



# The approach of EU labour law in redressing the problems of working parents and carers

Aleksandar Ristovski <sup>1</sup>  Todor Kalamatiev <sup>1</sup> 

## ABSTRACT

The conflict between employment and family responsibilities, that is, private life in general, is regarded as one of the most pressing concerns of labour law over an extended period. In the context of increasing participation of women in labour markets, ageing of the population and changes in the archetypal forms of employment relationships and families, the issue of reconciling work with family life, i.e. maintaining the work-life balance, affects all social actors: workers, employers and governments. In light of this, the paper first analyses the EU policies and legislative measures related to the special protection of women in relation to pregnancy and maternity, including the right to maternity leave. Additionally, it addresses the special rights of working parents, including the right to parental leave for both men and women workers. Finally, the paper looks at the most recent EU Directive on Work-Life Balance of 2019, providing a critical review of both the newly introduced rights in the Directive, such as paternity and carers' leave, and the already established rights of parental leave and flexible working arrangements.

## KEYWORDS

reconciliation of work with family life, pregnancy and maternity rights, rights of working parents and carers, work-life balance

<sup>1</sup>Ss. Cyril and Methodius University, Justinianus Primus Law Faculty in Skopje, North Macedonia

## Correspondence:

Aleksandar Ristovski,  
Ss. Cyril and Methodius University, Justinianus Primus Law Faculty in Skopje, North Macedonia

## Email:

[a.ristovski@pf.ukim.edu.mk](mailto:a.ristovski@pf.ukim.edu.mk)

## 1 INTRODUCTION

The relationship between work and family life has traditionally been characterized by greater or lesser mutual incompatibility, as meeting the demands of one side makes it difficult to meet the demands of the other (Greenhaus and Singh 2004). If such incompatibility is termed “conflict”, a logical concept through which solutions should be sought to reduce or eliminate said conflict is the concept of “*reconciliation*” between work and family life. In that regard, it can be defined as a “dynamic set of policies and legal provisions that address the inherent conflicts in juggling work commitments and family responsibilities” (Caracciolo di Torella and Masselot 2010). If, on the other hand, the incompatibility between work and family responsibilities is termed “imbalance”, the usual policy and regulatory responses can be sought through a concept called “*work-family balance*”. Regardless of whether the applied conceptual framework emphasizes the notion of “conflict” or “imbalance”, the addressed questions remain essentially the same — how to reconcile, i.e. balance the tensions, that is, the problems that professional obligations cause to family responsibilities regarding the care of dependent children and other family members who need care (Hein 2005), which, in turn, may limit preparation, entering, participation and advancement in economic activities (International Labour Organization 2023). However, limiting the scope of the concept of reconciliation, i.e. balance to the relationship between work and family life, would unjustifiably exclude different personal lifestyles of workers (Kalamatiev and Ristovski 2017). Hence, theory and regulatory frameworks are already beginning

to replace the narrower term “work-family balance” with the more inclusive term “*work-life balance*”, which, in addition to traditional family responsibilities, is also aimed at non-family responsibilities and requirements, such as study, commitment to travel or the like (Brough et al. 2020). Yet, despite the potential to encompass wider non-family responsibilities and demands of working people in general, it seems that the concept of work-life balance still primarily addresses the family responsibilities and demands of working parents and only then of working carers. Hence, this paper, to the greatest extent possible, analyses the issue of reconciliation, that is, the balance between work and family life.

In a historical context, the emergence of the problem of reconciliation, that is, the balance between work and family, is usually associated with the transition from an agrarian to an industrial society and the separation of the house from the workplace (Hein 2005). This leads to drawing clear boundaries between the two spheres of social life: public or employment and private or family. In the dichotomy of the two spheres, men have traditionally dominated the public sphere and employment, while women have traditionally been excluded or marginalised from labour markets and directed to unpaid care work within families (Hayes 2017). Cultural understandings of the role of men, i.e. fathers, and women, i.e. mothers, were embedded in the so-called “gender contract” defined as a normative and material basis around which sex/gender divisions of paid and unpaid labour operate in a given society (Rubery 1998). The gender contract determined the role of *men as family breadwinners* who establish a standard employment relationship and earn a family wage and *women as*

*family caregivers* who perform unpaid care work and possibly earn a secondary wage (Vosko 2006). The feminization of labour and the gradual integration of women from unpaid work in families to paid employment in the labour markets which gained momentum during the 60s of the last century, inevitably began to affect the gender contract (Fudge and Owens 2006; Fudge 2014), replacing the traditional “male breadwinner/female caregiver” with a “male and female (double) breadwinners/female caregiver” model (Kalamatiev and Ristovski 2014). However, the situation has, for the most part, remained unchanged because women not only have continued to bear the lion’s share of unpaid care within families, but it has also been expected of them to be productive workers who contribute both to the economy of the country and the well-being of the family.

