

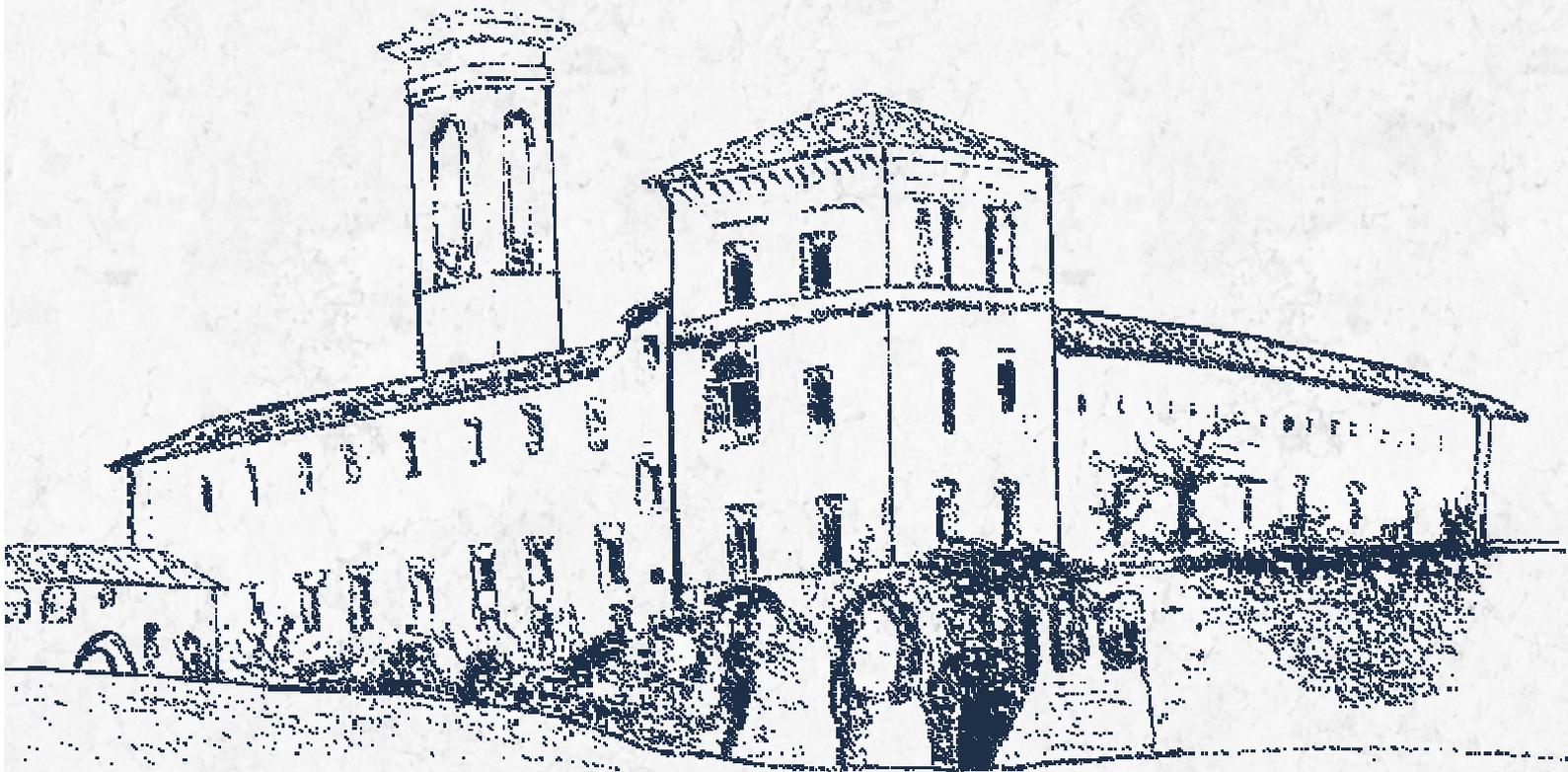
OPEN ACCESS

ISSN 2280-4056

*E-Journal of
International and Comparative*

LABOUR STUDIES

Volume 6, No. 1 January 2017



ADAPT
www.adapt.it
UNIVERSITY PRESS

ADAPT *International School of Higher Education in Labour and Industrial Relations*

Scientific Directors

Lauren Appelbaum (*USA*), Greg Bamber (*Australia*), Stuart M. Basefsky, (*United States*), Daria V. Chernyaeva (*Russia*), Richard Croucher (*United Kingdom*), Maurizio del Conte (*Italy*), Tomas Davulis (*Lithuania*), Tayo Fashoyin (*Nigeria*), József Hajdu (*Hungary*), Ann Hodges (*USA*), Richard Hyman (*United Kingdom*), Maarten Keune (*The Netherlands*), Chris Leggett (*Australia*), Guglielmo Meardi, (*United Kingdom*), Shinya Ouchi (*Japan*), Massimo Pilati (*Italy*), Valeria Pulignano (*Belgium*), Michael Quinlan (*Australia*), Juan Raso Delgue (*Uruguay*), Raúl G. Saco Barrios (*Peru*), Alfredo Sánchez Castaneda (*Mexico*), Malcolm Sargeant (*United Kingdom*), Jean-Michel Servais (*Belgium*), Silvia Spattini (*Italy*), Michele Tiraboschi (*Italy*), Anil Verma (*Canada*), Stephen A. Woodbury (*USA*)

Joint Managing Editors

Malcolm Sargeant (*Middlesex University, United Kingdom*)
Michele Tiraboschi (*University of Modena and Reggio Emilia, Italy*)

Editorial Board

Lilli Casano (*Italy*), Francesca Fazio (*Italy*), Emanuele Ferragina (*United Kingdom*), Antonio Firinu (*Italy*), Valentina Franca (*Slovenia*), Maria Giovannone (*Italy*), Erica Howard (*United Kingdom*), Karl Koch (*United Kingdom*), Lefteris Kretsos (*United Kingdom*), Attila Kun (*Hungary*), Felicity Lamm (*New Zealand*), Cristina Lincaru (*Romania*), Nikita Lyutov (*Russia*), Merle Muda (*Estonia*), Boaz Munga (*Kenya*), John Opute (*UK*), Eleonora Peliza (*Argentina*), Daiva Petrylaite (*Lithuania*), Ceciel Rayer (*The Netherlands*), Aidan Regan (*Ireland*), Marian Rizov (*United Kingdom*), Salma Slama (*Tunisia*), Francesca Sperotti (*Italy*), Araya Mesele Welemariam (*Ethiopia*), Barbara Winkler (*Austria*), Machilu Zimba (*South Africa*)

