



# 8. SOCIAL AND LEGAL PROTECTION FOR ONE-PARENT FAMILIES IN GERMANY – THE PITFALLS OF LAW REFORMS AND RECENT CASE LAW DEVELOPMENTS

**Eva Maria Hohnerlein**

Max Planck Institute for Social Law and Social Policy

[hohnerlein@mpisoc.mpg.de](mailto:hohnerlein@mpisoc.mpg.de)

## **Abstract**

Family benefits are relatively generous in Germany but not with respect to one parent families, although they account for 20% of families with children under age. Recent studies again confirmed that these families remain under persisting financial pressure, due to deficient socio-legal framework conditions and structural disadvantages. They face the highest poverty risks of all families and have to rely more than any other family type on basic income provisions. Financial pressure has increased in particular due to reforms adopted throughout the last decade in various fields (maintenance law, tax law, child benefit on the advance of maintenance, child support complement for low-income families).

Additional problems have emerged with the transformation of the labour market and the expansion of low income sectors and precarious work conditions that many single mothers have to cope with. One parent families are negatively impacted by the maintenance law reform of 2008 that has shifted financial risks on the divorced mothers and their children; cuts into the advance of maintenance payment for the child since 2008 the abolition of tax deductions under income tax law since 2004 a deficient construction of the child benefit complement. Social changes with respect of the role of fathers and new possibilities of medically assisted procreation have induced case law developments that seem to further increase pressure on one parent families.

The contribution will provide an overview of these developments to highlight the reasons for the persisting poverty risks of one parent families in Germany.

Key Words: social change, public welfare provision, child benefit, maintenance, income tax

## 1. Introduction

Family benefits are relatively generous in Germany. Family policy reforms since the late 1990s have brought considerable transformation, largely in parallel with an increase in female labour force participation. Changes in family policies, but also in general welfare policies, were aimed at employment-related interventions, increasingly based on an adult worker model. However, this process has largely failed to provide appropriate social protection for lone-parent families.

According to the current definition used for statistical purposes, lone-parent families comprise mothers and fathers who live in a common household together with at least one unmarried child, but without a spouse or a partner.<sup>15</sup> In 2011, almost 2.7 million lone mothers or fathers fell under this definition. If we focus exclusively on lone parents living with a child /children under the age of 18, the overall number is 1.6 million. Currently, this family type accounts for about 20% of all families with underage children (2011). 90% of these families are headed by a lone mother.

Recent studies reconfirmed that lone-parent families remain under persisting financial pressure (Lenze, 2014). They face the highest poverty risks of all families and have to rely more than any other family type on means-tested basic income provision. The potential causes of these risks, such as low earning capacity, barriers in the labour market, lack of access to affordable and high quality childcare services, but also the absence of shared financial responsibility between parents living apart, are well known. During the last decade, situations of economic vulnerability of and financial pressure on lone-parent families have increased. Major transformations in the socio-legal framework conditions are negatively affecting these families, due to implicit or explicit retrenchment policies, but also due to more general reforms adopted in various fields, encompassing maintenance law, tax law, or social welfare law. Additional problems have emerged with the transformation of the labour market and the expansion of low-income sectors and

<sup>15</sup> Slightly different definitions exist in social welfare legislation and income tax law which are related to specific legislative purposes.

precarious work conditions. More specifically, lone-parent families are negatively impacted by

- the maintenance law reform of 2008 that has shifted financial risks on to the divorced mothers and their children;

- new restrictions regarding the advance of child maintenance scheme since 2008

- the reduction and non-adjustment of tax deductions for lone parents under income tax law since 2004

- fundamental changes in the provision of income support, linked to the introduction of the basic income support scheme for jobseekers in force since 2005, and its interplay with other family benefits.

In addition, social changes with respect to the role of fathers which entail new models of “shared care time” (distinct from “shared parental responsibility” or “joint custody” as concepts of legal responsibility) in separated families and access to medically assisted procreation (anonymous sperm donation) have led the judiciary to develop restrictive interpretations of the provisions on the advance of child maintenance payments. Such case law has added to the financial pressure on lone-parent families.

The main part will first provide basic statistical data on lone-parent families in Germany and their poverty risks (2), and secondly give a broad overview of legal and institutional changes that contribute to the persisting financial pressure on these families (3). The final part (4) draws some conclusions, pointing to the interaction of different reforms, but also to the practice of denying adjustments on grounds of budgetary constraints.

## **2. Statistical Data on Lone-Parent Families in Germany**

There are currently (2012) an estimated 1.6 million lone parents in Germany who care for about 2.2 million children under the age of 18 (representing 17% of all children, in Eastern Germany their portion attains 25%). Lone-parent families make up 20% out of 8.1 million families with children under the age of 18 (Lenze 2014, p.19; Statistik der Bundesagentur für Arbeit, 2013, p.2).