In an EU regulatory context, the issue of reconciliation was first placed on the agenda of the European Communities through the adoption of the Social Action Programme in 1974. For more than two decades, until the entry into force of the Treaty of Amsterdam in 1997, measures and policies for reconciling work with family life in the European Community/European Union were mainly developed within different regulatory contexts, such as the equal opportunities, employment policy, improving labour markets, family relationships and training and education (Bercusson 1996). During this period, several directives were adopted that directly or indirectly affected the issue of reconciling work with family life, including the Directive on Equal Treatment of Men and Women (Directive 76/207 1976), the Pregnant Workers Directive (Directive 92/85 1992), and the Parental Leave Directive (Directive 96/34 1996). A com-

mon denominator of these instruments, in essence, is their orientation towards a single direction: to prohibit discrimination against women in employment but also to adapt their work to the traditionally predetermined responsibilities in the family. Hence, two key criticisms are attributed to them: the first refers to the problem of stereotyping the role of women, and the second refers to the tendency to cover only the care of children, but not of other dependent persons, including adult family members (Davies 2009).

After the Amsterdam Treaty, which strengthened the concept of gender equality by transforming policies prohibiting discrimination into policies promoting equal opportunities, reconciliation measures have taken a different course towards a human right that belongs equally to working mothers, fathers and carers in general. Confirmation for such a course can be found in the Charter of Fundamental Rights of the EU (2000 Art. 33, 2), through which the right to reconcile professional and family life has been raised to the level of a fundamental human right. Among other things, various soft law measures, such as the Resolution on the balanced participation of women and men in family and working life from 2000 and the Work-Life Balance Package from 2008<sup>1</sup>, but also certain directives, such as the Recast Directive on equal treatment of men and women in matters of employment and occupation (Directive 2006/54 2006)

<sup>1</sup> This Package, among other things, provided for Proposals for amendments to existing directives such as the Directive for self-employed workers (Directive 86/613 1986) and for pregnant workers (Directive 92/85 1992). While amendments to the first Directive were successfully adopted through Directive 2010/41 (2010), attempts to amend the second Directive failed and were withdrawn in 2015.

and the Parental Leave Directive (Directive 2010/18/2010) repealing and replacing the eponymous Directive of 1996, have been adopted. All the while, the affluent case law of the Court of Justice has played a huge role. The most recent stage in the development of measures and policies to reconcile work with family, i.e. private life, was marked by the adoption of the European Pillar of Social Rights (2017). It provided a new impetus in the development of such measures and policies, and under its auspices, a new Directive on Work-Life Balance for Parents and Carers was finally proposed. The new Directive was adopted in 2019, repealing the previous Parental Leave Directive from 2010. Directive 2019/1158 (2019) represents the first legal instrument that explicitly addresses the issue of work-life balance as a stand-alone concept and puts care and care-related responsibilities on the EU agenda (Caracciolo di Torella 2020). However, despite strengthening existing rights (such as parental leave and flexible working arrangements) and introducing new ones (such as paternity and carers' leave), this Directive is not immune to certain criticisms regarding the (un)realized potential for meeting the ideal of substantive gender equality and for more comprehensive regulation of the issue of providing care to a broader scope of dependent persons.

## **2 SPECIAL PROTECTION OF WOMEN IN RELATION TO PREGNANCY AND MATERNITY**

Modern instruments that regulate the protection of women in the field of employment no longer speak of the protection of employed women as a special category of workers in need of special protection because such an approach is

now perceived as a form of disguised or "benign" discrimination, having adverse effects on equality of opportunity in employment (Birk 2007). Instead of special measures for their "general" protection as women, female workers enjoy special protection in exceptional cases such as pregnancy and maternity. However, the issue of determining the point where special protection ends and discrimination against women (Grgurev 2014) or violation of equal treatment in relation to men begins is a complex issue. In EU law, pregnancy and maternity rights are addressed through various instruments that establish a complex horizontal linkage. On the one hand, there are the directives in the field of equal treatment and opportunities, of which the Equal Treatment Directive (Directive 76/207/1976), including its amendments by Directive 2002/73 (2002) and Directive 2006/54 (2006), are of particular importance, and on the other hand the Directive 92/85 (1992).

