

# Reconciliation of private and professional responsibilities

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## Overview

- Introduction
  - Aspirations, provisions, policies and challenges
- The legal framework
  - Equal treatment
  - Pregnancy and maternity
  - Parenting
- Progress?

## Introduction: a growing ambition

- Equal treatment
  - Formal equality
- A fundamental right
  - Pregnancy
- Special treatment
  - Maternity rights
- From mothers to parents
  - Parental leave
- Reconciliation of private and professional responsibilities
- Work/life balance

## Introduction: EU general provisions

### TEU: Art 3(3)

[The Union] ... shall combat social exclusion and discrimination and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child

### EU Charter of Fundamental Rights: Art 33

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.

## Introduction: ECJ jurisprudence

- **Gerster Case C-1/95**

*“The protection of women—and men—both in family life and in the workplace is a principle broadly accepted in the legal systems of the Member States as a natural corollary of the fact that men and women are equal, and is upheld by Community law.”*

- **Hill & Stapleton Case C-243/95**

*“Community policy in this area is to encourage and, if possible, adapt working conditions to family responsibilities.”*

## Introduction: EU policy

- **Increased employment**
  - Lisbon strategy 2000 – 2010
  - Europe 2020 Strategy
- **Gender equality**
  - Commission Strategy for Equality 2010-2015
- **Reconciliation of work and family**
  - Commission Communication: “A Better Work-Life Balance: Stronger Support for Reconciling Professional, Private and Family Life” October 2008
- **Accommodation of demographic change**
  - Council Conclusions: “Reconciliation of work and family life in the context of demographic change” June and October 2011

## Introduction: some challenges

- Economic growth v social rights
- Public/Private divide – limited EU competency
- Demographic change and diversity
- Gender gap – paid work and unpaid care
- Business needs v family needs
- Economic recession

## Achieving balance



*“Workers achieve work-life balance (WLB) when they reconcile the demands of their paid employment with those related to private and family life. The ideal WLB will be different for different people and may vary over a lifetime.”*

[Work-life balance, Library Briefing, Library of the European Parliament, 2013](#)

## The legal framework

- Gender equality
  - Art 157 TFEU (ex Art 141)
  - Equal Treatment Directive 76/207/EC - Equal Treatment Directive 2006/54/EC (Recast Directive)
- Parenting
  - Pregnant Workers Directive 92/85/EEC
  - Parental Leave Directive 2010/18/EU
- Work/Life balance
  - Working Time Directive 93/104/EEC
  - Part Time Workers Directive 97/81 EC

## Pregnant and equal ... sometimes

### **EQUAL TREATMENT**

*Dekker Case C-177/88*

*Webb Case C-32/93*

*Tele Danmark Case C-109/00*

*Busch Case C-320/01*

**A fundamental EU right?**

### **EQUAL PAY**

*Gillespie Case C-342/93*

*Boyle Case C-411/96*

**A welfare payment limited  
by Member States?**

## Gender equality or gender stereotyping?

- *Commission v Italian Republic* Case 163/82
- *Hofmann* Case 184/83
- *Abdoulaye* Case C-218/98
- *Lommers* Case C-476/99
- *Roca Alvarez* Case C-104/09
- *Betriu Montull* Case C-5/12

## Parenting

- Pregnant Workers Directive 92/85/EEC
  - Health and safety
  - Maternity leave
  - Protection against dismissal
- Parental Leave Directives 96/34/EC and 2010/18/EU
  - Framework agreement

## Pregnancy and maternity: some cases

- Personal scope  
*Mayr Case C-506/06*  
*Danosa Case C-232/09*
- Protection against dismissal  
*Paquay Case C-460/06*  
*Pontin Case C-63/08*
- Payment and progress  
*Gassmayr Case C-194/08*  
*Finnair Case C-471/08*  
*Napoli C-595/12*

## The special case of surrogacy

Equal treatment: *Z v Government department and board of management of a community school Case C-363/12*

- Sex?  
*“a commissioning father ... is treated in the same way as a commissioning mother ... in that he is not entitled to paid leave ...”*
- Pregnancy?  
*“A commissioning mother who has had a baby through a surrogacy arrangement cannot, by definition, be subject to less favourable treatment related to her pregnancy, given that she has not been pregnant with that baby.”*
- Disability?  
*“The concept of disability within the meaning of Directive 2000/78 presupposes that the limitation from which the person suffers ... may hinder that person’s full and effective participation in professional life on an equal basis with other workers.”*

## The special case of surrogacy

What's the purpose of maternity leave?: *CD v ST* Case C-167/12

1. To protect woman's biological condition during and after pregnancy
  2. To protect the special relationship between a woman and her child
- But 2 must follow 1.

## Pregnancy: a new directive?

- The proposal
- A difficult pregnancy
- [The final push?](#)



## Parenting: parental leave

- Parental Leave Framework Agreement

- Objective:

*“to improve the reconciliation of work, private and family life for working parents and equality between men and women with regard to labour market opportunities and treatment at work across the Union”*

## Parenting rights

- Parental Leave Directive 96/34/EC
- Parental Leave Directive 2010/18/EU –
  - All employees – all types of contract
  - Parental leave increased to 4 months
  - To encourage more equal take-up by both parents – at least one month should be non-transferable
  - MS to address specific needs of adoptive parents
  - Request change to working hours on return
  - Encourage contact during leave
  - The importance of pay?

## Parenting dilemmas

- Quality time
  - *Chatzi* Case C-149/10
- Parenting: a juggling act
  - *Kiiski* Case C-116/06
  - *Terveys* Cases C-512/11 and C-513/11
- The price of parenting
  - *Gomez-Limon Sanchez-Camacho* Case C-537/07
  - *Meerts* Case C-116/08
  - *Lyreco Belgium* Case C-588/12
  - *Riezniece* Case C-7/12

## Reconciliation of private and professional responsibilities

### Progress or the same old problems?

- Equal Treatment or Special Treatment?
- Responsive or Inconsistent?
- Flexibility or Insecurity?
- New families
- Reconciling work to the family or the family to work?