous wage in 16 States that can also depend on the qualifying conditions and flat-rate amount in 8 States. The combination of two of these models is also designed in several states, such as Sweden.

According to the EU requirement for two non-transferable months of parental leave, M. Corte-Rodríguez proposed to divide EU states into three groups depending on the period of compensation: below the minimum standard, equal to the minimum standard, and above the minimum standard. Almost half of EU states (13) were classified as the second group with the minimum demanding standards.⁵⁶ Some States, which propose a long maximum duration of parental leave compensate only part of it, e. g., Poland.

Several states (Austria, Lithuania, Latvia, Poland, Czechia, and the Slovak Republic) designed the parental leave system based on options of duration periods within the indicated frames that are directly connected with remuneration of parental leave. The person's right to choose appropriate length of parental leave best reflects the individual character of the rights and personal needs of the parents. While some scientists consider the systems with options to be problematic due to the inability to choose different systems for each parent⁵⁷, authors of this article believe that the opportunity to choose the model of payments and duration of the parental leave is the best possible solution for the transformation of Ukrainian legislation. It should also be emphasized that such models were launched in neighbouring countries (Poland, the Czech Republic, and the Slovak Republic).

The parental leave has been optional and paid in Poland since 2013 and has been significantly developed after that time. With the aim of transposing the Directive 2019/1158 in 2022-2023, the system based on the two options of payments was modified, and the period of compensation was increased from 32 to 41 weeks per family, with nine non-transferable weeks per parent.⁵⁸ The first option applies

⁵⁶ CORTE-RODRÍGUEZ, M. *The transposition of the Work-Life Balance Directive in EU Member States (II): Considerable work still to be done 2023*. European Commission, 2024, p. 69. Doi:10.2838/186937.

⁵⁷ Ibid., p. 70.

⁵⁸ Witoszko, W. Transformation of parental rights as a result of the implementation of EU directives in Polish labour law and its impact on women's labour force participation. Report on the International Conference "20 years of EU Membership. Labour Law and Social Security Law in Central and Eastern Europe." 6.–7. 6.2024. Prague, Charles University, Faculty of Law.

when a maternity leave allowance of 100% of salary is granted. The mother alone decides whether to activate the option. If a mother expresses her willingness to take 32 weeks of parental leave within 21 days after giving birth, she will get 81.5% of her previous income for both maternity and parental leave. If the woman chooses the second option, the father will only receive a non-transferable nine-week allowance at 70% of his previous income, unless she shares her 32 weeks of parental leave at 81.5% of salary. Moreover, the requirement was removed that provided for the possibility to take parental leave immediately after maternity leave, which provided parents with more flexibility to take the leave at any period until the end of the calendar year in which the child reaches 6 years.

One year after the entry into force of the amendments to the Polish Labour Code following the implementation of the work-life balance Directive, the number of fathers taking parental leave is increasing. In 2023, this number was 19,000 fathers; a year earlier, it was 3,700 fathers.⁵⁹

While payments under the Polish optional system are based on wage percentage, the parental leave allowance in the Czech Republic is designed with flat-rate with a stable lump-sum amount of 350 000 CZK (about 14 000 EUR) that is paid until the child born after 1 January 2024 reaches three years according to the period chosen or amount of 300 000 CZK until the child turns four years.⁶⁰ According to the Czech system, the beneficiaries are allowed to choose the monthly amount of the parental allowance up to the indicated amount and even change it once every 3 months. The payments will be terminated when the total amount of the allowance is exhausted. However, the allowance can be paid during the maximum period of parental leave. Consequently, it is entirely up to parents to decide how to share the full period of allowance.⁶¹ The optional system in the Slovak Republic is very similar to the Czech parental leave.

According to the Lithuanian Law on Sickness and Maternity Social Insurance, the amount of child care allowance depends on the chosen duration of the leave and varies from 100% of the beneficiary's reimbursed remuneration if the child care leave lasts from the end of a maternity leave until the child turns one year old to 40% for the period from the child reaching one year to two years with the duration of the leave till the child turns two years old.⁶²

⁵⁹ Ibid.

⁶⁰ Parental allowance in the Czech Republic. Public Administration Service. Governmental portal. <https://portal.gov.cz/en/sluzby-vs/parental-allowance-S482>

⁶¹ CORTE-RODRÍGUEZ, M. The transposition of the Work-Life Balance Directive in EU Member States (II): Considerable work still to be done 2023. European Commission, 2024. Doi:10.2838/186937.