The equality directives have had a significant role in protecting and improving the position of women in employment in cases of pregnancy and maternity, both before and after the adoption of the Pregnant Workers Directive. Their impact is particularly notable in several cases before the Court of Justice concerning pregnant women, related to prohibition of discrimination in entering into employment (e.g. the "Dekker" case, C-177/88 1990), protection in case of non-renewal of a fixed-term employment contract due to pregnancy-related reasons (e.g., the "Melgar" case, C-438/99 2001), etc.

In other cases, the application of the equality directives is interpreted in the direction of limiting such protection. Such are, for example, the cases based on absences from work due to

pregnancy-related illness, which refer to the admissibility of giving notice of dismissal after the end of maternity leave or the payment of a reduced salary during pregnancy or after returning from maternity leave.<sup>2</sup> The insufficiently clear boundaries and the “built-in conflict” between the right to special protection which pursues substantial gender equality and the formal equality of treatment of men and women, can also be considered through the prism of the potential clash between the context of safety and health at work (predominantly represented in the Pregnant Workers Directive) and the context of equal treatment (arising from the Equality Directives). In that regard, what is interesting but also contradictory is the approach of the Court of Justice concerning the legal treatment of the said issues related to the protection against dismissal and the payment of women during pregnancy and maternity and especially in cases of absence from work due to illness related to pregnancy. The Court, on the one hand, justifies the special protection of women from dismissal for the duration of the entire period of pregnancy and maternity leave, *inter alia*, for the purpose of protecting their physical and mental state, including the protection of pregnant women from the risk of voluntary termination of pregnancy that may be caused by the threat of dismissal.<sup>3</sup> However, on the other hand, the Court considers that the stress suffered by the reduction of the worker’s salary during pregnancy or maternity leave cannot be compared to the stress related to the termination of her employment contract.

<sup>2</sup> See “Hertz” Case, (C-421/88 1990); “Larsson” Case, (C-400/95 1997); “McKenna” Case, (C-191/03 2005), etc.

<sup>3</sup> See “Brown” Case, (C-394/96 1998).

## 2.1 SPECIAL PROTECTION OF WOMEN IN RELATION TO PREGNANCY AND MATERNITY UNDER THE EQUALITY DIRECTIVES

The original text of Directive 76/207 (1976) does not provide for special provisions, i.e. positive rights for women in relation to pregnancy and maternity, but rather refers to their protection as an *exception* to the principle of equal treatment of men and women. A more detailed explanation of the justification for such an exception, i.e. different treatment, is given by the Court of Justice in the “Hofmann” case, where it refers to two legitimate goals of the protection of pregnancy and maternity, namely: 1) the protection of a woman’s *biological condition* and 2) the protection of the *special relationship between a woman and her child* (C-184/83 1984).

It is also a difficult challenge to “adjust” pregnancy and motherhood as unique conditions in which only women can be found to the usual formula for coping with discrimination based on the existence of a “comparator” (Ellis and Watson 2012). The literal application of the concept of equal treatment by comparing the condition of a pregnant woman who has recently given birth to a similarly situated male comparator is an artificial legal exercise (Barnard 2012).

The first significant judgment through which the Court of Justice addressed this impracticality was the “Dekker” case. The Court ruled that since pregnancy only affects women, decisions made on the ground that a woman is pregnant are a form of sex discrimination without the need to make comparisons. This approach is also confirmed by Directive 2002/73 (2002 Art. 2, 7) and further by Directive 2006/54 (2006 Art. 2, (2), c.). The difference between the Directives

2002/73 (2002) and 2006/54 (2006) is that the former retains a passive approach to regulating the special protection of women during pregnancy and maternity as an exception to the principle of equality using the formula that *“the Directives shall be without prejudice to provisions concerning the protection of women, particularly as regards pregnancy and maternity”*, while the latter abandons such a formula by which approaches the ideal of substantial gender equality.