Between 1996 and 2012, lone-parent family rates increased in the eastern part of Germany from 18% to 26%, in the western part from 13% to 18%. The vast majority (90% – 92%) are female-headed households. The life course situation among these families is rather heterogeneous with respect to the age of the children, professional qualification, the reasons leading to the lone-parent

situation and the duration of this phase. According to survey data 4 out of 5 women became a lone parent following the break-up of a marriage or partnership (Ott et al., 2011: 16). Only in very few cases (5%) did lone parenthood result from the death of the spouse or partner. On average, children living with divorced or widowed lone parents tend to be older, while younger children prevail in families with an unmarried /unpartnered lone parent (Rainer et al. 2013, p. 211). Mothers who are single at the time of the birth of their child represent only a minority (12%) (BMAS, 2013: 13 f.).

**Age and number of children:** About 15% of lone mothers care for children under the age of 3, 16 % for children aged 3 to 5 years, 20.6% for children aged 6 to 9 years, and 29.9% for children aged 10 to 14 years. This means that more than 50% of all lone-mother families have to find appropriate childcare services if they want to participate in the labour market. 18.5% live with an adolescent child aged 15-17 years (BMAS, 2013: 16). In 2011, about 61% of lone mothers (7.5% of lone fathers) lived with one child only, 23.2% with two children, and about 5.8% with 3 or more children.<sup>16</sup>

**Lone parents and employment:** The vast majority of lone parents (fathers and mothers) are in employment: the employment rate for lone mothers is 70% (over 1 million), which is about the same rate as for married/partnered mothers in general (BMAS, 2013: 19). However, what is different is the rate of full-time employment among lone mothers. It amounted to 43% as compared to only 30% for partnered mothers (BMAS, 2013: 24). Moreover, also the volume of part-time work is different: More than 40% of lone mothers work at least 35 hours per week, and only a minority of 15% work less than 20 hours. The employment patterns among partnered mothers are the opposite: more than 75% work less than 35 hours per week, about 1/3 even less than 30 hours (BMAS, 2013: 25).

Unemployment among lone parents is high. On average, they accounted for 9.4% of all unemployed in 2013 (9.1% in 2012). Out of an average number of 277,000 unemployed lone parents only 11% were covered by the – more generous – unemployment insurance benefits scheme (Social Code Book III) which provides earnings-related benefits with a replacement rate of 68% of previous net income, whereas 89% received benefits under the –very rigid – basic income support scheme for jobseekers (Social Code Book II). Lone parents receiving income support benefits for job-

<sup>16</sup> Source: Federal Office for Statistics, Microcensus 2011.

seekers are not necessarily unemployed. In fact, only a minority of 40% are unemployed. The rest are either in employment, but with insufficient income from work, or participate in so-called “active labour market policy measures”, or they are in education (school, university or professional education). About 96,000 lone parents are not required to work because they care for a child under the age of three.

Poverty in lone-parent households is persistently high: In 2011, 44% of single-mother families lived at a subsistence level and had to rely on a monthly net family income of less than 1,300€ (compared to 24% of lone-father families). Relative income poverty of lone-parent families is reflected in particular by the extent to which they depend on social assistance benefits from the income support scheme for job seekers. While only 7.7% of two-parent families depended on such benefits in 2011, the average rate among lone-parent families was five times as high (39.6%) (Achatz et al., 2013: 12)<sup>17</sup>. In December 2013, there were 610,000 lone parents in receipt of income support for job seekers, most of which (94%) were mothers. Although the overall rate of lone parents depending on income support had slightly decreased to 39% by the end of 2013, the duration of benefit receipt for lone parents under this scheme remains persistently high, in particular in households with more than one dependent child.<sup>18</sup> Survey data on labour market participation show that many single mothers face difficulties in finding an adequate job that provides sufficient income and is compatible with their children’s care needs (Lenze, 2014: 88). In many cases, lone mothers engage in marginal forms of employment – so-called mini-jobs – that normally do not provide enough income to exit the income support scheme (Achatz et al., 2013: 67).

Child poverty risks: 952,000 children (50%) out of almost 1.9 million children under the age of 18 years whose household receives benefits under the income support system for job seekers (Social Code Book II), live with a single parent. This means that 50% of child poverty risks are linked to lone-parent situations, and

17 On the evolution of the average rates of dependency on social income support of different types of family households cf. Statistics of the Federal Agency for Employment, 2007-2013, May 2014.

18 The dependence rate on basic income among lone-parent families with 2 children is 44.3% (6.4% in two-parent families), with 3 children 69.3% (15% in two-parent families), data for June 2012, cf. Federal Agency for Employment (October 2012), Grundsicherung für Arbeitsuchende in Zahlen, p. 12.



what is even more alarming is the fact that the risks continue to persist at the same high level, despite the high rate of full-time employment among lone parents.