⁶² Republic of Lithuania Law on Sickness and Maternity Social Insurance. 21 December 2000 No. IX-110. <https://e-seimas.lrs.lt/portal/legalAct/>

It should be underlined that not only EU states but also some other third countries, such as Moldova, for example, which also obtained a status of candidate country for EU membership, have already changed their national legislation and brought it into line with European standards. From 1 September 2022, 3 main options for paid childcare (parental) leave were provided for parents: the monthly allowance with an amount of 90% of the lost income for the period from the date of the leave is granted until the child reaches one year; for the parental leave until the child reaches 2 years, the monthly allowance is different for the first and second years and constitutes 60% of the income, and it is granted for the first 12 months and 30% thereafter; and the third option for parental leave proposes to reserve 30% of the income for the period until the child turns 3 years. Despite the fact that the proposed 30% of the income by the second and third options is less than the adequate level that should be not less than 50% of the median equivalised income of income-replacement benefits according to the Committee's interpretations, the Conclusions were positive regarding Moldova in this aspect. Indeed, considering the opportunity to choose any model, the first option, which proposes the compensation of 90% of the income for the period from the date the leave is granted until the child's first birthday, would overcome the minimum threshold of 50% of the median equivalised income and exceed the minimum 4-month period of parental leave duration that is prescribed by the EU Directive 2019/1158.

Therefore, in light of European standards, Moldova's legislative approach should be carefully examined as a litmus test for Ukraine, particularly in light of the European Committee of Social Rights' emphasis that the Directive's requirements for parental leave compensation are comparable to those of the Charter.⁶³

According to the writers of this article, EU member states and third-world nations that were once a part of the communist bloc are more likely to have models with varying durations and techniques to compensate for lost revenue. In the Soviet era, it was common for women to be granted lengthier parental or childcare leaves. The employer was expected to keep the job for the mother during this period, and social benefits were also provided to make up for the lost income. Even though it is the twenty-first century, post-communist states are more traditional in this regard and still give parents – mostly mothers – a variety of options, such as returning to work after taking parental leave during the first year of the child's life or prolonging the enjoyment of parenthood. Therefore, the length of such leave is used to determine the compensation. This is also true for Ukraine, which is attempting to join the EU as a full-fledged member state.

⁶³ European Committee of Social Rights, Conclusions 2023. Spain. 24 March 2024, p. 65, <https://rm.coe.int/conclusions-2023-spain-en-2787-1441-4345-1/1680aedd1d>

5. Proposed remuneration models for parental leave in Ukraine

The first Demographic development Strategy of Ukraine for the period until 2040 was adopted in October 2024.⁶⁴ This Strategy is aimed at overcoming key demographic challenges exacerbated by the war. The main tasks include increasing the birth rate, stopping the population decline, supporting families, improving working conditions, increasing the availability of medical and social services, etc. An important component is the creation of the favourable atmosphere for childbirth; parenting is ensuring the economic self-sufficiency of families. Considering this list of mentioned tasks, parental leave issues should be certainly included. Moreover, among the obstacles to Ukraine's development listed in the Strategy is the widespread deliberate postponement of childbearing by a significant part of the population due to insufficient living conditions for raising a child (children). This situation, alongside the requirements of implementing European standards, requires reforming the parental leave system.

To meet European parental leave standards while also taking into account the real economic circumstances during a war, it would be prudent to introduce in Ukraine several options (models) for remunerating parents who choose to take parental leave. Given the catastrophic financial resource shortfall, the offered models should be expanded to include the differentiation of leave duration within the current amount paid. At least three fundamental systems should be created: the minimalistic model, the flexible model and, conversely, the old maximum model, in order to align national laws with the EU minimum standard of four paid months with a sufficient level of payment and to preserve the ability to take parental leave until the child turns three.⁶⁵

According to the minimum model, the benefit would be paid within 4 months from the date of registration of leave by one of the child's parents with a proportional distribution of the total amount, taking into account 2 months of non-transferable leave for the other parent. The application of one parent and agreement with the other seems to be necessary to receive it. In the case of choosing such a minimum model, the Unified social contribution (USC)⁶⁶ would be paid within 4 months in a five-fold amount. Following renewal of

⁶⁴ Cabinet of Ministers of Ukraine. Order "On the approval of the Demographic Development Strategy of Ukraine for the period until 2040" as of 30.09.2024. <https://zakon.rada.gov.ua/laws/show/922-2024-%D1%80#Text>

⁶⁵ The inclusion of three indicated models into Ukrainian legislation have been discussed within the Council of Europe project "Enhanced social protection in Ukraine".

⁶⁶ The USC in Ukraine is the contribution of a company that pays employment income/remuneration under civil agreements to individuals and is 22% of the gross remuneration.

employment, a person who has selected the minimal model is provided with a one-time cash payment upon application from the social protection authorities. The amount of the payment is defined by the Government of Ukraine, taking into consideration the state's budgetary capability. A child whose parents chose the minimum model has the right to priority enrolment in a preschool institution at the place of registration.

If a person who has taken leave for 4 months, or another person who is entitled to such leave, decides to extend the leave to care for a child until he/she reaches the age of three, then such extension is carried out in the general manner. A person who extends the leave to care for a child until he/she reaches the age of three after choosing the minimum model and receiving the benefit in full; no further payment of the benefit and accrual of the USC are made.

Within the maximum model, payment of childcare allowance until the child reaches the age of three is made in equal parts until the child reaches the age of three. During the leave period, the person is accrued USC in the minimum amount as it is paid according to the legislation in force. The USC is accrued to persons who have taken leave for childcare, within and at the expense of the total amount of expenses provided for in the State Budget of Ukraine for the relevant year for the Pension Fund of Ukraine.

