

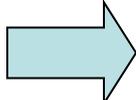
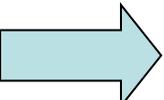
# Reconciliation of Work and Family Life in European Law



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12-13 November 2012



# What do we mean by reconciliation?

- Reconciliation of work and family life  
 **the need** to limit the involvement at work in order to be able to deal with family commitments
- Reconciliation of life and work  
 **the desire** to limit the number of hours of work

# Nice Charter of Fundamental Rights of the European Union

## Article 33 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.



# European Convention on Human Rights

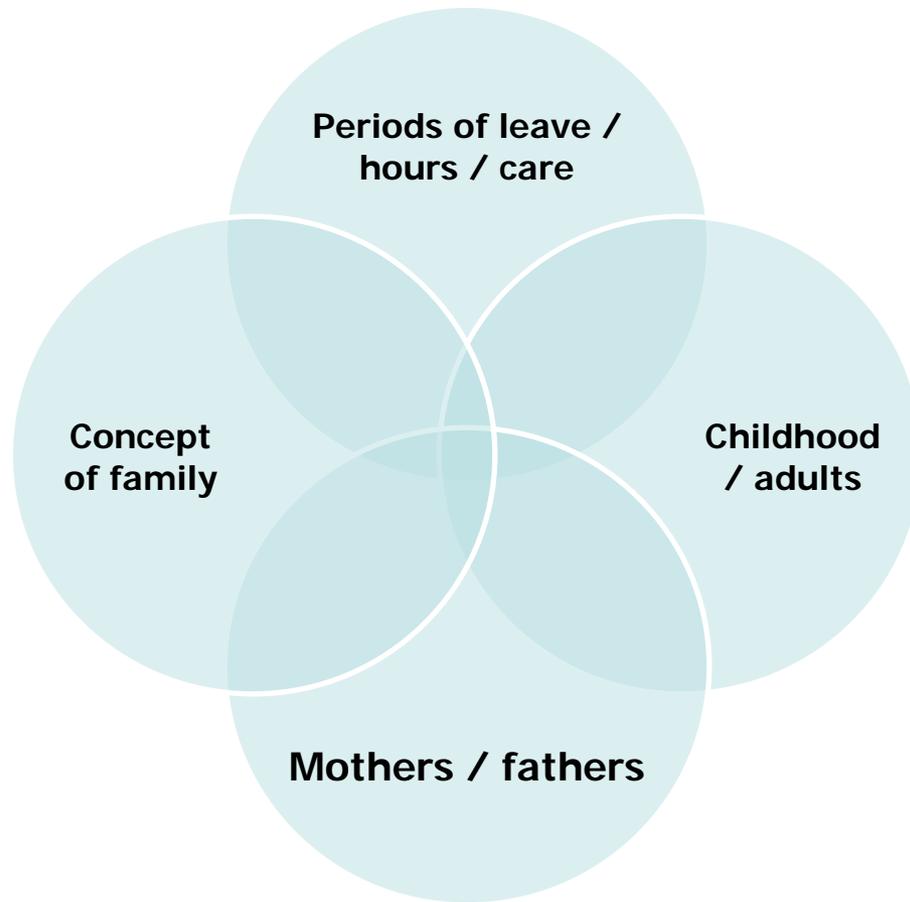
## Article 8 – Right of respect for private and family life

- 1 Everyone has the right to respect for his private and family life, his home and his correspondence.
- 2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

# Equality between Men and Women – 2010

## COM(2009) 694 final

A good work-life balance **for both women and men depends on modern work organisation, the availability of affordable quality care services, and a more equal sharing of family responsibilities and domestic tasks.** The possibility of reconciling work and family has a direct impact on women's employment and **positions in the labour market**, earnings and economic independence over the life-cycle. A major challenge is to focus on policies and incentives to encourage and enable men to take up more care and family responsibilities. Policies also need to take into account the increasing number of lone-parent households, mainly headed by women.