These data suggest that the legal and institutional framework, namely maintenance law, tax law, and social welfare law, do not effectively address poverty risks of lone-parent families. On the contrary, reforms adopted during the last decade have increased financial pressure on such families, and the living conditions and children's life chances tend to worsen persistently proportional to the length of time spent in a lone-parent family condition. Moreover, structural labour market reforms introduced as part of the "2010 Agenda"<sup>19</sup> constitute a severe challenge to the securing of financial self-sufficiency in lone-parent families, in particular the growth of low-income jobs.

### **3. Legal and Institutional Changes Increasing Financial Pressure on Lone Parents**

#### **3.1. Maintenance Law Reform 2008**

One of the major objectives of the 2008 maintenance law reform<sup>20</sup> was to enhance financial self-reliability of divorced spouses by reducing the maintenance obligations of the ex-spouse to support the divorced partner who is the main parent to care for the common children of the couple. Prior to the 2008 reform, divorced mothers were entitled to receive maintenance to take care of a child ("*Betreuungsunterhalt*")<sup>21</sup> according to different age groups based on case law, but in general they were not required

19 This Reform Agenda was adopted and implemented by the Red-Green Coalition Government under Chancellor Gerhard Schröder in 2003-2004. The reform programme included significant retrenchment measures, such as tax cuts (a 25% reduction in the basic rate of income tax), drastic cuts in pension benefits, and cuts in unemployment benefits. A series of labour market reforms known as the Hartzplan was adopted in 2001-2004: They proclaimed a shift from passive towards activating labour market policies. The first and the second reform acts were aimed at the expansion of "mini-jobs" (marginal employment) and the introduction of so-called "midi-jobs", the third reform provided for the re-organisation of the Federal Office for Employment and its local articulations. The final reform (or Hartz IV reform) created the basic income support system for jobseekers regulated by Social Code Book II.

20 Maintenance law reform, Act of 21/12/2007, in force since 1/01/2008.

21 Art. 1570 German Civil Code (Maintenance to care for a child):

(1) A divorced spouse may demand maintenance from the other, for the care for or upbringing of a child of the spouses, for at least three years after the birth. The duration of the claim to maintenance is extended as long as and to the extent that this is equitable. Here, the concerns of the child and the existing possibilities of childcare are to be taken into account.

(2) The duration of the maintenance claim is further extended if, taking into account the arrangement of childcare and gainful employment in the marriage and the duration of the marriage, this is equitable.

to work if they cared for a child younger than 8 years. Unmarried single mothers were entitled to maintenance to provide care up to the third birthday of a child only. In 2007, the German Federal Constitutional Court found that this discrimination violated the constitutional rights to equal treatment for all children (Bundesverfassungsgericht, decision of 28 February 2007, 1 BvL 9/04).<sup>22</sup> The 2008 reform established equal treatment between children born to married parents and children born to unmarried parents by reducing the level of protection granted by maintenance law to the lower level for children of unmarried parents. As a consequence, divorced mothers with children older than 3 years on principle lost their right to maintenance to care for a child, and are now obliged to engage in full-time employment, if appropriate child care services are available.<sup>23</sup> Maintenance to care for a child older than 3 is awarded only on the basis of equity, if continuing personal care is necessary for child-related reasons. Maintenance for other reasons than childcare needs do exist, e.g. for parent-related reasons such as unemployment or insufficient income from appropriate employment. However, such parent-related reasons have a lower priority and are therefore hardly able to compensate a complete loss of maintenance to care.<sup>24</sup> At any rate, protection after the break-up of a marriage has been downsized, shifting financial responsibility from divorced fathers on to divorced mothers.

As to the exceptions admitted to extend the period of payment of maintenance to care, the Federal Court of Justice (*Bundesgerichtshof, BGH, sentence of 18/03/2009, XII ZR 74/08*) has adopted a very strict interpretation since 2009. By contrast, various lower courts had attempted to facilitate personal care by the mother for children beyond the age of 3 years (Lenze 2014, pp. 26 ff.) and were also more likely to limit the duties of working mothers with care obligations to part-time work of 25 or 30 hours per week. But the Federal Court of Justice requested, in general, full-time employment if all-day care services were available

22 The Constitutional Court had also suggested that a 3-year period of personal care would strike a fair balance between the interests of the parent providing care, the parent providing maintenance, and the child's interests.

23 In general, the courts will consider only the availability of child care rather than the quality of available services. It is quite clear that neglecting the quality of any child care service can undermine the development of the child involved.

24 Only if maintenance based on child-related reasons and on parent-related reasons apply simultaneously, the more favourable priority rules are applied to the overall maintenance to which the caring parent is entitled, cf. Federal Court of Justice (Bundesgerichtshof), decision of 1 October 2014, in *Neue Juristische Wochenschrift* 1014, 3649.

