



Historical evolution and assessment of EU work-life balance policies

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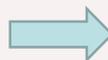


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1957



2017

Treaty of Rome

European Social Pillar

Article 119 EEC-Treaty

Many Treaty-provisions,
directives and case law

Equal Pay for Equal Work

Work-life balance on the EU
agenda and work-life
balance proposal



European Social Pillar

Principle 9 Work-life balance

Parents and people with caring responsibilities have the right to suitable leave, flexible working arrangements and access to care services. Women and men shall have equal access to special leaves of absence in order to fulfil their caring responsibilities and be encouraged to use them in a balanced way.



Outline

- The context: unequal division of work and care
- EU policies, legislation and case law
- The prohibition of direct and indirect sex discrimination
- Direct sex discrimination
- The Pregnancy Directive 92/85
- Indirect sex discrimination
- The Parental leave Directive 2010/18
- General principle of equal treatment
- Protection in relation to pregnancy and maternity versus parenthood
- Some concluding observations



Unequal division of work and care

Employment rate in the EU 2016 (15-64):

- Male employment: 71.9%, female 65.3%
- FTE : male 74.4%; female 56.3%
- Share of part-time employment: male 8.98%; female 31.9%

Much higher average number of unpaid working hours of women than men.

Working women spend 22 hours on unpaid work weekly, working men fewer than 10 hours weekly



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“What do you mean, you need to find a balance between work and family?
We consider you part of our family.”



EU legislation and case law

- Pay
- Equal treatment at work
- (Statutory) social security
- Self-employed
- Specific rights
 - Pregnancy and maternity
 - Parenthood



Prohibition of direct and indirect sex discrimination

- **Pay:** the principle of equal pay for equal work or work of equal value
 - Art. 157 TFEU (ex 119 EEC Treaty, 141 EC); Directive 75/117 repealed by the Recast Directive 2006/54
 - direct horizontal effect since 8 April 1976: *Defrenne II* (43/75).
 - example: Christmas bonus: *Lewen* (C-333/97)



Prohibition of direct and indirect sex discrimination

- **Equal treatment at work:**
Directive 76/207, amended by Directive 2002/73, both repealed by the Recast Directive 2006/54
- **Statutory social security:**
Directive 79/7
- **Occupational social security:**
Directive 86/378 repealed by the Recast Directive 2006/54
- **Self-employed:**
Directive 86/613 repealed by Directive 2010/41
- **Goods and services**
Directive 2004/113



The EU Charter of Fundamental Rights

- Chapter on equality: Articles 20-26
 - Art. 20: non-discrimination (any ground, includes explicitly sex)
 - Art. 23: Equality between men and women
 - Art. 33(2): Reconciliation of family and professional life
 - Protection against dismissal and maternity and parental leave



Direct (sex) discrimination

- Direct discrimination is defined as: ‘where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation’
- Prohibition of less favourable treatment in relation to pregnancy and maternity (e.g. Art. 2(2)(c) Directive 2006/54)
- Some case law:
 - *Dekker* (177/88), *Melgar* (C-438/99), *Gassmayr* (C-194/08), *Parviainen* (C-471/08)
 - In relation to parental leave: *Maïstrellis* (C-222/14)



Pregnancy Directive 92/85

- Aim: encourage improvements of health and safety of:
 - Pregnant workers
 - Workers who have recently given birth or
 - Are breastfeeding (Art. 2)
- Some relevant cases: *Mayr* (C-506/06); *Danosa* (C-232/09)



Pregnancy Directive 92/85 (cont.)

- 14 weeks maternity leave (Art. 8)
- Leave in relation to surrogacy: *CD* (C-167/12) and *Z.* (C-363/12)
- Payment or adequate allowance (Art. 11): *McKenna* (C-191/03); *Rosselle* (C-65/14)
- Period of parental leave preceding maternity leave: *TSN* (C-512/11)
- Holidays: *Merino Gómez* (C-342/01)



Protection against dismissal in relation to pregnancy

- Protection against dismissal from beginning pregnancy until the end of maternity leave (Art. 10, direct effect); *Melgar* (C-438-99)
- Applies also to fixed-term contracts: *Tele Danmark* (C-109/00)



- Art. 15 Recast Directive 2006/54
 - Return to own or equivalent job
 - Benefit from improvement in working conditions
 - *Napoli* (C-595/12)
- Proposal to amend the Pregnancy Directive COM (2008), 637 is withdrawn
- New proposal on work-life balance: COM (2017) 253



PERSONNEL SAY THEY CAN'T AFFORD TO FUND YOUR MATERNITY LEAVE, BUT THEY WILL BE ABLE TO SEND SOMEONE AROUND TO SAY 'OOOH, AAHH, WHO'S A LOVELY BABYKINS' AFTER THE CHILD IS BORN!