Language Editor

Pietro Manzella (*ADAPT Senior Research Fellow*)

Book Review Editor

Chris Leggett (*James Cook University, Australia*)

*E-Journal of
International and Comparative*

LABOUR STUDIES

Volume 6, No. 1 January 2017

@ 2017 ADAPT University Press

Online Publication of the ADAPT Series
Registration No. 1609, 11 November 2001, Court of Modena
www.adaptbulletin.eu

The articles and the documents published in the *E-Journal of International and Comparative LABOUR STUDIES* are not copyrighted. The only requirement to make use of them is to cite their source, which should contain the following wording: **@2017 ADAPT University Press.**

Working and Caring – Polish Regulations in the Context of Demographic Changes

Małgorzata Kurzynoga¹

Abstract. This paper focuses on the problem of combining employment with care of dependent relatives, either children or the elderly, faced by people of working age. It highlights the importance of providing instruments to support working carers in their efforts to balance their professional and caring roles. This study analyses the Polish legislation regarding the reconciliation of work and family life. A significant part of the paper includes *de lege ferenda* proposals for combining a professional career with care of an elderly family member.

Keywords: *Demographic Changes, Care, Dependent Family Member, Filial Leave, Maternity Leave, Child-Care Leave, Parental Leave, Part-Time Work, Flexible Working Hours, Teleworking.*

¹ Doctor in Law and Assistant Professor at the Faculty of Law and Administration of the University of Lodz (Poland). Email address: mkurzynoga@wpia.uni.lodz.pl

1. Introduction

In August 2015, the European Commission published a Roadmap for the initiative “A new start to address the challenges of work-life balance faced by working families”, which will replace the 2008 Commission’s proposal to amend the Maternity Leave Directive. The objective for this new initiative is to modernise and update the current European Union’s legal and policy framework to allow parents with children and/or those with dependent relatives to balance caring and professional responsibilities better, encourage a more equitable use of work-life balance policies between women and men and strengthen equal treatment on the labour market.² By enhancing women’s participation in the labour market, this initiative would contribute to implementation of the Commission’s priorities on jobs and growth in the context of demographic challenges.³

In its 2016 Work Programme, the European Commission also announced a ‘new start’ initiative on work-life balance covering a package of legislative and non-legislative measures. The intention is to update and adjust the current European Union legal and policy framework with a view to better tackling the challenges of work-life balance faced by parents and carers. One of the proposed measures is to provide the right to ‘filial’ leave, i.e. a leave to take care of a dependent family member, which seems to be quite significant in the time of ageing societies.

With regard to the above-mentioned initiative, the European Commission carried out a compulsory two-stage consultation procedure, as provided for under Article 154 of the Treaty on the Functioning of the European Union. The consultations on possible action addressing the challenges of work-life balance faced by working parents and caregivers were carried out between 11 November 2015 and 30 September 2016.

² D. Bouget, S. Spasova, B. Vanhercke, *Work-life balance measures for persons of working age with dependent relatives in Europe. A study of national policies*, 2016, ec.europa.eu/social/BlobServlet?docId=15848&langId=en (accessed September 15, 2016).

³ European Commission, *Consultation document. Second-stage consultation of the social partners at European level under Article 154 TFEU on possible action addressing the challenges of work-life balance faced by working parents and caregivers*, Brussels, 12.7.2016 C(2016), ec.europa.eu/social/BlobServlet?docId=15865&langId=en (accessed September 15, 2016).

2. Demographic Changes in Poland

The progressive ageing process concerns both Poland and other member states of the European Union. The population ageing is influenced by many factors. The literature mentions among the basic ones: the decreasing number of births and lengthening of the average duration of life. The society ageing is a global phenomenon, although its pace is different in different parts of the world, countries and regions.⁴ According to Eurostat's projections, the pace of population ageing in Poland will be one of the fastest in Europe. As a result, from one of the youngest populations in Europe (measured in terms of the old-age rate and old-age dependency rate), the Polish population will become one of the oldest.⁵ According to the data from the Central Statistical Office of Poland (GUS), the percentage of people aged 65 and more was 15.3% in 2014 and in the year 2035 it will account for 24.5% of the total population. Additionally, in accordance with the GUS forecasts, the population of Poland between 2014 and 2035 will decrease by more than 2 million and reach 35.993 million in 2035. During the same period, the median age will grow by about seven years and in 2035 it will stand at 47.9.⁶

3. Importance of Measures Supporting the Reconciliation of Work and Care Responsibilities

The population ageing will affect many areas of social and political life, and it will influence the labour market as the workforce will not only be ageing, but also shrinking. Furthermore, the growing number of old people in the society, even though enjoying better health, will need care. As a result, more and more employees, especially the middle-aged ones, will be responsible for taking care of a dependent family member, most frequently a parent.

The occurring demographic processes, which entail the society ageing, necessitate legal solutions that would make the reconciliation of work and care easier. The solutions involve creating opportunities for combining

⁴ A. Richert-Kaźmierska, *Demographic Changes in Poland – the Regional Dimension*, in *Equilibrium*. Quarterly in Journal of Economics and Economic Policy, 2015, no. 10 (1), p. 113.

⁵ http://ec.europa.eu/eurostat/statistics-explained/index.php/People_in_the_EU_%E2%80%93_population_projections (accessed August 25, 2016)

⁶ A. Richert-Kaźmierska, *op. cit.*, pp. 117-118.

work with raising young children and caring of an elderly person. Legal solutions which allow the reconciliation of work and child care have two basic aims. Firstly, they are designed to encourage people to have children and this way increase the birth rate and, secondly, they are to trigger employment by making the career of people raising children possible. Opportunities for combining work with care of an elderly person first and foremost are aimed at enabling the carers to stay on the job market.

Legal solutions which facilitate the reconciliation of a professional career and care of an elderly person play a crucial role, both from the point of view of public interest and the interest of carers themselves. From the viewpoint of public interest, it is important to enable people with caring responsibilities to stay on the job market. Giving up work in view of taking care of a child or an adult family member brings about a decrease in the workforce and an increase in the burden for the state budget. The growing number of pensioners, due to the society ageing, in relation to the number of professionally active population poses a serious risk. In Poland, the pension system is based on pensions financed by a working group of the society, mainly through the Social Insurance Institution (ZUS) and other state bodies. The decreasing number of people in employment in relation to old-age pensioners will lead to the collapse of the pension system and the increase in the state expenditure. Legal solutions which would allow combining career with care of an elderly person produce real benefits for the society.

