Reconciliation of Private and Professional Responsibilities

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The problem

- Employment rates for men and women aged 15-64
  - 72.8% men
  - 59.1% women
- Part-time employment
  - 7.9% men
  - 31.1% women
- Employment rate for men and women aged 25-49
  - With children under 12:
    - Men: 91.6%
    - Women: 67%
  - Without children under 12:
    - Men: 84.8%
    - Women: 78.5%
Lack of care services

- 30% of working-age women who have care responsibilities in the EU...
  - are inactive or work part-time (but would like to work more hours)
- Below 10% in Netherlands, Sweden and Denmark
- Higher than 60% in Spain and Greece
- Higher than 80% in Latvia and Romania.
When do women prioritise private over professional responsibilities?

- Biological reasons
  - Pregnancy
  - Childbirth and recovery
  - Breastfeeding

- Societal reasons
  - Inflexible employment conditions
    - ‘Male’ norm
  - Social norms
  - No affordable, good quality alternative care services for:
    - Children under 12
    - Ill family member
    - Disabled family member
    - Elderly family member
Lack of public care services causes sex inequality when...

- It is more costly for the man than the woman in the family to give up the job or reduce working hours

- Costs:
  - Loss of wages
  - Loss of status, identity
    - Gender norms
Community Policy

- Resolution of European Parliament, OJ 184/116, 11.7.83
- Conclusion of the Council of the Ministers Responsible for Family Affairs, OJ C 277/2, 31.03.89
- Green Paper, European Social Policy: Options for the Union, 1993
- Council Resolution, June 6, 2000 on the Balanced Participation of Women and Men in Family and Working Life

- need for a global and integrated approach for reconciling family and working life as a right for men and women
- ...balanced participation of men and women in family and working life as one of the basic conditions for de facto equality
- ...grant working men an individual and untransferable right to paternity leave
- measures to encourage a balanced sharing between working men and women of the care to be provided for children, elderly, disabled or other dependent persons
- measures to encourage the development of support services for families

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Roadmap for equality between women and men – 2006-2010

• Flexible working arrangements for both women and men
  • Far more women than men make use of such arrangements, which creates a gender imbalance. It has a negative impact on women’s position in the workplace and their economic independence.

• Increasing care services
  • Barcelona targets: the provision of childcare by 2010 to at least 90% of children between 3 years old and the mandatory school age and at least 33% of children under 3 years of age

• Better reconciliation policies for both women and men
  • Men should be encouraged to take up family responsibilities, in particular through incentives to take parental and paternity leaves and to share leave entitlements with women
• Efforts to develop affordable, accessible and quality care services for children, in line with European targets, and other dependents should be continued and intensified.

• The agreement of the European social partners on parental leave shows progress in this area. Men should be encouraged to share parenting equally with women, and both women’s and men’s need to balance work and family life must be better recognised in the workplace.

• The economic downturn should not be used as a reason to cut budgets allocated to care services and leave arrangements...

• The proposals reviewing the two directives on maternity leave and rights of self-employed women need to be rapidly adopted by the EU legislators.
Relevant legal provisions

- Treaty
- Directives
- Recommendations
- Case law
Treaty Articles

- Article 2 TEU
  - EU values
- Article 3 TEU (ex Article 2 EC)
  - EU task
- Article 8 TFEU (ex Article 3(2))
  - Gender mainstreaming
- Article 19 TFEU (ex Article 13(EC))
  - Competence to adopt measures to combat discrimination
- Article 153 TFEU (Article 137 EC)
  - Shared competence with Member States regarding equality between men and women with regard to labour market opportunities and treatment at work
- Article 157 TFEU (Article 141EC)
  - Equal pay
Directives

• Equal Treatment Directive (recast) 2006/54/EC
  • Definition of discrimination, Article 2(2)(c)
  • Return from maternity leave, Article 15
  • Paternity and adoption leave, Article 16

• Biological characteristics
  • "Pregnancy Directive" (92/85/EEC)
      • presented by Commission on 3 October 2008,

• Social arrangements
  • Part-Time Work, Directive 97/81/EC
  • Safety and Health of Temporary Workers, Directive 91/383/EEC
  • Fixed Term Work, Directive 99/70/EC
  • Parental Leave, Directive 2010/18/EU
    • Revises and repeals Directive 96/34/EC
  • Temporary Agency Work, Directive 2008/104/EC
Pregnant Workers Directive

- Pregnant workers
  - right to 14 weeks leave
    - 4 of which must be mandatory
  - no right to pay during leave; only ‘adequate allowance’, to be determined by Member States
    - Can subject right to ‘adequate allowance’ to qualification period, to be determined by Member States (up to a year)
Parental Leave Directive

- Directive 96/34/EC
  - Individual right to unpaid parental leave
    - to look after a child for at least 3 months up until the age of 8 and for urgent family reasons.
    - in principle not transferable.
    - also leaves open the possibility to arrange the leave in a flexible way – i.e. full-time, part-time, fragmented or in the form of a time-credit system.
    - employee protection against dismissals on account of leave,
    - rights acquired by the start of leave remain untouched
    - continuity of social benefits is guaranteed. conditions for entitlement and access, the modalities of application and the period of notice to be given to the employer left to Member States. employer may postpone the granting of parental leave for ‘justifiable reasons’ to be defined by Member States

- New Directive 2010/18/EU
  - 4 months minimum – in principle to be provided on a non-transferable basis; ‘to encourage a more equal take-up of leave by both parents, at least one of the four months shall be provided on a non-transferable basis’.
  - Ensure that workers returning form parental leave may request changes to their working hours and/or patterns for a set period of time.