(BGH 18/03/2009; BGH 15/09/2010; BGH 15/06/2011). Exceptions are admitted only in case of pathological conditions of the child (Lenze, 2014: 32) or if a divorced mother takes care of at least 3 children – a very rare constellation. The burden of proof for these special circumstances lies with the caring parent – in general the mother. As a consequence, the normal double burden of working mothers in a lone-parent situation is not sufficient to support the maintenance claim (BGH 18/04/2012, XII ZR 65/10). Divorced mothers are expected to educate and instruct their children, as well as to provide moral assistance almost as some form of occasional activity during the evenings and weekends.

Another problem linked to the 2008 maintenance law reform is related to changes in the priority rules of different maintenance claims (Art. 1609 BGB). This is crucial when the financial capacity of the debtor is limited. Previously, the “first” family of the debtor had priority as regards maintenance. With the reform having been passed, first priority is now given to children from the first as well as from any subsequent family. Although the entitlement to “maintenance for care” is granted not for the interests of the parent, but for the interest of the children needing care and moral assistance, it is not defined as an entitlement of the child but of the caring parent. If the debtor of maintenance has not enough resources to pay maintenance for the child and for the caring parent, the lone-parent family may receive less support than before the reform, because the priority rule is limited to what is formally defined as “child maintenance” (Lenze, 2014: 33).

Furthermore, the financial responsibility of the non-resident parent to provide child maintenance by way of cash payments has been limited by the rules which determine the financial capacity of a liable parent. Entitlement to child maintenance is based on two principles: the needs of the child, and the financial capacity of the debtor. The financial responsibility of a non-resident parent is limited by specific minimum income thresholds. They allow the maintenance debtors to retain a minimum income for their own subsistence needs. Any increase of these subsistence thresholds will automatically reduce the financial capacity of maintenance debtors, so that the child will receive less maintenance from the non-resident parent. Since 2011, these minimum income thresholds have been increased by an overall amount of 180 € per month in favour of maintenance debtors,<sup>25</sup> while the maintenance claim

25 In 2015, the minimum income that parents obliged to pay child maintenance are allowed to



of children has not been adjusted since 2010. The adjustment of child maintenance is linked to a different mechanism, as it follows increases in the tax exemption for dependent children under income tax law which in turn is linked to variations in the subsistence minimum of children. Although adjustments have been overdue at least since 2014, they have been denied for budgetary reasons.<sup>26</sup>

The method used to define the amount of maintenance is another key problem. In practice, the maintenance obligations of the non-resident parent are not fixed according to the individual needs of the child, but are established by court-made guidelines, based on the age of children and parental income. According to family law experts, child maintenance amounts are systematically set too low, and result in a systematic over burdening of the caring parent (Breithaupt, 2012). As a matter of fact, child maintenance amounts reflect only – if at all – the mere material existence minimum of the child. This minimum does not include costs for recreational activities, for cultural and social participation, or similar costs for developing the personal interests of a child. The Federal Court of Justice (*Bundesgerichtshof*) holds that both parents have to share these additional costs according to their income situation, but this view contradicts the general principle that the parent with whom the child lives is not liable for maintenance payments in cash (Art. 1606 § 3 (2) BGB).<sup>27</sup>

Anyhow, the compliance of non-resident fathers with child maintenance payments is often limited: Two thirds of lone parents caring for one or more children do not receive the maintenance necessary to provide for the minimum needs of a child (Breithaupt, 2012). Private maintenance is therefore not a solution for every single case. Nevertheless it could serve to provide better support and prevent lone-parent families from having to rely on the minimum income support scheme with its extremely rigid rules. It makes a big difference whether a divorced mother can sus-

retain has been increased by 80 € per month in case of minor children (or adult children under 21 in school education residing with the caring parent), the minimum guaranteed to the non-resident parent obliged to pay maintenance for care has been increased by 100 € per month.

26 Tax exemptions for dependent children are constructed as deductions from taxable income. The deductions which amounted to 7008 € in 2014 should be increased by 144 € p.a. in 2015, and a further 96 € p.a. in 2016.

27 Exceptions to the principle that the parent with the main caring responsibilities is not liable to pay maintenance in cash apply if the debtor lacks financial capacity, if the debtor's own appropriate maintenance would be at risk while the caring parent could cope with the extra financial burden, if the caring parent's income is at least twice the non-resident parent's income, or if the parents practice a model of equally shared care (Scheiwe 2010, 125, 129 ff.)

tain herself by combining wage income and private maintenance or whether she is forced to combine wage income with minimum existence benefits under Social Code Book II (Lenze, 2014: 43f.).

### **3.2. Restrictions in the Advance of Child Maintenance Scheme**

In 1980, the Advance Payment of Maintenance Act came into force<sup>28</sup> which seeks to guarantee a minimum financial support for a child living in a lone-parent family, if the non-resident parent liable to pay child maintenance in cash does not - or not fully or not regularly – comply with his or her child maintenance obligations. This family benefit – the only one granted directly to children in a lone-parent family - is not means-tested.<sup>29</sup> The guarantee is restricted to children aged under the age of 12 and is granted for a maximum of 72 months (6 years).<sup>30</sup> Further extensions have been denied in recent reform debates in view of budget constraints.