Furthermore, solutions which facilitate the reconciliation of work and both child-rearing and care of an elderly person bring notable effects for carers. A professional career plays a very important role in the life of every adult person, even more so in the life of carers of elderly people. Firstly, work is the source of income, ensuring financial means to support employees and their families. Giving up work so as to take care of an elderly family member results not only in the loss of income for the persons involved but also a lower pension in the future. Firstly, it entails the risk of poverty and inability of covering the carers' future caring needs. Secondly, work makes it possible for employees to meet their very important social needs which are beneficial for the psychophysical condition of the carers. An opportunity of following one's career, a sense of self-fulfilment and being productive, a possibility of interpersonal relations and taking a break from everyday chores, especially if a carer shares accommodation with an elderly family member in his/her care, are

listed among aspects of employment which have a positive effect on the psychophysical condition of carers.⁷

Polish solutions for combining career with caregiving focus mainly on facilitating the reconciliation of work and child care. Over the last years, several crucial changes have been introduced in this area. Under the Polish law, there are no particular schemes which would support the reconciliation of work and care of an adult person. All general legal solutions introducing flexible employment and working time schemes are applicable in this area. The introduction of legal solutions which would aim at the reconciliation of a career and care of an adult person appears to be particularly important in case of women. In Poland, it is usually women aged 50-69 who work as carers. Daughters account for 37% and wives of the dependants for 20% of the above-mentioned group. Approximately one-third of carers combine care with regular employment. Some of the remaining persons are unemployed, and some had to resign from work because of the care responsibilities in the absence of measures which would enable them combining care of their dependants with a professional career.⁸

4. Combining Career with Child Care under Polish law

The Polish system of parental employment entitlements has been modified several times. The last of the changes entered into force on 2 January 2016. Regulations modifying the parental employment entitlements scheme are designed to make it easier for employees to balance their professional careers with raising children. The system of reconciling work and care of children is based on an extensive range of parenthood leaves. The Polish labour law provides for several types of leaves from work to care of children. These include: maternity leave, parental leave, paternity leave and childcare leave.

During the period of maternity leave, parental leave or paternity leave, the person who uses it is entitled to a maternity allowance, i.e. a cash benefit in lieu of the income from work. The maternity allowance in the case of maternity or paternity leave amounts to 100% of the average

⁷ Ł. Jurek, *Polityka łączenia pracy zawodowej z opieką nad osobą starszą*, in Acta Universitatis Lodzianis, Folia Oeconomica, 2015, no. 2 (312), p. 104.

⁸ Annex to the Resolution of the Council of Ministers no. 238 dated 24 December 2013 – *Guidelines for the Long-term Senior Policy in Poland for the years 2014 and 2020 (ASOS)*, Monitor Polski 2014 (official journal), no. 118.

remuneration earned during the last 12 months preceding the leave. During the period of parental leave, the allowance paid amounts to 100% of the remuneration for the first six or eight weeks of the leave and 60% of the remuneration during the remaining period. The employee starting maternity leave may also request payment of the maternity allowance amounting to 80% of the remuneration for the entire period of maternity and parental leave.⁹

4.1. *Maternity Leave*

Maternity leave is a period of statutory leave from work. Its length depends on the number of children born during one childbirth. A female employee is entitled to maternity leave of: 20 weeks when giving birth to one child at one birth, 31 weeks when giving birth to two children at one birth, 33 weeks in case of three children born at one birth, 35 weeks for the birth of four children at one birth, and 37 weeks with respect to five or more children at one birth.

A female employee may take maternity leave also before the expected date of birth, however, not earlier than six weeks prior to that date. The request for maternity leave is binding for an employer. If the female employee has not taken her maternity leave before the childbirth, the date of birth is the first day of the leave. When a newborn child requires hospital treatment, the female employee who has used eight weeks of maternity leave after the childbirth may use the remaining part of that leave on a later date, after the child is discharged from hospital.

In some cases, maternity leave may be taken not only by the child's mother. According to the latest amendment in the Polish law, the mother is allowed to share the maternity-related leaves that she is entitled to not only with the employed father, but in certain cases also with an employed member of her immediate family, or with the child's father or some other family member who is not employed but covered by social insurance on another basis and has interrupted his/her work to care of the child.

After at least 14 weeks of maternity leave, the employed mother of the newborn child may waive the right to the remaining part of the leave and return to work if:

- a) the remaining period of maternity leave is used by the employed father taking care of the child,

⁹ M. Włodarczyk, *Protection of parenthood*, in: K.W. Baran (ed.), *Outline of Polish Labour Law System*, Wolters Kluwer, Warsaw 2016, pp. 362-363.

- c) for a period corresponding to the remaining part of maternity leave, personal care of the child is taken by the insured father of the child who, in order to take such care, suspends his gainful activity.

If an insured mother renounces the maternity allowance having benefitted from it for at least 14 weeks after childbirth, the employed father raising the child is entitled to the part of the maternity leave falling immediately after the date on which the insured mother has resigned from the allowance.

After using at least eight weeks of maternity leave after childbirth, a female employee holding a ruling stating her need for long-term care has the right to renounce the remaining part of the leave if:

- a) the remaining part of the maternity leave is used by the employed father raising the child or some other employed member of the closest family,
- b) for a period corresponding to the remaining part of the maternity leave, personal care of the child is taken by the insured father of the child or some other insured member of the immediate family who, in order to take such care, suspends his/her gainful activity.

If the insured mother of the child, holding a ruling stating her need for long-term care renounces the maternity allowance having benefitted from it for at least eight weeks after childbirth, the employed father raising the child or some other employed member of the immediate family is entitled to the part of the maternity leave falling immediately after the date on which the insured mother has resigned from the allowance.

After using at least eight weeks of maternity leave after childbirth, a female employee staying in hospital or another healthcare establishment providing medical services, such as full-stay and 24-hour-a-day treatment, due to her medical condition which prevents her from personal care of the child, may suspend her maternity leave for the period of stay in hospital or healthcare establishment, if:

- a) the part of maternity leave for that period is used by the employed father raising the child or some other employed member of the immediate family,
- b) personal care of the child is taken by the insured father of the child or some other insured member of the immediate family who, in order to take such care, suspends his/her gainful activity.