# Employment and equality: a few statistics

- Employment rate (15-64 age bracket)
  - 72.8% men
  - 59.1 % women
- Part-time work
  - 7.9 % men
  - 31.1 % women
- Level of employment (29-49 age bracket)
  - With children aged less than 12
    - 91.6 % men
    - 67.1 % women
  - With children aged less than 12
    - 84.8 % men
    - 78.5 % women

(Equality between Men and Women – 2010, COM(2009) 694 final)

# The legislative measures:

Periods of leave	Time spent working (hours)	Measures concerning care
Period of absence from work	Change in work timetables	Performance of work for the benefit of dependent individuals
<ul style="list-style-type: none"><li>• maternity leave</li><li>• paternity leave</li><li>• parental leave</li><li>• for reasons of <i>force majeure</i> or reasons connected with the family</li></ul>	<ul style="list-style-type: none"><li>• predetermined work times</li><li>• work by contract</li><li>• telework</li></ul>	<ul style="list-style-type: none"><li>• young children</li><li>• adults</li></ul>

# Directive 92/85/EEC

on improvements in the health and safety at work of pregnant workers and workers who have recently given birth or are breastfeeding



# Guarantees for the benefit of:

- a) every **pregnant worker** who **informs** her own employer of her condition in conformity with national legislation and/or practices;
- b) every **worker who has just given birth** within the definition of national legislation and/or practices and who informs her own employer of her condition in conformity with said legislation and/or practices;
- c) every **worker who is breastfeeding** within the definition of national legislation and/or practices and who informs her own employer of her condition in conformity with said legislation and/or practices.

## **Article 8: Maternity leave**

1. Member States shall take the necessary measures to ensure that workers within the meaning of Article 2 are entitled to a continuous period of maternity leave of a least 14 weeks allocated before and/or after confinement in accordance with national legislation and/or practice.
2. The maternity leave stipulated in paragraph 1 must include compulsory maternity leave of at least two weeks allocated before and/or after confinement in accordance with national legislation and/or practice.

# Art. 11: Employment rights

In order to guarantee workers within the meaning of Article 2 the exercise of their and safety protection rights as recognized in this Article, it shall be provided that:

1. in the cases referred to in Articles 5, 6 and 7, the employment rights relating to employment contract, including the maintenance of a payment to, and/or entitle an adequate allowance for, workers within the meaning of Article 2, must be ensured in accordance with national legislation and/or national practice;
2. in the case referred to in Article 8, the following must be ensured:
  - (a) the rights connected with the employment contract of workers within the meaning of Article 2, other than those referred to in point (b) below;
  - (b) maintenance of a payment to, and/or entitlement to an adequate allowance for, workers within the meaning of Article 2;
3. the allowance referred to in point 2 (b) shall be deemed adequate if it guarantees income at least equivalent to that which the worker concerned would receive in the event of a break in her activities on grounds connected with her state of health, subject to any ceiling laid down under national legislation;
4. Member States may make entitlement to pay or the allowance referred to in points 1 and 2 (b) conditional upon the worker concerned fulfilling the conditions of eligibility for such benefits laid down under national legislation.

These conditions may under no circumstances provide for periods of previous employment in excess of 12 months immediately prior to the presumed date of confinement.



# Limits to Directive 92/85

- Definitions
- Limited period of maternity leave
- Absence of measures governing the return from leave (but cf. Article 15 of Directive 2006/54)
- Absence of explicit principles in matters of remuneration
- No mention of paternity leave

# Proposed amendment

cf. Opinion of the European Economic and Social Committee regarding the proposal for a Directive of the European Parliament and Council amending Council Directive 92/85/EEC on the introduction of measures intended to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding

COM(2008) 637 final — 2008/0193 (COD) COM (2008) 637 final

# Directive 2010/18 EU on parental leave

**Directive 2010/18/EU** repeals and replaces the earlier directive 96/34/EC and, at the same time, it gives **legal effect** to the **framework agreement signed on 18 June 2009** by the European employers and employees through their inter-sectoral bodies (the European Trade Union Confederation, ETUC, and the employer organisations representing small and medium-size businesses, UEAPME, and public-sector businesses, CEEP, as well as **BUSINESSEUROPE** (formerly known as UNICE) in the presence of the European Commissioner responsible for employment, Vladimir Špidla).