The amount is determined by reference to the minimum maintenance under (private) maintenance law.<sup>31</sup> Private maintenance law allows the parent obliged to pay maintenance in cash to deduct 50% of the child benefit from the amount. The same reduction applied to the public benefit scheme. However in 2008, the legislator changed the public advance maintenance scheme and increased the size of the reduction due to the child benefit from 50% to 100% of the child benefit (equal to 184 € per month), thereby lowering the benefit of advance payment. As of January 2010, the public support has been limited to 133 € for the younger age group, and to 180 € for older children (Lenze, 2014: 45 f.).<sup>32</sup>

Since (2008), so that in practice Further restrictions have

28 Act of 23 July 1979 on the provision of maintenance for children of lone parents by means of maintenance advances or replacement benefits (Gesetz zur Sicherung des Unterhalts von Kindern alleinstehender Mütter und Väter durch Unterhaltsvorschüsse oder –ausfallleistungen, UVG) with subsequent modifications.

29 Expenditure is borne by the Federal State (1/3) and by the states (2/3).

30 The law of the former German Democratic Republic had set the age limit at the age of 18.

31 Sect. 1612 a of the Civil Code. The minimum maintenance for children has been harmonized with provisions on tax exemptions for the material subsistence needs of a child under income tax law (Art. 32 § 6 Income Tax Act).

32 The modification was enacted by Law of 21/12/2007 (Bundesgesetzblatt = BGBl. 2007, I, p. 3194). In March 2015, the German Government proposed to increase the benefit amounts, which are expected to rise to 140/188 € in 2015, and to 145/194 € in 2016.

been added by a reform of 2013:<sup>33</sup> The right to retroactive benefit payments has been limited to one month before the month when the application was filed (Art. 4 UVG), which means more pressure on lone parents to end informal negotiations on child maintenance and to rather seek judicial redress; another disadvantage for lone-parent families is that the reform facilitates possibilities for local authorities involved in the benefit administration to reduce the – already limited - maximum duration of the benefit even in cases of later recovery of all or some of the public payments (Art. 3 UVG) – as a consequence lone parents may lose part of their entitlement even if no public expenditure on the benefit took place.

Further restrictions appeared in recent case law of the administrative courts and are based on implicit objectives of the benefit scheme. Several administrative courts denied that a child could qualify for the public advance payment scheme if the lone mother had deliberately agreed to have a child by way of anonymous sperm donation which excluded recourse to a father liable for maintenance.<sup>34</sup> The Federal Administrative Court<sup>35</sup> in particular claimed that the benefit scheme is based on the assumption that the parent living with the child has to cooperate with public authorities so that recovery of public payments would not be precluded by willful behavior of the lone parent. Therefore, the child cannot claim the benefit when the behavior of the mother is decisive for making any attempt of recovery illusive. The case is an example of how competing policy goals – like ensuring financial provision for the child's needs and limiting or reducing public expenditure – are decided in favour of public budgets rather than in favour of the best interest of the child. This restrictive interpretation neglects the fact that the German system of maintenance guarantee always covered cases where the father was missing or unable to pay maintenance so that cost recovery would not be feasible.<sup>36</sup>

A similar type of reasoning has been developed in cases of

33 Act of 3 May 2013, in force since 1/07/2013 (BGBl. 2013 I, p. 1108).

34 Administrative Law Court of Baden-Württemberg, sentence of 3 May 2012, 12 S 2935/11, in: *Zeitschrift für das gesamte Familienrecht* 2012, 1680.

35 Federal Administrative Court - BVerwG 5 C 28.12 – sentence of 16 May 2013, [ECLI:DE:BVerwG:2013:160513U5C28.12.0].

36 Maintenance advances are paid if the father has died, is disabled or incapacitated for work, or not required to earn wage income due to being a student.

shared care situations between divorced mothers and fathers.<sup>37</sup> This case law emerged in cases where divorced parents had mutually agreed to “distribute” the children among them, and the agreement involved that each caring parent would liberate the other parent from cash maintenance obligations.

Current family policy reforms often try to strengthen the role of fathers and to involve fathers in care responsibilities. But when divorced fathers take over a fair share in such responsibilities, the divorced mother may lose the status as a lone parent, and access to the advance maintenance payments will be barred, even if the father does not provide maintenance.<sup>38</sup> According to the Federal Administrative Court, benefits under the advance maintenance scheme are not granted if the second parent is involved consistently in raising the child.<sup>39</sup>

It must be emphasized that advance maintenance payments only constitute a minor share in the household income of lone-parent families. The limited role of such payments is reflected in the low recovery rate by public authorities from liable debtors. The ratio lies between 20% and 30%, and in poorer regions of Eastern Germany even below 15%.