## **2.2 SPECIAL PROTECTION OF WOMEN IN RELATION TO PREGNANCY AND MATERNITY WITHIN THE FRAMEWORK OF THE DIRECTIVE ON PREGNANT WORKERS**

The Pregnant Workers Directive (Directive 92/85 1992) was adopted as the tenth individual directive of Directive 89/391 (1989) on the general framework for the safety and health of workers at work (Blanapin 2013). It is based on the assumption that employed expectant and new mothers must be considered a particularly sensitive risk group and protected against the dangers which specifically affect them. However, despite the principal role of the safety and health regulatory context, the Directive does not neglect the context of equal treatment either (Kenner 2003).

Directive 92/85 (1992) contains definitions for the terms “pregnant worker”, “worker who has recently given birth”, and “worker who is breastfeeding”, but a closer explanation of the concept of “pregnancy” and the personal scope of the Directive can be found in the jurisprudence of the Court of Justice. Thus, in the “Danosa” case (C-232/09 2010), the Court stated that as a (subordinated) worker and in that sense, a “pregnant worker”

can also be considered *a member of the board of directors of a company*, who in return for remuneration, provides services to the company, under the direction or control of another body of that company.

In the “Kiiski” case (C-116/06 2007), on the other hand, the Court expands the scope of Directive 92/85/EEC also in relation to *“workers who are on childcare leave”* at the time they seek to rely on the rights granted by the Directive, such as the right to maternity leave. Finally, in the “Mayr” case (C-506/06 2008), in addition to indirectly addressing the question of the personal scope of the Directive, the Court also addressed fundamental questions such as what constitutes pregnancy and when it can be considered to have begun. In this regard, it ruled that the term “pregnant worker” does not include a worker who, despite having had a successful in vitro fertilization (IVF) procedure resulting in the creation of embryos, at the time she requested dismissal protection stating that she was pregnant, the embryos were still not implanted in her uterus. The provisions of the Directive, whose primary and predominant purpose is to protect the health and safety of employed expectant and new mothers, cover a wide range of issues, including, among much else, employers’ obligations related to assessment of specific risks, taking occupational health and safety measures and informing the workers and/or their representatives of the results of those activities; adjusting the working conditions including hours of work of the workers, taking necessary measures to move the worker to another job or granting leave in order to protect her safety or health (Art. 3 – 6).

Pregnant workers are also entitled to paid time off in order to attend ante-natal examination (Art. 9). What is

also interesting is the issue of the regulation/restriction of night work for women in general, that is, for pregnant women and mothers in particular.<sup>4</sup> The Directive does not introduce a general ban on night work for pregnant workers, workers who have recently given birth or are breastfeeding, but in order to protect their safety and health, it requires taking into account their individual medical condition and the lack of constraint to perform such work, if it would constitute a risk for the women or the child (Kovacs and Heissl 2015). In comparative law, the types of regulatory frameworks on night work performed by pregnant workers or mothers vary from the general prohibition or prohibition with broad exceptions to the permission with restrictions (Birk 2007).

One of the most significant rights from the Pregnant Workers Directive is the right to maternity leave during a continuous period of at least 14 weeks (Directive 92/85 1992 Art 8, 1). The Directive implicitly distinguishes two periods of leave resulting from the total maternity leave: compulsory leave of at least two weeks and optional leave up to the remaining 14 weeks. Compulsory leave is considered a non-waivable period of leave, while the use of the optional leave depends on the woman's personal choice, but in any case, the employer is not allowed to put pressure on the woman to waive her right

to the full length of leave (Kovacs and Heissl 2015). Member States may provide that the period of maternity leave commences with the date notified by the person concerned to her employer, including the day on which the child is born (C-411/96 1998).

Directive 92/85 (1992) also contains certain rights that are related but, at the same time, can be considered to be beyond the narrower context of safety and health at work. They refer to the *prohibition of dismissal* and the *exercise of employment rights*. The prohibition of dismissal includes the period from the beginning of pregnancy to the end of maternity leave. Exceptions to this prohibition may be allowed only in exceptional cases not connected to the worker's condition and if they are acceptable under national law, and where applicable, followed by consent of competent authority (Art. 10). As "exceptional cases" that justify dismissal, cannot be considered the cases where a pregnant worker *is not available to perform her duties* during the period for which she is needed, regardless of whether the main reason for her initial employment was a replacement for another worker who uses maternity leave (C-32/93 1994) or because the worker concluded a fixed-term employment contract (C-109/00 2001).