- **It increases the duration of parental leave (on the occasion of the birth or adoption of a child),** which may be taken until the child reaches an age of not older than eight years, **extending the minimum of three months for each parent to a minimum of four months.** One of the four months is to be non-transferable from one parent to the other **(in order to safeguard the individual right).**
- **It recognises parents' rights to return to work after parental leave,** the possibility of asking for a defined period of adaptation of their working conditions (for instance, a flexible working timetable and/or organisation of professional life).
- **It grants greater protection** not only against dismissal but also against any unfavourable treatment associated with exercising the right of parental leave.

# Other important provisions in this matter:

Directive 76/207/EEC on equal treatment as regards working conditions, access to work, vocational training and promotion – amended by Directive 2002/73 and then incorporated in Directive 2006/54 (recast)

Directive 97/81/EC concerning the framework agreement on part-time work

Package of measures on reconciliation proposed by the Commission (2008)

# Case-law

**C-177/88 Dekker [1990] ECR I-3941**

*An employer is in direct contravention of the principle of equal treatment embodied in Articles 2(1 ) and 3(1 ) of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions **if he refuses to enter into a contract of employment with a female candidate whom he considers to be suitable for the job where such refusal is based on the possible adverse consequences for him of employing a pregnant woman, owing to rules on unfitness for work adopted by the public authorities, which assimilate inability to work on account of pregnancy and confinement to inability to work on account of illness. The fact that no man applied for the job is irrelevant.***

**C-421/88 *Hertz* [1990] ECR I-3979**

**C-432/93 *Gillespie* [1995] ECR I-4705**

**C-191/03 *McKenna* [2005] ECR I-7631**

**C-243/95 *Hill and Stapleton* [1998]**

*It must be borne in mind that all the parties to the main proceedings, and the national tribunal, agree that almost all job-sharing workers in the Irish public sector are women. It is apparent from the case-file that approximately 83% of those who chose that option did so in order to be able to combine work and family responsibilities, which invariably involve caring for children.*

C-460/06 *Paquay* [2007]

C-194/08 *Gassymar* [2010] ECR I-6285

C-471/08 *Parviainen* [2010] ECR-6533

C-149/10 *Chatzi*

# Role of fathers in European law

From case 184/83, *Hofman* [1984] 3047...

*Function of Directive 76/207*

*“protection” of the relationship between mother and child*



... through to case C-104/09, *Roca Alvarèz* [2011] I-08661,  
*the situations of a male worker and a female worker, or of a father and mother of young children, are strictly comparable from the point of view of the need to reduce daily working hours in order to have time to care for the baby.*

# Food for thought

- The *Roca-Álvarez* case is capitalising on a “**change in climate**”;
- It is proposing a new model of parenthood;
- It has an impact on the workplace atmosphere.

## **Directive 2006/54/EC (recast)**

### **Article 16 Paternity and adoption leave**

This Directive is **without prejudice** to the right of Member States to recognise distinct rights to paternity and/or adoption leave. Those Member States which recognise such rights shall take the necessary measures to protect working men and women against dismissal due to exercising those rights and ensure that, at the end of such leave, they are entitled to return to their jobs or to equivalent posts on terms and conditions which are no less favourable to them, and to benefit from any improvement in working conditions to which they would have been entitled during their absence.

# Some difficulties, however still remain

- Economic arguments
- Stereotypes
  - at the workplace
  - in the family
  - in society



*It is easier to  
split an atom  
than to dispel  
a prejudice.  
(A. Einstein)*