If the insured mother of the child renounces her maternity allowance having benefitted from it for at least eight weeks after childbirth, the employed father raising the child or some other employed member of the immediate family is entitled to the part of maternity leave corresponding to the period of the mother's stay in hospital or another healthcare establishment providing medical services, such as full-stay and 24-hour-a-day treatment, due to her medical condition which prevents her from personal care of the child.

The Polish Labour Code does not specify who the immediate member of the family is. As a result, any member of the family can be recognized as a person authorised to maternity leave and maternity allowance.¹⁰

Finally, it should be indicated that an employee who decides to adopt a child and applies to a family court in order to initiate the adoption proceedings, or who decides to foster a child, except in a professional foster family, has the right to avail oneself of leave on the terms and conditions of maternity leave. The length of leave on account of adoption depends on the number of children received to be raised at one time. The minimum period is 20 weeks in the case of one child, and the maximum is 37 weeks in the case of five or more children to raise. However, the leave must be taken before the child reaches the age of seven, or ten in the case of a child whose compulsory full-time schooling has been postponed.

4.2. Parental Leave

Parental leave was introduced in the Polish labour law in 2013. This is a voluntary leave from work granted for 32 (in case of one child born during one birth) or 34 (for more than one child during one birth) weeks, directly after maternity leave has been used. Both parents of the child are entitled to parental leave for the mentioned period. Parental leave may be taken by one of the parents or parents may share such leave or take it at the same time. However, the total length of parental leave for both parents cannot exceed the mentioned period (32 or 34 weeks). Parental leave may be taken as a whole in one go or in maximum four separate blocks falling directly one after another. Since January 2016, it has been possible to take 16 weeks of parental leave later, until the end of the calendar year when the child reaches the age of six. The number of blocks

¹⁰ B. Godlewska-Bujok, *Uprawnienia związane z rodzicielstwem – nowa odłona*, in *Praca i Zabezpieczenie Społeczne*, 2015, no. 9, p. 18.

used this way reduces the number of those of the available child-raising leave. None of the blocks of parental leave can be shorter than eight weeks, with the exception of:

- a) the first block which, in the event of giving birth to one child at one birth, cannot be shorter than six weeks,
- b) cases when the block which is left to be used is shorter than eight weeks.

An employee may combine parental leave with work for the employer granting this leave, however, the working time may not exceed half of the full-time job. In such case, parental leave is granted for the remaining working time. The work is commenced upon the employee's written request, submitted at least 21 days before the employee begins to perform work. The employer is obliged to accept the request, unless it is impossible due to the work organisation scheme or type of work performed by the employee. The employer notifies the employee in writing of the reason for rejection of the request.

In the case when the employee combines parental leave with work for the employer granting this leave, the length of parental leave is extended proportionally to the working time of the employee during parental leave or its part, however, no longer than until:

- a) 64 weeks – in the event of giving birth to one child at one birth,
- b) 68 weeks – in the event of giving birth to two or more children at one birth.

It should also be noted that an employee who decides to adopt a child and applies to a family court for initiating the adoption proceedings, or who decides to foster a child, except in a professional foster family, is entitled to parental leave as well. The length of parental leave in this case depends on the number of children received to be raised and amounts to 32 or 34 weeks.

4.3. Paternity Leave

Paternity leave was introduced in the Polish labour law in 2010. An employee who is a father taking care of his child is entitled to paternity leave of two weeks, but no longer than:

- a) until the child is 24 months old, or
- b) until the lapse of 24 months as of the date when the adoption decision became final, and until the child is seven years old or,

in the case of a child whose compulsory full-time schooling has been postponed, until the child is ten years old.

Paternity leave may be used all in one go or in not more than two blocks yet none of which may be shorter than one week. Paternity leave is granted at a written request of a male employee raising his child, submitted not later than seven days before commencing that leave. The employer is obliged to accept the request.

4.4. *Child-care Leave*

Child-care leave is a leave from work granted to parents or guardians to take personal care of the child during the first years of his/her life. The legislator does not differentiate between men and women and grants equal rights to them in respect of that leave.¹¹ An employee who has been employed for at least six months has the right to take child-care leave. The six-month employment period includes previous periods of employment. Child-care leave is granted at the employee's request submitted at least 21 days before commencing the leave. The employer is obliged to accept the request. An employee may withdraw his/her request for child-care leave by submitting a written statement yet no later than seven days before commencing the leave. The length of child-care leave must not exceed 36 months and may be used in no more than five blocks. The number of blocs shall be determined on the basis of submitted requests for leave. The leave is granted for a period no longer than until the end of the calendar year when the child reaches the age of six. However, if the child requires personal care of the employee due to health reasons confirmed by a certificate of disability or a degree of disability, then the employee may take child-care leave of up to 36 months until the child reaches 18 years of age. If both parents or guardians are employed, child-care leave may be taken by one or both of them at the same time. In the latter case, the overall length of parental leave cannot exceed 36 months.

Personal care of the child as a requirement of granting child-care leave does not mean that such care must be permanent and that the carer cannot be replaced in his/her duties by other household members.¹² The legislator allows that an employee may, during child-care leave, take on paid work for the current or another employer, or any other activity, as

¹¹ M. Włodarczyk, *op. cit.*, p. 363.

¹² *Ibidem.*

well as education or training, as long as it does not interfere with personal care of the child.

The employee may waive childcare leave at any time during the period of such leave, with the employer's consent. The employer may call on the employee to return to work if it is determined that the employee has permanently ceased taking personal care of the child.

It should be emphasized that an employee entitled to child-care leave may request the reduction of his/her working time to not less than half of his/her full working time in the period when the leave could be taken. The employer must accept the request. The request must be filed 21 days before commencing work in the reduced working time scheme.

4.5. Employment after Leave

After the end of maternity leave, the leave on terms and conditions of maternity leave, parental leave, paternity leave, child-care leave, the employer should readmit the employee to work in the previous job position or, if this is not possible, in a position equivalent to the position held before the leave, or in another position that corresponds to the employee's professional qualifications, for remuneration not lower than the one which the employee would receive if he/she had not been on the leave.

4.6. Other rights of Employees Raising Children

Polish regulations provide for time off from work to take care of a child. Firstly, according to Art. 188 of the Labour Code, an employee raising at least one child of up to the age of 14 is entitled to taking time off for 16 hours or two days in a calendar year, while retaining the right to remuneration. Secondly, in accordance with the Act of 25 June 1999 on cash benefits from the National Insurance, in case of illness and maternity, an insured person is entitled to care leave so as to take care of a child and the right to a care allowance during that period. Both employees and self-employed persons are entitled to the above-mentioned allowance. The allowance amounts to 80% of the average monthly pay. Such time off is provided when caring of: a healthy child under eight years of age in the situations specified in the act, a sick child under 14 and sick child over 14 years of age. The leave and allowance are granted for the period of 60 days in the calendar year in the case when care is provided to a child under 14, and 14 days in a calendar year for an older child. The indicated

period is applicable irrespective of the number of family members entitled to the leave and the number of children who require care.