Finally, in "Paquay" (C-460/06 2007), the Court extends the protection against dismissal to those cases in which the employer takes preparatory steps for dismissal on the grounds of pregnancy or of birth of a child, such as recruiting a permanent replacement for the concerned employee, before the end of that period. EU Member States are not obliged to provide a specific list of exceptional cases justifying the dismissal of a worker during pregnancy or maternity

<sup>4</sup> Today, the general ban on night work for women cannot be considered an exception to the principle of non-discrimination, but on the contrary, a violation of this principle since night work has equally harmful consequences for workers of both sexes. Only the prohibition that covers women in cases of pregnancy and maternity is considered a permissible exception, based on the assumption that working at night poses a serious risk to their health but not to the health of women in general (Kovačević 2021).

leave, but examples of such cases could be the following ones: force majeure situation which permanently prevented a person from working, collective redundancy, gross violations of contractual or other legal obligations of the employee, complete and permanent loss of the capacity to perform the agreed work, etc (Ellis and Watson 2012; Kovacs and Heissl 2015).

Concerning *employment rights*, Directive 92/85 (1992) firstly obliges the Member States to guarantee workers who, for reasons related to the protection of safety and health, are forced to work under modified working conditions, to another job, or to be exempted from work, the exercise of the employment rights relating to the employment contract including the maintenance of payment to, and/or entitlement to an adequate allowance. During maternity leave, on the other hand, the workers should receive either *payment or an adequate allowance*, which is at least equivalent to that which they would receive in case of sick leave. In both cases, the exercise of the entitlements may depend on the fulfilment of eligibility conditions, which, by no means, may require previous employment longer than 12 months counted from the date of confinement (Art. 11).

### **3 THE POSITION OF WORKING FATHERS AND THE RIGHTS OF WORKING PARENTS**

For many years, the position and role of fathers in EC/EU policies and measures to reconcile work with family life were essentially neglected. Interestingly, this situation was “bolstered” by certain judgments and interpretations of the Court of Justice that strengthened the gender division of the roles of women

(as primary caregivers) and men (as primary breadwinners) even further.<sup>5</sup> However, over time, the Court, has started to examine whether a period of leave is genuinely designed to protect women who have just given birth (Davies 2012), or it refers to the need of longer-term care for children which can be provided by both parents. Thus, in the “Roca Alvarez” case (C-104/09 2010), a subject of assessment by the Court of Justice was a leave scheme for feeding babies in Spain, allowing each parent one hour of leave from work until the child was nine months old. Such a right to leave was granted to all employed mothers (regardless of whether the fathers of the children have the status of employees) but only to the employed fathers (if the mothers of the children have the status of employees). The Court held that such a situation perpetuates a traditional distribution of the roles of men and women regarding their parental duties, and on that view, the leave should be afforded to men on the same terms as it was afforded to women.

The involvement of fathers in policies and measures to reconcile work with family life usually appears in two forms: paternity leave and parental leave (Caracciolo di Torella and Massetot 2010). The right to paternity leave was beyond the regulatory framework of EU labour law for many years.<sup>6</sup>

<sup>5</sup> See “Hofmann” case (C-184/83, 1984); “Abdoulaye” case (C-218/98, 1999).

<sup>6</sup> It should be noted that the first draft of the Pregnant Workers Directive provided for two unpaid days of paternity leave related to the birth of the child. However, such a proposal was not only not included in the adopted and still existing Directive of 1992 but was also not included in the Proposal for its amendment of 2009, which was also never adopted. Paternity leave is for the first time introduced and regulated by Directive 2019/1158 (EU) on Work-Life Balance from 2019.



It is mentioned only in two instruments in the field of equality – Directive 2002/73 (2002 Art. 2, 7) and Directive 2006/54 (2006 Art. 16). These instruments, however, do not provide for the right to paternity leave as a positive right granted for fathers. They merely provide the same level of protection of paternity and adoption leave compared to maternity leave if Member States have already established such rules in national legal systems. This means that fathers' rights within the framework of the Equality Directives have the status of "optional" and not "individual" and thus mandatory rights for the Member States (Caracciolo di Torella 2017).