### **3.3. Access Limitations to the Supplementary Child Benefit for Low-Income Families.**

The reform of the basic income support scheme for job seekers (Social Code Book II), introduced in 2005, was accompanied by a new supplementary child benefit for low-income families.<sup>40</sup> This new benefit is aimed at parents that are able to sustain themselves but do not earn enough to sustain their children with the aid of their earned income. The benefit thus should prevent parents with low earnings to claim basic income support just because of unmet existence needs of their children. Its maximum amount is 140 € per month and per child. The initial restriction on the duration of the benefit has been abolished subsequently, but the maximum

37 Shared care - not to be confounded with joint custody – refers to a situation where children spend roughly equal time or at least a consistent amount of time with each parent.

38 Hohnerlein 2014, p. 127.

39 BVerwG, 5. Senat, 11/10/2012, 5 C 20/11 (Juris), [ECLI:DE:BVerwG:2012:111012U5C20.11.0].

40 Art. 6a Bundeskindergeldgesetz (BKGG). To be eligible, parents have to be entitled to the general child benefit regulated in income tax law, and meet specific lower and upper income limits. The minimum income limit for lone-parent families has been set at 600 € per month since 2008 (900 € for two-parent families).

amount has not been adjusted up to the beginning of 2015.<sup>41</sup>

In practical terms, lone parents very often find themselves not eligible for this new measure (Prognos, 2013: 386): Only 14% of all households receiving this supplement are lone-parent families, although 50% of all children receiving benefits under the basic income support scheme are living in a lone-parent family (BMFSFJ, 2013: 12). Lone-parent families are thus at a higher risk of depending on basic income support under Social Code Book II and to suffer from stigmatization as income support recipients. The reasons for this exclusion are twofold:<sup>42</sup> Many lone mothers are unable to meet the required minimum income limit to sustain themselves; at the same time, any income of the child is set off against the child benefit supplement. As a consequence, child maintenance by the non-resident parent, payments under the advance maintenance scheme or an orphan pension always entail a reduction of the amount of the supplementary child benefit. Lone-parent families are thus disadvantaged as compared to two-parent families because child maintenance is qualified as child income and not as parental income. In two-parent families such maintenance is provided by parental income which is not deducted.

### **3.4. Limitations linked to the Basic Income Support for Job Seekers.**

General Limitations of the Basic Income Support Scheme Introduced in 2005

The new income support scheme of 2005 was introduced as part of an overall package to reform German labour market legislation. It became known as the “Hartz IV” scheme which substituted both the previous unemployment assistance and the previous social assistance scheme and created a new unified system with rigid means-testing. This new system applies when an entitlement to the regular unemployment benefit under the unemployment insurance scheme is exhausted or is not applicable because the eligibility criteria are not met. It applies to persons with previous integration into the labour market, to persons without any previous link to the labour market, and also to persons currently integrated into the labour market but with wages below subsistence level.

41 According to reform proposals of the German government of March 2015, the monthly amount will be raised to 160 € as of July 2016.

42 Hohnerlein 2014, pp. 120 ff., Lenze 2014, pp. 70f.



Access to income support at subsistence level is combined with labour market integration and work opportunity programmes - at least in theory. Lone parents can refrain from participating in such programmes only if they have to care for a child under the age of 3. Otherwise, they are – like any other recipient of income support for job seekers - required to accept any type of work including work that does not correspond with previous professional qualification and skills. Non-compliance entails rather strict sanctions, in particular reductions in the benefit amount.

Lone parents and their children are entitled to social benefits under Social Code Book II (basic income support for job seekers), if at least one person capable of work but in need of assistance lives in their benefit community.<sup>43</sup> In January 2015, the standard benefit amount under Social Code Book II or XII for an adult was set at 399 €, and children are entitled to a certain portion of this standard benefit according to four age groups: the rate is 234 € for children under 6 years, 267 € for children between 6 and under the age of 14, 302 € for adolescent children between 14 and under the age of 18, and 320 € for adult children between 18 and under the age of 25 living with a parent in a benefit community.<sup>44</sup> The income support scheme is the only public benefit scheme paying tribute to the special condition of lone-parent families: Lone-parent households are entitled to a specific supplement for increased needs where the volume of the supplement depends on the age and number of children living in the household.<sup>45</sup>

In a large number of cases, lone-parent families dependent on the new income support scheme experience more financial hardship than they did before the reform. The disadvantages have increased for various reasons: The overall amount of financial support for poor families has decreased, mainly because additional expenditure for sudden household or child needs has been abolished. Specific additional costs for children such as for new clothes or shoes needed as they grow up have to be met by the regular monthly rate and are no longer covered by any supplements as

43 If they live with persons not capable to work but in need of assistance, they have, at the same level, an entitlement to social assistance under Social Code Book XII.