Moreover, employees taking care of a child cannot, without their consent, be employed overtime or at night, under the intermittent working time scheme and outside the permanent place of work until the child reaches the age of four.

5. Combining Career with Care of an Elderly Person

The issue of combining career with care is the subject of interest of the International Labour Organisation. The ILO Convention no. 156 concerns the equal opportunities and treatment of workers of both sexes: employees with family responsibilities. The above convention together with recommendations refer to employees who have responsibilities towards their “dependent children” (Art.1 (1)) and towards “other members of their immediate family who clearly need their care or support” (Art.1 (2)). In accordance with the Preamble, the aim of the Convention is to promote equal opportunities and treatment between both women and men workers with family responsibilities and between employees with family responsibilities and other workers. However, Poland has not ratified the Convention.

In Poland, there are no specific regulations which would provide for combining career with care of an elderly person. Still, the Resolution of the Council of Ministers of 24 December 2013 entitled “Guidelines of the Long-term Senior Policy in Poland for the years 2014 and 2020”¹³ indicates the need for such legal solutions. Noting that informal carers play a crucial role in providing care to their relatives – elderly family members – the system of support for informal carers was acknowledged. It was stated in the document that “ensuring of the suggested changes must take into account the needs and expectations of informal carers of elderly people, who require systemic solutions that would enable them to take care when they are not employed and devote themselves to such care, but also when they have to reconcile care with their career”. No drafts of legal acts with the aim of facilitating such care have been drawn up as yet.

¹³ Monitor Polski of 4 February 2014, no. 118.

5.1. Legal Solutions in Polish Law Supporting Persons Who Take Care of an Adult Person

Basically, there are no regulations which would aim at supporting people who take care of an elderly person. Some solutions in this area can only be found in the National Insurance law. In accordance with the Act of 25 June 1999 on cash benefits from the National Insurance, in case of illness and maternity, an insured person is entitled to care leave so as to take care of a family member and a care allowance during that period. Both employees and self-employed persons can receive the above-mentioned allowance. The discussed act lists three types of leave:

- a) a leave up to 60 days in the calendar year in order to take care of a healthy child up to eight years of age in the situations specified in the act,
- b) a leave up to 60 days in the calendar year in order to take care of a sick child of up to 14 years of age,
- c) a leave up to 14 days in the calendar year in order to take care of another sick family member. A spouse, parents, a child's parent, a stepfather, a stepmother, parents-in-law, grandparents, grandchildren, siblings and children aged over 14 are regarded as family members as long as they share the household with the insured person when the care is required.

A person on leave in order to take care is entitled to 80% of the care allowance. The basis of the allowance for an insured carer is an average monthly pay earned for the period of 12 months prior to the month during which that person becomes incapable of working. The mentioned allowance is not a burden to the employer as it is financed by the National Insurance. A person is entitled to the care allowance during the leave caused by the necessity of taking care for no longer than:

- a) 14 days in the calendar year, if the care involves a family member aged over 14, regardless of the number of sick family members who require care,
- b) 60 days in the calendar year if the care involves a child up to 14 years of age, regardless of the number of children who require care. Such an allowance combines both care of children and other family members for no longer than 60 days in the calendar year. This means that a person cannot use 60 days of care in case of children and 14 days for other family members. The sum of such leaves cannot exceed 60 days in the calendar year.

The maximum period of leave as stipulated by the legislator indicates that the care of a child is regarded as a priority, and little attention is paid to the care of other family members, especially elderly ones. There is no justification for such a discrepancy.

Another benefit which can be granted to a person who takes care of a sick family member is a non-cash allowance which involves payment of a national insurance premium to a carer. Such an allowance in the system of social welfare is addressed to:

- a) people on unpaid leave taken in order to take care,
- b) people abandoning work in order to take care of a sick family member.

In accordance with Art. 42 of the Social Welfare Act, a pension insurance premium is paid by a social welfare centre to a carer who gives up work in order to take personal care of a long-term or seriously ill family member, a mother, a father, siblings, the mother or the father of a spouse who does not share the household. People who are on unpaid leave because of the need to take care of the above-mentioned persons are entitled to this non-cash allowance. It should be mentioned, however, that the employer has no obligation to grant such unpaid leave to an employee. In accordance with Art. 174 of the Labour Code, the employer may grant unpaid leave upon an employee's written request. The decision about granting unpaid leave is taken by the employer. Furthermore, it should be indicated that, due to the fact that it concerns payment specified in the social security system, the entitlement to the payment depends on meeting the income criterion. To be more specific, a social welfare centre pays the carer's pension insurance premium if the income per person in the family does not exceed the amount stipulated by law (it amounts to 150% of the income criterion per person in the family, as specified in another regulation¹⁴). Apart from that, this regulation is not applicable to carers who are covered by compulsory insurance resulting from a different right or who receive pension. The pension insurance premium, the amount of which is specified in the rules of the social insurance system, is payable for the time when care is provided.

¹⁴ In accordance with § 1 (1)b of the Resolution of the Council of Ministers of 29 July 2009 relating to the verified criteria of income and cash social welfare benefits (Polish Journal of Laws Dz. U. no. 127, item 1055), this amount stands at PLN 351.

5.2. General Solutions Supporting the Reconciliation of Work and Care

Flexible working schemes may play a crucial role in the reconciliation of work and care. Therefore, Polish solutions in this area are discussed below in order to assess whether they actually meet this objective. The Polish labour law provides for flexible work schemes such as: flexible working hours, part-time work and teleworking.

a) Part-time work

One of the flexible working time models which can substantially help to reconcile work and care is part-time work. The provisions of both Directive 97/8 of 1997 referring to part-time work and the Polish Labour Code do not specify the minimum and maximum limits of employment during part-time employment. This means that the parties in employment are allowed a lot of leeway when deciding about part-time work. It might be both two-day and four-day work per week. Similarly, the working hours scheme and intensity of work in particular weeks may vary, depending on the will of both parties and the flexibility is determined to a large extent by the accounting period. In the process, depending on the needs of an employee who is in education, the daily or weekly limits might be reduced. It might be work performed for eight hours for three days a week or for four hours every day. Part-time work can take place in any work schemes as long as it is compliant with the labour law regulations.