On the other hand, parental leave is granted to both parents to enable them to take care of their child (C-519/03 2005). This right was regulated for the first time by the Directive 96/34 (1996). It introduced an individual right to at least three months of parental leave on the grounds of the birth or adoption of a child to both men and women working parents (Clause 2, 1) and provided for the right to take time off in the event of sickness or accident for urgent family reasons to all workers (Clause 3, 1). If Directive 96/34 (1996) is the first directive adopted by means of social dialogue implementing a Framework Agreement between the representative social partners at the Union level, after the amendments to the Agreement of 2009, Directive 2010/18 (2010) (repealing Directive 96/34 1996) also, adopted through social dialogue, is the first directive implementing a revision of a Framework Agreement (Houwertzijl 2015). Directive 2010/18 (2010) has been repealed and replaced by the most recent Work-Life Balance Directive 2019/1158, which will be specifically addressed in the next section of this paper.

Considering the continuity between the two directives, below, we refer to the key rights covered by Directive 2010/18 (2010) in the context of reconciling work with family and private life.

The first is the *right to parental leave* for the birth or adoption of a child guaranteed in order to take care of the child. It was provided as a right that is granted to each parent (man or woman worker) for at least a period of four months, with the possibility of being used up to the child's eight-year-old age (Clause 2, 1). On the one hand, in order to promote equality, the Directive defined it as "in principle" non-transferable right, but on the other hand, it stipulated that at least one of the four months is non-transferable in order to encourage equal use of the leave by both parents (Clause 2, 2). The formulation of the right to parental leave as an "in principle" non-transferable right allowed Member States to deviate from the non-transferability rule (of course, with the exception of one of the four months granted to each of the parents) depending on the modalities of application set down at the national level.<sup>7</sup> In none of its provisions, Directive 2010/18 (2010) established that the right to parental leave must be paid.

The second right is the right *to request changes to the working hours and/or patterns* after the return of a worker from parental leave. This right created an obligation for the employer to consider and respond to the worker's request, taking into account both his and the worker's needs (Clause 6, 1). The Directive drew inspiration for the introduction of this right from the statutory right of

<sup>7</sup> The freedom to deviate from the principle of non-transferability may be justified by certain objective reasons, such as when the parents are divorced or separated or when one of them is unable to work or deceased (Houwertzijl 2015).

employees with young children or children with disabilities to request flexible work arrangements in UK employment law (Sargeant and Lewis 2010). In any case, the right to request changes in working hours and/or patterns did not guarantee the worker that the requested changed terms would be approved, but merely that he/she had the right to request them (Barnard 2012). The other limitation stems from the fact that the right to request changes is not a free-standing right, which means that the worker can only exercise it when returning to work after previously taking parental leave (Davies 2012).

Finally, the third right is the *right to time off from work* on grounds of force majeure for urgent family reasons in cases of sickness or accident (Clause 7, 1). Its significance lies in the fact that it applies not only to working parents but to all workers. This means that the right is not only intended for urgent situations related to the care of children by parents but, indirectly, it can also cover other persons (for example, a partner, an elderly, or another dependent relative).

#### **4 WORK-LIFE BALANCE DIRECTIVE AND ITS IMPORTANCE FOR PARENTS AND CARERS**

The policies and legal measures for reconciling work with family, i.e. private life, reach their last and most recent stage with the adoption of Directive on Work-Life Balance for Parents and Carers 2019/1158 (Directive 2019/1158 2019). With the explicit mention of “carers” already in its title, this directive no longer views the issue of “reconciliation”, i.e. “balance” just as a problem of women or parents, but as something that is expected to affect most workers through-

out their professional life (Caracciolo di Torella 2020).<sup>8</sup> The main objective of the work-life balance policies, and therefore, of the Directive itself, remains gender equality which could be achieved, inter alia, by promoting the participation, equal treatment and opportunities of women in employment and the equal parenting between men and women (Recital 6). In that regard, the Directive not only strengthens the existing rights of working parents but also introduces new ones for working fathers and carers in general, with the aim of improving their work-life balance and preventing them from leaving the labour market due to caring responsibilities (Bouquet et al. 2017).

Directive 2019/1158 (2019) applies to a broader range of persons compared to previous Directives on parental leave. Its personal scope includes all workers who have an employment contract or employment relationship, *taking into account the case-law of the Court of Justice* (Art. 2). Through such an expression, the application of the Directive can implicitly be extended to the most vulnerable categories of workers including workers performing paid household work, workers performing platform work and other new forms of work, as well as trainees and apprentices. However, the most significant part of the Directive lies in its material scope. In that regard, the Directive contains four individual rights: *the right to paternity leave, the right to carers’ leave, the right to parental leave, and the right to request flexible working arrangements* (Art. 1). While the first two are rights that are regulated for the first

<sup>8</sup> For the theoretical explanation and the differences between the terms “reconciliation of work with family life”, “work-family balance”, and “work-life balance”, see the introductory part of this paper.

time by an EU directive, the second two have their roots in the repealed Parental Leave Directives but are simultaneously strengthened and expanded by the new Work-Life Balance Directive.