44 Rates for 2015 in Bundesgesetzblatt 2014, I, No. 47, p. 1618.

45 The supplement is determined as a percentage of the standard benefit of a single person: It amounts to 36% of the standard benefit (or 140,76 € in 2015) if one child under the age of 7, or if 2 children under the age of 16, or three children live in the household. When the only child in a lone-parent household reaches the age of 8, the supplement is reduced from 36% to 12 % of the standard benefit (to 46.97 € in 2015).

was the case before. The reform has also reduced the standard monthly rate for the age group 7-17 years by 5% to 10% compared to the previous income support system. The system used to determine the benefit levels is highly controversial, in particular with regard to the benefit levels for children:

“In its decision of February 9, 2010, the Federal Constitutional Court rated the existing system of fixing the standard benefits under Social Code Book II and XII as unconstitutional and formulated requirements for a new fixing system. The new fixing system<sup>46</sup> [...] which came into force in March 2011, did not bring substantial improvements. As a consequence, the current benefit level of the last safety net for children and adults is not sufficient to guarantee a living free from poverty.” (Hanesch, 2014: 16).

Another problem concerning the sufficiency of benefit levels introduced by the reform is that for various reasons the benefit levels – which are already set at an extremely low level – may fall even below this minimum standard: This situation can occur when the unemployed lone parent does not comply with obligations under the system and is subjected to financial sanctions. If an obligation is violated for the first time, the standard benefit is reduced by 30%, if the violation is repeated for the first time the benefit is reduced by 60%, and subsequent violations entail the suspension of the benefit (Art. 31a Social Code Book II). If dependent children live in the household, the authorities are obliged to provide benefits in kind if the cash benefit is reduced by more than 30%.

## **Stricter Means-Testing Rules for Basic Income Support**

The ongoing financial pressure on lone-parent families is also linked to the overall architecture of the benefit system, and in particular to the interplay between the basic income support scheme in force since 2005 and various family benefits. Previously, under the former unemployment assistance scheme (*Arbeitslosenhilfe*) as well as under the former social assistance scheme (*Sozialhilfe*), a portion of the general child benefit would remain in the family budget. Likewise, the basic amount of the parental leave benefit (300 €) was paid on top of the assistance benefit. However, the current income support scheme in force since 2005

46 Cf. Sect. 77 Social Code Book II, “Gesetz zur Ermittlung von Regelbedarfen und zur Änderung des Zweiten und Zwölften Buches Sozialgesetzbuch”, as modified by the Act of 24 March 2011, last amendment by Art. 2 of the Act of 22 December 2014.

does not allow for disregarding general family benefits, therefore lone-parent families on income support are systematically excluded from family benefits, such as the universal child benefit (*Kindergehalt*). Since 2011, parents that had no own income before the birth of their child and had to rely completely on income support after the birth are no longer entitled to top up their minimum support income by the basic amount of the parental allowance (*Elterngeld*) during the first 12 to 14 months following childbirth. The abolition of the previous rules on disregarding the basic parental leave benefit entails unequal treatment to the disadvantage of the most vulnerable families (Lenze 2011). In the same way, recipients of basic income support are excluded from the new child care allowance (*Betreuungsgeld*) that came into force in August 2013. The new benefit (150 € per child per month as of 1 August 2014) is granted to parents whose child is born after 30 July 2012 and who do not make use of early childhood care in publicly subsidized child care facilities. Because of severe benefit offset rules in the context of subsidiary basic income support many lone-parent families cannot improve their living standard by claiming non-means tested family benefits.

The same result occurs in the context of private maintenance payments: Public efforts to make non-resident parents comply with maintenance responsibilities to children may accomplish little or nothing for the poorest lone-parent families because of the strict benefit offset under the means-tested income support scheme (Social Code Book II). Similar or worse problems arise in case of the advance payment of maintenance scheme. If the lone-parent family is dependent on basic income the child is obliged to request the benefit under the advance maintenance scheme although these payments will not improve overall financial stability as they will be deducted from income support. While the obligation to claim benefits under the advance of maintenance scheme does not at all contribute to improve the living standards of a lone-parent family that has to rely on income support, it is an additional risk for future improvements: as the maximum duration of the advance payment of maintenance is limited to 72 months, the obligation imposed reduces future options to request the advance of maintenance benefits, hence jeopardizing the future improvement of living standards based on a combination of earnings and advance payment of maintenance.

### 3.5. Income Tax Law and Social Insurance Contributions

Until the end of 2003, lone parents were entitled to financial relief by a special income tax deduction for single parent households.<sup>47</sup> This deduction was meant to provide substantial compensation for additional expenditure incurred by lone parents obliged to pay income taxes. It was substituted by a much lower relief that amounted to only 1,308 € - half of the previous tax relief. Moreover, the deduction reduced by half has not been adjusted since 2004.<sup>48</sup> Many lone parents, in particular those in lower income quintiles, face almost the same income tax burden as unmarried individuals that do not raise children.<sup>49</sup>

Tax income conditions have worsened also for non-resident parents liable to pay maintenance due to the changes introduced in the priority rules for child and spousal maintenance by the 2008 reform. While spousal maintenance payments up to an amount of 13,805 € per year can be deducted from taxable income, no such deductions apply for child maintenance payments. As the new priority rules favour child maintenance, and spousal maintenance is more and more marginalized, the existing income tax exemptions linked to spousal maintenance are lost, and net income available for cash payments is reduced accordingly (Lenze, 2014: 54).