Part-time employees preserve all employee rights. According to Art. 29² § 1 of the Labour Code, the conclusion of a contract of employment for part-time work must not result in conditions of work and pay which are less favourable for the employee compared with other employees who perform the same or similar work based on full-time employment, subject to the provision that remuneration and other work-related benefits must be in proportion to the employee's working time. Moreover, Art. 18^{3a} § 1 of the Labour Code guarantees equal treatment of employees, regardless of employment on the full-time or part-time basis. Equal treatment in employment is defined as the prohibition of any discrimination, direct or indirect (Art. 18^{3a} § 2 of the Labour Code). The principle of equal treatment applies to the termination of an employment relationship, terms and conditions of employment, promotion and access to training for the development of professional qualifications.

The possibility of changing the length of the working time plays a vital role in the protection of an employee. In accordance with Art. 29 § 2 of the Labour Code, as far as possible, an employer should consider requests filed by employees to change the length of their working time defined in their respective contracts of employment. The quoted rule refers both to reduction or increase of the working time. An employee, whose family member requires care can request the employer to reduce the working time to part-time employment. An employee who has ceased to take care of an elderly person, due to that person's death or placement in the nursing home, may request the employer to change the part-time to full-time work scheme. It is doubtful, however, whether the employee can claim the change in the employment contract. It is rightly indicated in the legal doctrine that an employee may raise such claims if the employer is capable of providing such possibilities.¹⁵

b) Flexible working hours

The arrangement of working time in which an employee decides on the hours of starting and finishing work, referred to as flexitime, plays a role in the reconciliation of career and care of an elderly person. It has been a relatively new solution, introduced in the amendment to the Labour Code from 2013. The institution of flexitime, regulated in Art. 140 of the Labour Code allows the use of working time more freely by both parties to the employment contract. The regulation provides for two types of flexitime. Under Art. 140 § 1 of the Labour Code, the first type is based on the working time scheme with different hours of starting and finishing work on the days which in that arrangement are the working days for an employee. The other type of flexitime is stipulated in Art. 140 § 2 of the Labour Code, in accordance with which the working time scheme can provide for the period when an employee decides about the time of starting work on his/her working days in that scheme. In the first case, the employer is the beneficiary of the adopted regulation as he/she determines the flexible working hours of starting work on the following days. The other type is, first and foremost, to the benefit of the employee as it is he/she who decides about what time to start work within the previously specified range of time. This type of flexitime is introduced by determining the range of time in the working time scheme during which an employee may start work (e.g. between 8:00 and 11:00 a.m.). Together with the change in the time of starting work, the time of finishing it on a

¹⁵ M. Gersdorf, *Kodeks Pracy. Komentarz*, LexisNexis, Warsaw 2012, p. 236.

given day changes accordingly. It is the sole right of an employee to specify what time he/she starts work within the set range of time on a given day. The employer cannot decide when an employee is to start work on a given day. He/she has the right, however, to employ such an employee overtime if there are reasons as those stipulated in Art. 151 of the Labour Code. It is worth remembering that the employer arranges the working time scheme, hence it is his/her responsibility to determine the range of time during which an employee will decide about starting work on a given day.¹⁶ Flexitime may be introduced in every working time scheme provided that the daily rest is ensured.¹⁷

Flexitime can be introduced exclusively if the representatives of employees consent to it or upon a written request of an employee. The Labour Code in Art. 150 § 5 provides for the additional procedure of introducing flexitime upon a written request of an employee. The request for the flexitime work schedule is permissible, regardless of its procedure, in the agreement with trade unions or the representatives of employees. It is possible for an employee to request it even if flexitime has already been introduced in the collective work agreement in case the employee is interested in a different working time arrangement.¹⁸

c) Teleworking

The employment in the telework model is subject to regulations of the Labour Code. Chapter IIb of the Labour Code entitled “Employment in the form of telework” comprising 13 new articles (Art. 67⁵ to 67¹⁷) came into force in October 2007. It should be noted that prior to the mentioned amendment of the Labour Code, there were no regulations in Poland dealing specifically with telework. The new legislation focuses on the specificities of telework, both as regards its introduction and the relations between an employer and a teleworker. In matters relating to telework not regulated by the new chapter, the other provisions of the Labour Code apply.

It is worth noting that the Labour Code is not the only act which applies to telework. In 2014, a new regulation aimed at encouraging employment

¹⁶ K. Stefański, in K.W. Baran (ed.) *The Labour Code, Commentary*, Wolters Kluwer, Warsaw 2016, Lex/el.

¹⁷ A. Sobczyk, in A. Sobczyk (ed.) *The Labour Code, Commentary*, C.H. Beck, Warsaw 2014, pp. 578-579.

¹⁸ K. Sakowska, *Elastyczne formy organizacji czasu pracy według ustawy nowelizującej z 23 sierpnia 2013 r.*, in A. Bieliński, A. Giedrewicz-Niewińska, M. Szablowska-Juckiewicz (eds), *Elastyczne formy zatrudnienia i organizacji czasu pracy*, Difin, Warsaw 2015, p. 280.

in the form of telework was inserted into the Act of 20 April 2004 on employment promotion and labour market institutions. According to Art. 60a of that statute, an employer may receive a grant for creating telework jobs for an unemployed parent with at least one child under six years of age, returning to the labour market, or an unemployed person taking care of a dependant, who resigned from employment or other paid work to take care of her/his child or dependant, provided that it had happened within three years before they registered as unemployed with the labour office. The grant for creating telework jobs is awarded to an employer on the basis of a contract concluded with the labour office. Such grant cannot be given if the employer wants to employ his/her spouse, parent, sibling, or biological or adopted child either of the employer or of their spouse or sibling. The employer is bound by the contract to maintain employment for the period of 12 months on a full-time basis or for the period of 18 months on a part-time basis. The employer receives a grant in the amount indicated in the contract, however, it cannot exceed sixfold the minimum monthly pay for each unemployed person. If the employer defaults on maintaining the employment for the contractual period or spends money against the contract, he/she will be obliged to return the entire grant together with the statutory interest calculated as of the day of receiving it within 30 days of a notice delivery. It should be noted that the grant for creating telework jobs is not a very popular measure.

