

Work-Life Balance in Europe

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Introduction

- A Right to Care: Unpaid Care Work in European Employment Law (OUP, 2011)
- Specific rights-based approach
- Compatibility with pre-existing EU law and policy framework
- Prominence of the Court of Justice's jurisprudence (past and future).

Framing Work-Life Balance

- Work and family reconciliation
- Work–Life Balance Package (COM(2008) 635) – ‘...combining the professional, private and family aspects of [our] lives’.
- Unpaid care/paid work conflict?

Unpaid Care

- Refers to informal care arrangements that take place within private households.
- Broad definition of care –
 - Provided for dependent child, sick or disabled adult or elder
 - Care relationship between parent/child, partners, close relative, extended family member or friend.
 - Must encompass the diversity of relationships that exists.

Effect of Care on Paid Employment

- Financial cost – e.g. loss of income, pension entitlement.
- Opportunity costs – e.g. promotional prospects, lack of mobility.
- Impact on individual's well-being – e.g. physical health, psychological effects, non-achievement of personal goals and aspirations.

Status of Care

- Excluded from regulation of (paid) work
- No market value?
- Gender dimension

BUT

- Care is a crucial aspect of human activity
- Its value should be recognised
- Participation in care relationships should be facilitated for *all*.

The Role of Law and Policy

- A. Supiot, Beyond Employment: Changes in Work and the Future of Labour Law in Europe (OUP, 2001)
 - Traditional exchange (subordination for security) has broken down
 - Time to renegotiate a new settlement for the regulation of work
 - Law is both a determinant and an expression of social relations
 - Implications for work-life balance?

The Policy Context

- Social v economic objectives
- Restricted competence in private/family matters
- Goal to increase (women's) employment rates
 - Lisbon (2000-2010) target to achieve female employment rate of 60%.
 - Europe 2020 Strategy: target rate of 75% for overall employment of workers aged 20–64⁰%.
- Globalisation and deregulation –
 - 'Flexicurity'

The Legal and Policy Provisions

- **Anti-discrimination laws**
 - Recast Directive 2006/54
- **Family-based rights**
 - Pregnant Workers Directive 92/85
 - Parental Leave Directives 96/34 and 2010/18
- **Regulation of working arrangements**
 - Part-Time Workers Directive 97/81
 - Fixed-Term Work Directive 99/70

Critique of Provisions to Date

- Lack of uniformity in standards
- Focus on job creation NOT improvements in job quality
- Flexibility for employers not workers
- Different (competing) goals
 - Gender equality/reconciliation of personal and professional life
 - Further integration of women into the labour market
- Lack of consistency and coherence due to the absence of a common ideology and unifying strategy.

The Charter of Fundamental Rights

- Primary aim –
 - To reaffirm and clarify the EU's commitment to democracy
- Article 33 on Family and Professional Life
 - '(1) The family shall enjoy legal, economic and social protection; (2) To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.'

The Charter of Fundamental Rights

- Text of Article 33 disappointing – merely codifies existing entitlement
- No new rights
- Leaves role of interpretation to the Court of Justice
- But, legal status and effect of Charter could be significant if read alongside wider policy and legal provisions of EU law.

The Charter of Fundamental Rights

- Legal status and prominence
- Consolidation of modern economic and social rights with traditional, established civil and political rights
- Identification of a unifying ideology and normalisation of social standards
- Impact on work-life balance?

Court of Justice's Jurisprudence

Post-Lisbon

- Human rights dimension promising – see Case C-159/10 *Fuchs and Köhler v Land Hessen*, (Judgment 21/7/11, nyr).
- CoJ willing to use the Charter provisions to bolster fundamental principles of EU law where conflict with secondary legislation – see Case C-236/09 *Association Belge des Consommateurs Test-Achats ASBL v Conseil des Ministres*, (Judgment 1/3/11, nyr).
- No cases (yet) on work-family balance - over to national advisers?