

Paid Domestic Work and EU Gender Equality Law

Dr. Vera Pavlou
Lecturer in Labour Law
University of Glasgow



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Outline

1. Importance of paid domestic work
2. The profile of paid domestic workers
3. Obstacles to gender equality at work: focus on selected areas
4. Role of EU law and EU institutions

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1. The importance of paid domestic work

- ▶ Persistent conflict between unpaid care and paid work
 - ▶ Culture of long working hours
 - ▶ Workplace expectations to be flexible and free of caring responsibilities
- ▶ Ageing of Europe's population
- ▶ Lack of publicly-funded care services, marketization of care
- ▶ Reliance on privately hired domestic workers as an essential strategy to manage the social reproduction crisis
- ▶ Key role for the sustainability of our families, communities and economies

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2. The profile of paid domestic workers

- ▶ Who is a domestic worker
 - ▶ ILO C.189 on Decent Work for Domestic Workers
 - Article 1(a) "domestic work means work performed in or for a household or households"
 - Article 1(b) "domestic worker means any person engaged in domestic work within an employment relationship"
- ▶ 67.1 million domestic workers globally (ILO, 2015)
- ▶ Mainly female workforce (83% according to the ILO)
- ▶ Migration dimension
 - ▶ Global care chains/care resource extraction
 - ▶ 2.5 million migrant domestic workers in Europe (ILO, 2015)

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2. The profile of paid domestic workers

- ▶ Snapshot of selected European countries
 - ▶ Spain: approximately 563 100 domestic workers in 2020 (Labour Force Survey), mostly women, large share of migrants, but also national women
 - ▶ Cyprus: important destination for migrant domestic workers, mainly third-country nationals. In 2020, 23 107 migrant domestic workers (Ministry of Labour statistics) which represents a share of 36% of all migrant workers in the country
 - ▶ UK: between 17 000 and 21 000 temporary migrant domestic worker visas granted every year. About 90 000 au pair visas at any given time according to estimates. Many EU and national workers providing domestic work in different modalities (private cleaners, babysitters, care workers for the elderly/disabled)
 - ▶ Sweden: growing sector of private companies providing cleaning, childcare and housekeeping services. Around 600-750 new work permits every year only for cleaners. Mostly migrants working as personal care assistants

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2. The profile of domestic workers and implications for equality

- ▶ Multiple forms of disadvantage that range from notoriously low wages, long and unregulated working hours, 'instant' dismissals, increased risk of harassment at work, pregnancy discrimination, difficulties to achieve work/life balance ...
- ▶ Lower legal protections, but also "unequal law of the private household" (Adelle Blackett, 2019)
- ▶ Significant obstacles to access redress mechanisms, especially for temporary migrant workers

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3. Obstacle to gender equality: focus on selected areas

- ▶ Freedom from harassment at work
 - ▶ Significant risk for live-in workers and those working in adult care
 - ▶ Migration status deters access to redress mechanisms
 - ▶ Important innovations in EU law: reversal of the burden of proof, protection against victimisation, creation of equality bodies
 - ▶ Often the problem is not the lack of incorporation into national law, but the lax enforcement of the law in practice
 - ▶ Cyprus equality body report in 2019
 - ▶ Widespread practice of victimisation
 - ▶ Expulsion of third-country nationals who filed complaints

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3. Obstacle to gender equality: focus on selected areas

- ▶ Protection against pregnancy/maternity discrimination
 - ▶ Broad personal scope of Article 10, Pregnant Workers Directive
 - ▶ Gap between law in the books and law in practice
 - ▶ Preventive protection against dismissal? C-103/2016 *Porras Guisado*
 - ▶ How are Member States complying?
 - ▶ Important to restrict the employer's managerial prerogative
 - ▶ Free and simplified extrajudicial mechanisms for affected workers and administrative fines for unscrupulous employers
 - ▶ Preventive measures are key for women in precarious, non-unionised jobs

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3. Obstacle to gender equality: focus on selected areas

- ▶ Combining paid work with unpaid care
- ▶ Work-Life Balance Directive
 - ▶ Paternity, parental, carer's leave
 - ▶ Application to domestic workers?
 - ▶ In principle, the Work-Life Balance Directive has a broad personal scope, reference to the CJEU's jurisprudence on the notion of 'worker'
 - ▶ A straightforward inclusion of domestic workers would have pre-empted their exclusion from national implementing measures
 - ▶ Interestingly, the Directive on Transparent and Predictable Working Conditions makes a reference to domestic workers being potentially included

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3. Obstacle to gender equality: focus on selected areas

- ▶ Discriminatory dismissals
 - ▶ Fear of dismissal instigates a 'profound sense of insecurity' (Lydia Haye's socio-legal study on care workers in the UK)
 - ▶ Protection against dismissal as a vehicle to ascertain other fundamental rights at work
 - ▶ Legal obstacles common to many atypical workers (employment status, qualification periods)
 - ▶ Lower protection against dismissal for domestic workers in some jurisdictions reflecting a societal expectation for high level of trust between employer and domestic worker (but, it is one-sided)

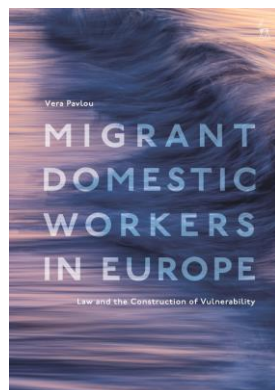
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4. The role of the EU and its institutions

- ▶ ILO C.189 on Decent Work for Domestic Workers created a much-needed global impetus to scrutinise domestic workers' treatment
- ▶ Council Decision in 2014 authorising Member States to ratify European Parliament Resolution in 2016 on domestic workers and carers
- ▶ FRA issued a number of reports
- ▶ Areas of EU law with significant potential to challenge domestic workers' inequality, such as working time
- ▶ Updated and comprehensive analysis of domestic workers' conditions, including in key equality areas
 - ▶ Knowledge exchange on innovative practices
 - ▶ Clarification of which EU social/equality law sources apply to domestic workers
 - ▶ Identifying mismatches as a tool shaping reform claims
 - ▶ Identifying areas for future regulation, including by the EU

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<https://www.bloomsbury.com/us/migrant-domestic-workers-in-europe-9781509942398/>



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Thank you!

E-mail: Vera.Pavlou@glasgow.ac.uk