*Paternity leave* is a right to be used by fathers or equivalent second parents (if recognized by national legal systems) in case of a child's birth, with the aim of providing care (Art. 3, 1, a). It can amount to 10 working days that can be taken partly before or only after the birth of the child, as well as in flexible ways (Art. 4, 1). Much like maternity leave, it is provided as an unconditional right, the exercise of which shall not be made subject to a previous period of employment, and employers cannot reject or delay the worker's request to use it. Another indicator of the similarity with maternity leave is the amount of its payment or allowance that should be at least equivalent to that which the worker concerned would receive in the event of a sick leave. Such payment or allowance may be subject to a period of previous employment, which must not be longer than six months before the expected date of the child's birth (Art. 8, 2). Holders of the right to paternity leave, in addition to fathers, can also be equivalent second parents (if they are recognized by national legislation), and it should be granted to them irrespective of their marital or family status, in accordance with national law (Art. 4, 3). With such an approach, the Directive acknowledges the plurality of family units in contemporary societies, making it possible for the right to be acquired by families of same-sex parents (commonly referred to as rainbow families) or by persons with constantly changing identities (commonly referred to as fluid families) who take care of children. However, it fails to address or specifically refer to

single-parent families, who are arguably in an even more vulnerable position. Other criticisms can also be attributed to the Directive in the context of regulating the right to paternity leave. Thus, despite the fact that it bears the title "work-life balance", not only does it not address the issue of motherhood at all, but it fails to establish more substantial symmetry in the duration of paternity and maternity leave (which remains significantly longer than paternity leave). Another criticism is that, compared to the part of maternity leave which is compulsory, paternity leave does not have the status of compulsory leave at all (Caracciolo di Torella 2020).

*Parental leave* is a right to be used by both parents in the event of the birth or adoption of a child to take care of that child (Art. 3, 1, b). It is formally structured as an individual right that cannot be transferred from one parent to another, while the age of the child up to which it can be taken is to be specified at the national level, up to the age of eight. However, even the new Directive does not substantially deviate from the determination of (at least) one part of this right as a family right, i.e. a right that can be transferred from one parent to the other. Unlike the repealed Directive 2010/18 (2010), in Directive 2019/1158 (2019), only two of the total four months of parental leave guaranteed for each parent cannot be transferred (Art. 5, 1 and 2). With that, the portion of non-transferable leave between parents increases from one to two months, and if such portion is not used, it is lost. To a certain extent, the new Directive strengthens the right of workers to use parental leave flexibly. It does not explicitly mention and is not limited to the modalities for using parental leave provided for in previous

directives (on a full or part-time basis, on a piecemeal way or in the form of a time-credit system), but it guarantees the right of workers to request to take parental leave in flexible ways while providing an obligation for employers to consider and respond to such requests, taking into account the needs of both the employer and the worker (Art. 5, 6).

The flexibility in the use of parental leave by workers also depends on the established rules for notifying the employers of the intended beginning and end of the period of leave, as well as the possibility of changing pre-agreed periods of leave. This issue was addressed in the aforementioned “Kiiski” case, where the employer refused the request of Ms Kiiski for early termination, i.e. altering the end date of her period of child-care leave despite the fact that she was pregnant and the reason for which she requested such a change was to exercise another right, which is maternity leave. The Court of Justice held that the Community law “precludes a decision by an employer, the consequence of which is that a pregnant worker is not permitted to obtain, at her request, an alteration of the period of her child care leave at the time when she requests her maternity leave and which thus deprives her of the right inherent in that maternity leave” (C-116/06 2007). However, in case of a request to change a pre-agreed period of parental leave for another reason, such a request may be subject to strict conditions for approval in order not to affect the organization of the employer’s business (Ellis and Watson 2012).