- Child care is essential to achieving equality
- In order to meet the needs of full-time employed parents, child care facilities should be complemented by ‘family friendly’ conditions of paid employment.
- Child care arrangements should be open to low income groups and should be of high quality.
- Ensure that due recognition is given to persons engaged in child-care services as regards the way in which they work and the social value of their work
Case Law – pregnancy and maternity leave

• Guiding principles:
  • Discrimination involves the application of different rules to comparable situations or the application of the same rule to different situations.
  • Pregnancy, childbirth, and breastfeeding cannot be compared with pathological conditions. They are *sui generis*.
  • Pregnant women, breastfeeding mothers are vulnerable and need special protection as compared with fathers.
Case law – Pregnancy – refusal to hire and dismissal

- Dekker, Case C-177/88 [1990] ECR I-3941
- Habermann, Case C-421/92 [1994] ECR I-1657
- Hertz, Case C-179/88 [1990] ECR I-3979
- Larsson, Case C-400/95, [1997] ECR I-2757
- Brown v Rentokil, Case C-394/96 [1998] ECR I-4185
- Mahlburg, Case C-207/98, [2000] ECR I-549
- Tele Danmark, Case C-109/00 [2001] ECR I-6933
- Busch, Case C-320/01 [2003] ECR I-2041
- Paquay, Case C-460/06 [2007] ECR I-8511
- Mayr, Case C-506/06 [2008] ECR I-1017 (in vitro fertilization)
- Pontin v T-Comalux, Case C-63/08 [2009], not yet reported in ECR
Case law – pregnancy and maternity leave – pay and employment conditions

- Gillespie, Case C-342/93 [1996] ECR I-475
- Boyle, Case C-411/96 [1998] ECR I-6401
- Lewen, Case C-333/97 [1999] ECR I-7243
- McKenna, Case C-191/03 [2005] ECR I-7631
- Herrero, Case C-294/04 [2006] ECR I-1513
- Kiiski, Case C-116/06 [2007] ECR I-7643
Case law – Men as caregivers

- *Commission v Italy*, Case C-163/82 [1983] ECR 3273
- *Hoffmann*, Case C-184/83 [1984] ECR 3047
Case law – flexible work arrangements

- Part-time work, equal pay cases (Bilka Kaufhaus line of cases)
- Hill and Stapleton, Case C-243/95 [1998] ECR I-3739 – job sharing (2 employees working same job, \( \frac{1}{2} \)-time)
Main principles regarding pregnancy-related refusal to hire and dismissal

• Refusal of employment and dismissal on account of the financial consequences of absence and/or unavailability for work due to pregnancy and maternity leave or other protective legislation constitutes direct discrimination on grounds of sex. (Dekker, Webb, Tele Danmark, Mahlburg, Busch)

• Period of protection from dismissal/refusal to hire extends from beginning of pregnancy to end of statutory maternity leave. (Hertz)
  • Applies to employer’s decision-making; time of notification of dismissal is irrelevant. (Paquay)

• Pregnancy is not in any way comparable with a pathological condition, and even less so with unavailability for work on non-medical grounds.
  • Qualified somewhat by Høj Pedersen and McKenna
Main principles regarding pay and employment conditions linked to pregnancy and maternity leave

- Minimum period of maternity leave provided by Pregnancy Directive (14 weeks preceding and after delivery) is an unconditional right. (Kiiski)
- Mandatory leave, and in some cases all of the 14-week-period, cannot be used as basis for disadvantageous treatment. (Thibault, Lewen, Herrero)
- BUT in matters of pay,
  - workers on maternity leave or absent because of pregnancy-related problems are not comparable with men at work or with workers on other sorts of leave; not entitled to same pay as men or persons on sick leave. (Boyle, Høj Pedersen)
  - Maternity leave may be used as basis for advantageous treatment of mothers as compared with fathers. (Commission v Italy, Hoffmann, Abdoulaye)
Main principles regarding men as caregivers

- Men are unsuccessful in obtaining rights to leave or compensation in connection with childcare on basis of sex equality arguments.
  - Relationship between mother and young children deemed “special” and delicate, in need of protection. (Commission v Italy, Hoffmann, Abdoulaye)
- Preference may be given to female employees for places in employer-provided childcare, because women more likely to give up work because of lack of adequate childcare, if male civil servants having sole responsibility for their children are allowed access to nursery places. (Lommers)