In addition to the models that have been presented, the authors proposed that the Czech system of parental leave allowance be considered. They also suggested a third model, the duration of which would be determined by the parents' preferences. In this selective model, the duration of parental leave is decided by one of the child's adoptive parents, in consultation with the other parent, as stated in the application that is presented to the social protection organization in order to provide the benefit. Taking into consideration two months of non-transferable leave for the other parent, the benefit amount is determined proportionately to the selected leave period, which must be at least four months.

The payment of the USC is made in an amount equivalent to the division of the UCS amount for two years in proportion to the chosen duration, and it is accrued monthly in equal portions, provided that the length of the parental leave does not exceed the child's two years of age. At the request of the person who returned to work after taking leave, the social protection bodies accrue a one-time cash payment in the amount decided by the Cabinet of Ministers, taking into account the state's financial capacity, provided that the leave did not last longer than two years.

When determining and allocating the allowance for childcare until the child turns three, the funds set aside for the payment of the minimum amount of allowance for two months for each of the child's parents should be taken into consideration in order to guarantee compliance with the non-transferable period

requirement. If one or both parents refuse to take a leave of absence, the total amount of the allowance and USC that must be accrued is lowered proportionately. the general rule that parental leave may be terminated whenever an individual so chooses.

The three parental leave models that have been suggested for Ukraine give beneficiaries the option to pay for childcare until the child turns three. This option has no bearing on the employee's rights, responsibilities, or the preservation of the workplace.

6. Conclusions

Actively evolving over the past 50 years, parental leave has been outlined and fixed in the legislation of all European countries; it has been consistently enshrined in three EU directives and established as a fundamental social right by the European Social Charter, solidifying its important position among European standards. The trend of creating paid, remunerative parental leave has grown evident, sophisticated, and widespread despite the EU states' broad discretion over parental leave regulations, their vast variety, including the generosity of paid parental leave durations within Europe.

The introduction of four months of paid parental leave by the EU Directive 2019/1158, with the necessity to secure at least two months for each parent as non-transferable, validated this accomplishment. This clause encourages equal opportunity, guarantees work-life balance, combats preconceptions about women's family duties, and provides momentum for more reforms in national systems. Nearly all of the EU states have already established, by the end of 2024 paid parental leave based on a flare-rate system or defining the amount due to the individual's prior salary, despite various issues that any of them still have with the effective implementation of providing payment or allowance for parental leave according to the Directive standards.

In its review of state obligations under the European Social Charter, which has been ratified by more than 40 states, including all EU states and its candidate countries, the European Committee of Social Rights reaffirmed the crucial role that compensation plays in allowing low-income families, particularly sole-parent workers, to take parental leave.

Therefore, having analysed the general European approach to paid parental leave, the legislation of Ukraine as a candidate for EU membership that tries to successfully continue the approximation of national legislation to EU *acquis* and overcome key demographic challenges exacerbated by the war was also scrutinised.

The research discovered that Ukrainian present legislation did not guarantee remuneration for parental leave, which was often referenced in several EU papers and the European Committee of Social Rights' conclusions. However, the new draft of Ukraine's Labour Code, presented in 2024, included a direct provision on unpaid parental leave, following the government's approach presented a decade ago to optimize family social protection by providing birth allowance.

The authors demonstrated that legislative consolidation of remunerated parental leave is essential for further approximation of Ukrainian parental leave laws and compatibility with the criteria of EU Directive 2019/1158.

Parental leave in Ukraine is a highly complex issue that includes gender imbalances in family responsibilities, traditional understandings of housework, treating children as women's work with lower salary than men, and the need for women, sole parents, and low-income parents to refuse parental leave and continue to work to ensure a dignified life. As a result, taking into account the urgent need to support working parents during parental leave with adequate compensation for lost salary, as well as the strong desire of a segment of the population to preserve the possibility of taking a long period of parental leave, concrete proposals for reforming Ukrainian parental leave legislation were made.

Changing the model of parental leave in Ukraine should not necessarily imply shortening its duration. However, society and legislators should reconsider its meaning, role, and purpose, providing a genuine opportunity for parents to take time off work to focus on their child while receiving appropriate financial protection in the form of compensation for a significant portion of their salary. Finally, it is critical to establish a mechanism for gender equality by introducing a non-transferable period of paid leave for both parents, with a proportional reduction in case of refusal to participate.

The process and requirements for granting parental leave (i. e., leave to care for a child) should be changed in Ukraine as part of the first significant reform in decades in the area of providing balanced opportunities and favourable conditions for parents of a child to combine professional and family responsibilities. This is a task that Ukrainian legislators and executive authorities are expected to undertake in light of Ukraine's prospects of becoming a full member of the European Union. The challenging economic circumstances in Ukraine brought on by the war have made reform necessary, as budgetary resources in the social sector are severely constrained. Both the labour market scenario and the demographic situation are crucial. As a result, the change should make it as easy as possible for people to have children and return to the workforce.

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