While the costs for the existence minimum of a child are exempt from income tax in Germany, such costs are not relevant for social insurance contributions. If not in marginal or close-to-marginal employment<sup>50</sup>, lone parents like other parents are charged with the same contributions for the public pension and health care insurance (except for the long-term care insurance). Unlike income tax, these social insurance contributions apply proportionally to the net income.

47 So-called „Haushaltsfreibetrag“ (household tax exemption).

48 Requests for adjustment put forward by the Federal Ministry of Family Affairs have been denied again by the Minister of Finance in 2015.

49 According to Lenze (2014, p. 53), lone parents falling under the highest income tax tariff of 42% obtain an overall tax reduction of only 549 € per year compared to a single tax payer without children. High income earners among lone parents thus obtain a tax credit amounting to a mere 46 € per month, irrespective of the number of children in their household.

50 Marginal employment („Minijob“) refers to employment with a monthly wage below 450 € (before 2013 below 400 €) which is not subject to mandatory social insurance contributions by the wage earner. The concept of „m“ is part of the labour market reforms enhancing low-income employment and refers to employment with a regular wage between 450,01 € and 850 € per month, for which the wage earner is subject only to reduced social insurance contribution rates between 11% and 21%.

nately up to a specific income cap. The general social insurance rate is applied to a monthly gross wage of 850 € or more<sup>51</sup>. As the vast majority of lone parents do not earn more than average wages, they share, proportionally, a higher burden of social security contributions than high income earners. International comparisons have revealed that families in Germany face very high taxes and social insurance contributions. This is even more burdensome for lone parents in lower and middle income groups and one of the reasons that undermine their financial capacities to provide for their household needs appropriately (Lenze, 2014: 56 ff., 58 ff.). Comparative studies have pointed out that lone parents are extremely disadvantaged by the combined effects of payable taxes and social insurance contributions in Germany, while social welfare benefits do not eliminate their poverty rate (Lenze, 2014: 58 ff.; Bahle et al., 2013).

#### **4. Some Conclusions**

The socio-economic framework which determines the living conditions of lone parents and their children has undergone important transformations during the past decade (2004-2014). In Germany, the current increase in economic pressure on lone-parent families and persisting poverty risks are not the result of the international economic and financial crisis, or only to a small extent. They result from major transformations that occurred in two distinct policy fields: in maintenance/family law since 2008 and in labour market and welfare policies since 2005. The common mantra or guiding principle of both reforms can be identified as the enhanced obligation of self-reliance, self-responsibility, or self-sufficiency imposed on job-seeking and on divorced mothers.

It is, above all, the combined effects of both reform developments and interaction with other measures/interventions that increased economic pressure on lone-parent families, and even more so, in particular, on lone mothers and their children. Employment-related poverty risks have increased, on the one hand by the dismantling of welfare provisions, the promotion of low-income employment sectors, and the new basic income support scheme for jobseekers below subsistence level. Due to new restrictions in private maintenance support law (in interaction with tax law) lone-mother families now face a much higher risk of depending on basic income support. Spousal support is much more difficult

51 For reduced social insurance contributions in case of lower wage income see footnote 36.



to obtain today as divorced parents are no longer obliged to pay spousal maintenance to the parent who is the primary care of a child older than 3. Child maintenance obligations under family law have not been adjusted for several years, while the subsistence level amounts left to the non-resident parent obliged to pay maintenance for the child have been adjusted at a more regular pace. In addition, minimum child maintenance guarantees based on the law on advance maintenance payments have also been reduced by law or restricted by the judiciary (for example in situations of anonymous sperm donation).

Moreover, lone-parent families are often left behind when family benefits are expanded or new benefits are created, as in the case of the supplementary child benefit for low-income families. Access to benefits available to lone-parent families has been restricted, either by retrenchment policies adopted in the context of family benefits, unemployment and labour market policies, or by restrictive case law developments, as for example in case of shared care situations. Budgetary constraints have served many times as an excuse to refrain from benefit adjustments, but also from necessary adjustments in tax deductions in favour of lone-parent families. Compared to other European countries, lone parents in Germany pay a lot of taxes and social insurance contributions. The combination of unfair maintenance law, specific problems for lone mothers to reconcile care needs of their children and professional obligations, disadvantages deriving from tax law, and the interaction of different legal instruments and measures with the income support system for job-seekers add to the difficulties faced by lone-parent families. It is a shame that the existing legal and institutional framework still does not effectively address the poverty risks of such families, pays too little attention to the needs of the children growing up in these families, and does not acknowledge the huge efforts of these families to accomplish their parental tasks.

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