According to the GUS, workers employed in the form of telework represent around 2% of the total number of the employed who have the employee status.¹⁹ Since the survey was conducted among companies employing at least nine workers, the actual number of teleworkers can be slightly higher. Moreover, it should be noted that around 9% of working people in Poland perform work under civil-law contracts. Research conducted in 2006, based on the sample of 1,000 companies, indicates that 57% of people who carry out work using information technology outside the employer's premises, do this job under civil-law contracts, i.e. under commission contracts, contracts for a specific task or self-employment contracts.²⁰ Meanwhile, in the light of Polish law, which came into force in 2007, only those who carry out work under the employment contract are recognized as teleworkers. Finally, it should be

¹⁹ Central Statistical Office of Poland, *Yearbook of Labour Statistics*, Statistical Publishing Establishment, Warsaw 2015, p. 121.

²⁰ The survey was conducted by the Partner and Business Strategies (Polish Market Research Company). The results are available in Polish at <http://pbs.pl/e4u.php/1,ModPages/ShowPage/337> (accessed August 15, 2016).

added that, according to the employers' organisation, some employers use telework informally.

Based on employers' opinion, it can be argued that the low employment rate in case of telework stems mainly from Polish regulations. A bureaucratic procedure of determining conditions of telework discourage employers from this model of employment. Even a possibility of taking a grant for creating telework jobs is not an incentive for employers to engage in telework. The Polish Ministry of Labour and Social Policy data shows that only two persons in 2014 and six persons in 2015 took on employment under the grant for creating telework jobs.²¹ Meanwhile, the results of studies conducted in 2010 by the Polish Agency for Enterprise Development indicate that 11.2% of Polish employees declared an interest in telework and 36.6% would like to work in a mixed system, i.e. to carry out work partly at the employer's premises and partly as telework.²²

5.3. Combining Career with Care of an Elderly Family Member – de lege ferenda Requirements

The policy of combining career with care of an elderly person should be implemented by different bodies, especially by the state, the self-government and a workplace. The state is responsible for the institutional and legal aspects of the system, drawing up of the action plan and financing of basic benefits. The territorial self-government should develop the social infrastructure and provide solid personnel and service solutions. Places of work should aim to create the work environment which would support the reconciliation of work and individual needs of employees.²³

As it has been indicated above, the Polish law does not provide for sufficient legal solutions which would facilitate the reconciliation of career and care of an elderly person. Nevertheless, due to demographic changes, the approach of the Polish legislator must change. A basic question arises: what solutions should be introduced? Can those developed for employees bringing up young children be applied to the care of elderly people or should they be modified? The latter approach seems appropriate. The care

²¹ <https://www.mpips.gov.pl/analizy-i-raporty/raporty-sprawozdania/rynek-pracy/sytuacja-na-ryнку-pracy/> (accessed August 20, 2016).

²² B. Wyrzykowska, *Telework and Personal Risk*, in Scientific Journal of Warsaw University of Life Sciences – SGGW. Problems of World Agriculture, 2014, vol. 14 (XXIX), no. 4, p. 218.

²³ Ł. Jurek, *The Policy of combining work with care of an elderly person*, in Acta Universitatis Lodzianensis, Foilia Oeconomica 2 (312) 2015, pp. 105-106.

of elderly people differs from the care of children. It is appropriately specified in the literature that there are basic noticeable differences between the care of children and the care of senior citizens. Firstly, in the case of children, the time of care is relatively easy to define, whereas for people who cannot act independently it is difficult (or even impossible) to be foreseen and the intensity of care is subject to continuous change, due to incidental illnesses or alternating improvement and deterioration of the mental and physical condition. Secondly, personal situation of carers is different. A child carer is usually a relatively young person who enters the job market and begins a professional career, whereas a carer of an elderly person is as a rule mature (aged 45+), with some professional experience and a settled position on the job market. Thirdly, there is a reverse degree of dependence on the carer. In the case of children, the dependence diminishes gradually, while with respect to elderly people it is just the opposite and in general it increases with time.²⁴

In the Polish law, the legal solutions which facilitate combining work with care of a child are based on a developed system of care leaves. Flexible forms of work organization, however, play a lesser role. As far as the care of elderly persons is concerned, the order of the indicated solutions should be reverse. Due to the specific nature of work involving care of an elderly person and the fact that it is hard to foresee the time of such care, which might take a number of years, the solutions related to the flexible work scheme should be given priority as instruments that are to support combining career with care of an elderly person. Leaves and time off taken due to the need of taking care, the introduction of which in the Polish law is desirable, should have a long-term objective. In other words, due to the possibly long-lasting period of care, the solutions which facilitate the reconciliation of work and care of an elderly person should also be long-lasting. Care leaves which should be financed by the state budget must then be of a specific duration. Meanwhile, flexible working time allows one to freely adjust the time and place of work to the long-standing care responsibilities. The above-mentioned benefits of work depending on the mental and physical condition of a carer weigh in favour of the system of work-care balance based on flexible work arrangement schemes.

Legal solutions related to working time which aim at support for employees who stay on the job market and take care of an elderly person are basically the same as in the case of persons who take care of a child.

²⁴ L. Jurek, *op. cit.*, p. 106.

As it has been indicated above, the Polish labour law provides for the flexible work schemes such as: flexible working time, part-time work and teleworking. The basic instruments involving flexible working time thanks to which an employee can reconcile career and care are present in the Polish legal system. Unfortunately, the particular legal solutions in this area do not guarantee the possibility of using the above-mentioned forms of employment. The flexible employment is dependent to a large extent on the employer's decision. Both in the case of a request to perform work on a part-time basis and for teleworking, the Polish legislator used the expression "the employer should consider, within his/her capabilities, the employee's request". In view of Art. 29 § 2 of the Labour Code, the employer should, within his/her capabilities, consider the employee's request referring to the change in the working time determined in the employment contract. Under Art. 67 § 3 of the Labour Code, a change in the conditions of work during employment in telework may take place upon a mutual agreement of the parties, initiated by an employee or an employer. The employer should, within his/her capabilities, consider the employee's request which refers to telework. It is indicated in the literature that the wording "the employer, within his/her capabilities, should consider the employee's request", used by the legislator in the quoted regulations indicates an obligation on the part of the employer to consider such a request if the employer has such possibilities.²⁵ In the case of rejecting the employee's request for the introduction of telework or part-time work when the employer has such possibility, the employee may claim a change of the contract.²⁶ However, as accurately indicated in the doctrine, it is extremely hard for the employee to prove during the judicial proceedings that the employer has had the possibility of employment in the requested scheme.²⁷ The situation of the employee who requests flexitime is even worse. In accordance with Art. 150 § 5, flexitime can be introduced upon a written request of an employee. This means that the decision to consider the employee's request on introducing flexitime belongs solely to the employer. The inferior position of a person who requests a flexible work arrangement has been noticed in the Polish doctrine. Strengthening of the position of the employee requesting a

²⁵ Ł. Pisarczyk, *Zmniejszenie wymiaru czasu pracy – odpowiedź na potrzeby pracowników i kryzys przedsiębiorstwa*, in *Praca i Zabezpieczenie Społeczne*, 2010, no. 6.