Indirect (sex) discrimination

- Indirect discrimination is 'where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary'
- Mobility: *Danfoss* (109/88)
- Comparability: *Österreichischer Gewerkschaftsbund* (C-220/02)
- Consistent and systematic manner in the light of the aim: *Leone* (C- 173/13)
- In relation to parental leave: *Rieznice* (C-7/12)



Parental Leave Directive 2010/18

- Framework Agreement
- Directive 96/34 was repealed
- Applies also to part-time workers, fixed-term workers and temporary agency workers
- Individual right, 4 months, not paid
- In principle non transferable
- Case law: e.g. *Meerts* (C-116/08) and *Lyreco* (C-588/12); *Gómez-Limón* (C-537/07)
- In relation to parental leave and probationary period: *H.* (C-174/16)
- Art. 16 Recast Directive 2006/54



Principle of equal treatment in the Charter

- Value of parental leave as a social right. Art. 33(2)
- CJEU in *Chatzi* (C-149/10):

‘observance of the principle of equal treatment, which is one of the general principles of European Union law and whose fundamental nature is affirmed in Article 20 of the Charter of Fundamental Rights, is all the more important in implementing the right to parental leave because this social right is itself recognised as fundamental by Article 33(2) of the Charter of Fundamental Rights’ (cons. 63).



CJEU on protection of mothers vs rights of fathers

- Protection of motherhood after birth: *Hofmann* (184/83): rights of fathers denied
- Reconciliation and link with equality between men and women: *Hill* (C-243/95), *Gerster* (C-1/95)
- Own rights of fathers: *Roca Álvarez* (C-104/09)
- Protection of mothers, only derived rights of fathers: *Betriu Montull* (C-5/12)



I told them I'd had
ENOUGH, that I couldn't
STAND the crushing hours
anymore, that I wanted to
spend time with my children...
How many have we got
by the way?



CJEU in surrogacy cases

- MS are not required to provide maternity leave to commissioning mothers, even if she does breastfeed the baby: *C.D.* (C-167/12) and *Z.* (C-363/12)
- No direct or indirect sex discrimination. Comparable situation of commissioning father and commissioning mother



Concluding observations

- Step-by-step process
- Declining scale of rights
- No paid parental leave (yet), would be a strong incentive for fathers. No rights to social security benefits in the Parental leave Directive 2010/18
- Potential role of the Charter
- No strong rights (yet) to flexible work arrangements or influence on working hours



Concluding observations (cont.)

- Protection of motherhood vs parenthood: divergences in case law
- Comparability issues
- The work-life balance proposal is an important step forward:
 - By emphasizing the role of men: paternity leave
 - By introducing a new carers' leave, also for seriously ill or dependent relative



Concluding observations (cont.)

- By introducing paid leaves
- By reinforcing the rights to flexible working arrangements of workers with care responsibilities
- Consistency with equal treatment provisions (e.g. protection against dismissal)



Concluding observations (cont.)

- However:
- The Pregnancy Directive remains unchanged
- No reference to CEDAW; no obligation to combat gender stereotyping (art. 5 CEDAW)
- Rather short leaves, in particular carers' leave
- Rather weak right to flexible work arrangements, no right to extend working hours
- No legislative proposals on childcare facilities
- No provisions on consequences for entitlements to (statutory) social security and (occupational) pensions, even in case of a temporary reduction working hours



Concluding observations (cont.)

- Piece meal approach
- Important step:
 - Paid leaves
 - Carers' leaves
 - Flexible working arrangements
- New challenges:
 - Importance of care
 - Avoiding loss of income



Thank you for your attention!





Some suggestions for further reading

- Sandra Fredman, "Reversing Roles: bringing Men into the Frame" 10 *International Journal of Law in Context* 442-459.
- Eugenia Caracciolo di Torella, "Brave New Fathers for a Brave New Word? Fathers as Caregivers in an Evolving European Union", (2014) 20 *European Law Journal* 88-106.
- Annick Masselot, Eugenia Caracciolo Di Torella and Susanne Burri, *Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood*, European Commission 2012,

http://ec.europa.eu/justice/gender-equality/files/your_rights/discrimination_pregnancy_maternity_parenthood_final_en.pdf



Further reading

- Aileen McColgan, European network of legal experts in gender equality and non-discrimination
Measures to address the challenges of work-life balance in the EU Member States, Iceland, Liechtenstein and Norway, European Commission, 2015,

<http://www.equalitylaw.eu/publications/thematic-reports>

- Reconciliation between work and private life
http://ec.europa.eu/justice/gender-equality/economic-independence/economic-growth/index_en.htm