

A NOTE ON CARING AND MALTESE SOCIAL SECURITY LEGISLATION

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Maltese Social Security legislation is written with the male breadwinner in mind. It tends to penalize employees who opt out of the labour market to raise children. It is true that Maltese women working within the civil service are eligible to 13 weeks paid and one week unpaid maternity leave, one year unpaid parental leave for each child and a one-time career break of three years which is unpaid. These options are available within the civil service, while workers working within the private sector are eligible by law to the paid maternity leave and other arrangements made with a particular company.

The majority of paid workers within the civil service who opt for unpaid parental leave and the career break tend to be women (see Annual Report 2002, p. 28-29). Employees - whether within the public or private sector - who avail themselves of unpaid leave to undertake caring responsibilities are not covered by the social security scheme. The law maintains that since they have stopped working, they are not eligible to pay the statutory contributions. In fact, it says that “a married woman whose husband has not abandoned her” (Social Security Act (2003) Part II, 6.(1)a) is not deemed to be a self-employed person or a self-occupied person. This means that such workers are not eligible to pay out of their own pocket the national insurance contributions to cover the period when they are not eligible to paid caring leave.

This has short-term and long-term repercussions for the individual concerned. In the short term, these persons depend on the income and goodwill of the partner who is in employment, who may or may not share their income with them. At the same time, derived rights do not provide the beneficiary with the whole range of social protection to which the insured persons have access, such as sick leave, unemployment and maternity benefits (Brocas, 1990, p. 81).

Long term effects are felt when such persons apply for a retirement pension. Gaps in their contributions would mean that the person concerned will not be eligible to a full pension. This is also coupled to the fact that while they are taking care of their children, such persons would have had to forfeit promotions, which would have lead to a better salary and hence a better pension at the end of their employment. Caring, therefore, can lead to the pauperization of women when they reach pensionable age. Since women tend to live longer

in the Maltese Islands (Vassallo et al. 2002, pp. 155-190), they are more likely to experience this poverty for a longer period of time, with negative effects on their mental and physical health.

Solutions

Brocas et al. (1990 p.80) point out that governments often maintain that they cannot find the necessary funds to provide non-working women with the same level of protection as that offered to those who work. At the same time though, countries which might find it a problem to compensate for those periods when women's employment is interrupted for family reasons raise no concerns about crediting those periods that men spend in military service (Brocas, 1990, p. 95). In the Maltese Islands, those conducting voluntary work abroad are credited contributions (Social Security Act, 2003, Part I 16(2)c), but not individuals who voluntarily opt out of the labour market to raise a family. These are the people who in the future have to maintain a welfare society. Brocas et al (1990, p. 88) argue that whether women are in employment or not, they should be entitled to their own personal rights.

Brocas et al. argue in favor of an insurance scheme that does not lead to inequality when women take up motherhood as a vocation. They (1990, p. 91) argue that women who interrupt their employment for caring purposes should receive credits in their favor for pension calculation purposes. They suggest that non-working periods such as un/paid maternity or child-care should be credited as insured periods (Brocas, 1990, p. 91). In France, these credited contributions are paid by the state on the basis of the guaranteed minimum wage (Brocas, 1990, p. 92). Female beneficiaries of such schemes are entitled to these benefits on the same guaranteed minimum and this ensures them a minimum old age pension. However, this scheme does not provide carers with sick leave, unemployment or invalidity coverage.

Brocas et al (1990, p. 92) maintain that a flat rate, universally available pension ensures that women are not castigated for any gaps in insurance coverage resulting from family responsibilities. The researchers believe that this kind of pension scheme would guarantee women with interrupted employment histories the right to a pension (Brocas, 1990, p. 92).

Universal pensions are, however, financed from taxes and hence this solution might prove costly for certain countries. Brocas et al. (1990, p. 107) maintain that this is an effective but costly solution to the problem of poverty. This insurance scheme, which provides residents with a means-tested subsistence level income, ensures that nobody loses out. Such a scheme is already available within the Maltese Islands.