²⁶ M. Gersdorf, *op. cit.*, p. 326.

²⁷ A. Sobczyk, *Telepraca w prawie polskim*, Wolters Kluwer, Warsaw 2009, p. 81; M. Latos-Milkowska, *Przepisy o czasie pracy wobec prognoz demograficznych*, in *Monitor Prawa Pracy*, 2014, no. 2.

change in the work organization or working time scheme to that which is beneficial from the employee's point of view is rightly called for in this context.²⁸ Firstly, the unification of the legal situation of the employee requesting a flexible work scheme is required. It is indicated in this respect that, similarly to teleworking and part-time work, also in the case of flexitime the wording "the employer should consider, within his/her capabilities, the employee's request" should be used. Secondly, it is recommended that in the case of the specific situation of an employee related to his/her care responsibilities, the employer should be obliged to accept the employee's request as long as it is not in contradiction to the objective circumstances related to the employer's interest, e.g. concerning the type and organization of work. Thirdly, in case the employee's request is rejected, the employer would be obliged to give the reasons for such decision.²⁹ A similar solution in this respect is applicable in the Polish law in relation to employees entitled to maternity or parental leave. According to Art. 182^{1c} of the Labour Code, an employee may combine parental leave with performing work for the employer granting such leave for not longer than a half of full working time. In such case, parental leave is granted for the remaining part of the full working time. The work is commenced upon a written request of the employee submitted within 21 days at the latest before starting work. The employer is obliged to accept the employee's request, unless it is impossible due to the work organisation or type of work performed by the employee. The employer must notify the employee in writing of the reason for the refusal. Also, in line with Art. 186⁷ § 1 of the Labour Code, an employee entitled to child-care leave may request the employer in writing for the reduction of his/her working time to no more than 50% of his/her full working time in the period when the leave can be taken. The employer is under the obligation to accept that request.

Another proposed change to support the reconciliation of work and care responsibilities is the extension of the regulation concerning flexitime. At present, Polish legal solutions provide for flexitime in its basic form, which means a possibility to start work at different times in particular 24-hour periods. Considering more developed flexitime schemes in other countries, it is rightly proposed that the possibility of flexitime not only in a 24-hour period but also in a working week or a four-week period should be introduced in the Polish law.³⁰

²⁸ M. Latos-Milkowska, *op. cit.*

²⁹ *Ibidem.*

³⁰ *Ibidem.*

Apart from the discussed legal solutions, it seems also desirable to establish in the Polish law an employee leave in order to take care of an elderly person. The regulations of the countries in which such leaves are available could be a good example to follow. The introduction of special care leaves (short- or long-term), which would allow occasional work leave in critical situations so as to perform more intensive than usual caring duties, should also be advocated.³¹ A good solution would be the increase, from 14 to 60 days in the calendar year, of the above described leave with the aim of taking care of a sick family member. As it has been emphasized above, the Polish law differentiates between the situation of people taking care of a sick child and those who look after another family member. People taking care of a sick child up to 14 years of age are entitled to only a 14-day leave in the calendar year. The introduction of an obligation to grant an employee, upon his/her request, unpaid leave in order to take care of a family member should be considered as well. Specific regulations provide for several derogations from the general rule that unpaid leave depends on the employer's decision. For example, unpaid leave granted, among others, to young employees during winter holidays, employees who are MPs or an employee who has been appointed a councilperson for the self-government is obligatory under the Polish law. Imposing the obligation on the employer to grant unpaid leave would not then be a novelty in the Polish law but only an extension of the employee rights to other situations.

6. Conclusions

1. Polish solutions allowing the reconciliation of career and care focus mainly on facilitating work and child care. The Polish system of parental employment entitlements has been modified several times. The last amendment in this respect entered into force on 2 January 2016. The system of reconciling work and care of children is based on an extensive range of parenthood leaves. The Polish labour law provides for several types of leaves from work to take care of children. These include: maternity leave, parental leave, paternity leave and child-care leave. Moreover, Polish regulations provide for time off from work to take care of a child.
2. In the Polish law, there are no particular solutions which would support the reconciliation of work and care of an adult person.

³¹ L. Jurek, *op. cit.*, p. 107.

Nevertheless, the approach of the Polish legislator must adapt to demographic changes.

3. The care of elderly people involves different requirements than the care of children. Firstly, in the case of children, the time of care is relatively easy to define, whereas for a person who cannot act independently it is difficult (or even impossible) to be foreseen and the intensity of care is subject to continuous change, due to incidental illnesses or alternating improvement and deterioration of the mental and physical condition. Secondly, personal situation of carers is different. A child carer is usually a relatively young person who enters the job market and begins a professional career, whereas a carer of an elderly person is as a rule mature (aged 45+, with some professional experience and a settled position on the job market). Thirdly, there is a reverse degree of dependence on the carer. In the case of children, the dependence diminishes gradually, while with respect to elderly people it is just the opposite and in general it increases with time.

4. Due to the specific nature of work involving care of an elderly person and the fact that it is hard to foresee the time of such care, which might take a number of years, the solutions related to the flexible work arrangement should be given priority as the instruments which support combining career with care of an elderly person. Leaves and time off due to the need of taking care, the introduction of which in the Polish law is desirable, should be of secondary importance.

ADAPT is a non-profit organisation founded in 2000 by Prof. Marco Biagi with the aim of promoting studies and research in the field of labour law and industrial relations from an international and comparative perspective. Our purpose is to encourage and implement a new approach to academic research, by establishing ongoing relationships with other universities and advanced studies institutes, and promoting academic and scientific exchange programmes with enterprises, institutions, foundations and associations. In collaboration with the Centre for International and Comparative Studies on Law, Economics, Environment and Work, (DEAL) the Marco Biagi Department of Economics, University of Modena and Reggio Emilia, ADAPT set up the International School of Higher Education in Labour and Industrial Relations, a centre of excellence which is accredited at an international level for research, study and postgraduate programmes in the area of industrial and labour relations. Further information at www.adapt.it.

For more information about the E-journal and to submit a paper, please send a mail to LS@adapt.it.