In some countries non-employed women or women who temporarily give up their employment, are given the chance to finance their own entitlements. This possibility is however limited to those who can shoulder the financial burden themselves or who have others to shoulder it for them.

Brocas et al. (1990, p. 94) maintain that the sharing of entitlements between the two spouses might help provide contribution-based personal rights for the spouse who opts to leave the

labor market for family reasons. They mention the case of Canada where the contributions amassed by the insured breadwinner are divided between spouses for old-age protection programs and pension plans. The sharing of entitlements confers identical rights to each of the spouses, and provides the care-giver with a personal pension or with an increment to any pension rights she or he may have earned as a result of paid activity (Brocas, 1990, p. 94). Such a scheme, however, is based on the premise that breadwinners will be able to reach retirement age. It does not therefore safeguard the personal rights of those carers who are single parents. Their rights are derived since they depend on welfare handouts. A system where contributions are transferred should have to safeguard the rights of women who find themselves divorced before they reach pensionable age.

A Point-by-Point Summary of Observations on the Social Security Law and Gender Discrimination

Main problem issues

1. the Maltese law still discriminates directly and indirectly against women
2. I focus mainly on the discrimination against women
3. I take into consideration mainly some aspects of the Social Security law

Social Security Law

1. the payment of NI contributions
2. women who are on unpaid maternity leave and career breaks with regards to domestic responsibilities cannot pay national insurance contributions
3. this means a break in NI contributions
4. this break will have an effect on whether or not they will have a full pension scheme
5. sometimes this break may necessitate working longer to cover the missing years
6. the Law is in this way directly discriminating against women who volunteer to stay at home to take care of children, disabled and/or elderly
7. when women leave the labour market to take care of children, they will experience a lag in their career projection
8. some opt for flexi-time, reduced hours and/or part-time to be able to cope with labour and domestic responsibilities
9. this may have an impact on the contributory pension they might be able to access
10. it is therefore no wonder that the majority of the elderly poor end up being women (JIM, 2003)

Solution

1. more ancillary services can be set up to ensure that women do not have to leave the labour market
2. some countries in the EU are rewarding women who have children and not punishing them as we are doing in the Maltese Islands
3. they accredit them NI contributions for the years they spend at home
4. others ensure that the NI paid by the one breadwinner is equally shared between the spouses

5. this ensures that there are no NI gaps
6. more educational programmes on the topic to ensure that women know the impact child rearing will have on their eventual economic well-being (and that of their children if they lose their spouse)

Stay at home mums

1. when there is one breadwinner in employment, those who stay at home are supposedly partaking of the NI contributions that this person is paying
2. the same thing happens when women are doing unpaid labour for family enterprises
3. this is especially true of those couples who are benefiting from the community of acquests regime
4. what happens when the couple separate is another thing
5. these women end up with no NI contributions to attest for during the years they stopped work if they separate from their spouses
6. this means that a number of them end up depending on non-contributory pensions, especially if the separation takes place when they are in their middle ages

Solution

1. changes in the way NI contributions are shared between spouses should be looked into
2. the law should make it clear that those women partaking in family businesses need to pay their NI contributions even if they do not receive a salary
3. educational programmes should establish that this is for their own protection with regards to invalidity, pensions and/or sickness

Changes in Definitions

1. the Social Security Act needs an overhaul
2. it is based on the premise of a two parent family when statistics show that this is not always the case in the Maltese Islands
3. some definitions such as breadwinner set out the 'male' breadwinner as being the head of household
4. women who are breadwinners need to write to the Director to ask to be acknowledged as such
5. it is up to the discretion of the Director to acknowledge whether or not to accept this claim
6. this is not the case for men - they are automatically seen as the breadwinners

Solution

1. studies conducted in the past say that legally, the Social Security Law is not discriminatory
2. There is a need to go through it word by word and underline the discriminatory concepts and laws implicated within this piece of legislation

There are many instances of discrimination on the basis of gender. I have here mentioned just a few of those that need to be addressed with particular urgency.

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