A similar “justification” in favour of employers can be found in relation to the right of employers to postpone the granting of parental leave requested by the worker, but only for a “reasonable period of time” and due to “serious

disturbances of the good functioning of the employer” (Art. 5, 5). An important novelty of Directive 2019/1158 (2019) in the context of exercising the right to parental leave is the requirement from Member States to adapt this right to the needs not only of adoptive parents and parents with children with a disability or a long-term illness but also of parents who themselves have a disability (Art. 5, 8). Finally, one of the most significant elements of parental leave, including the need for equal use of the leave by men and women, are the elements related to its payment or allowance and eligibility. Directive 2019/1158 (2019) stipulates for the first time that the right to parental leave should be paid (Art. 8, 3). For the sake of truth, the Directive sets off the determination of the amount of such payment (for example, in the amount of payment or allowance which the worker concerned would receive in the event of sick leave) and leaves this issue entirely to the national level. However, certain expressions that can serve as an orientation for determining the level of payment and as a sound legal ground for an interpretation by the Court of Justice can be found in the non-binding recitals of the Directive.<sup>9</sup> Even in the new Work-Life Balance Directive, the right to parental leave is not regulated as an automatic and unconditional right of the holders similar to maternity and paternity leave. Its acquisition may be subject to certain conditions of eligibility regulated by national law, such as a “period of work qualification or length of service qualification, which shall not exceed one year” (Art. 5, 4). The difference between the two qualifications is that the first one refers to the previous length of employment

<sup>9</sup> See Recitals 29 and 31.

of the worker irrespective of the number of employers, while the second one refers to one employer. On the other hand, both qualifications are inclusive of any number of weekly working hours performed by the worker (European Trade Union Confederation 2011).

One of the most significant achievements of the Work-Life Balance Directive is the introduction of *the right to carers' leave*. In fact, the Directive recognizes for the first time the provision of care as a responsibility which does not consist only of the care of children by a working parent but also of personal care or support by the worker (i.e. carer) to a relative (child, parent, spouse or partner in a civil partnership, in accordance with national law) or to a person who lives in the same household as the worker, and who is in need of significant care or support for a serious medical reason (Art. 3, 1, c, d, e). Carers' leave is defined as an individual right of each working carer and amounts to five working days per year (Art. 6, 1). However, compared to maternity, paternity, and even parental leave, this right does not have the status of paid leave from work. The limited duration of 5 working days might be sufficient to provide short-term care or support or to find other and more sustainable options for the dependent person, but it is certainly insufficient to provide regular and continuous help over a longer period of time. The relatively limited range of persons for whose personal care and support the leave can be used is also subject to criticism.<sup>10</sup> The modest quality and quantity of entitlements attached to the right

to carers' leave, however, does not call into question its significance for workers who are in need of it, because without this right, they would either depend on the goodwill of their employer or use days from their annual leave or other periods of leave for caregiving (Oliveira et al. 2020). In parallel with the introduction of the new right to leave for carers, Directive 2019/1158 (2019) also retains the "old" right to unpaid time off from work due to force majeure for urgent family reasons from the repealed Directives (Art. 7). Although there are certain similarities between the rights to leave for carers and for urgent family reasons, such as their focus on the family in a wider sense and not just on children, the main difference is that the former is intended for providing long-term care, and the second, to address urgent and immediate situations (Caracciolo di Torella 2017).

Last but not least, in the set of four individual rights is the right to request *a flexible working arrangement*. The most important improvements in the regulation of this right concern the scope of persons (since it is no longer an exclusive right of working parents, but also of all other workers with responsibilities related to providing care), as well as its purpose (since it is no longer based on purely economic motives of employers for flexible employment of workers, but a self-standing right related to the concept of work-life balance) (Caracciolo di Torella 2020). Hence, the right to request flexible working arrangements is intended both for workers with children up to at least eight years of age and for carers for caring purposes (Art. 9, 1). Flexible working arrangements may include the use of remote working arrangements, flexible working schedules, or reduced working hours (Art. 3, 1, f).

<sup>10</sup> For example, in its binding provisions, the Directive does not mention additional persons who may fall under the category of "relatives", such as siblings and grandparents, which, on the other hand, are mentioned in Recital 27 of the Directive.

The worker's request entails the obligation of the employer to consider and respond to such a request within a reasonable period of time and to provide reasons for any refusal or postponement. Hence, even in the new Directive, the right to request flexible working arrangements does not have the status of an absolute right but only the right to request flexible working (Waddington and Bell 2021). When deciding on the request, including a possible negative decision, it is necessary to consider the balancing of interests between the two parties (both the employer and the worker), i.e. to take into account their needs (Art. 9, 2). After the end of the agreed period of flexible working arrangement (if it is limited in duration), the worker has the right to request to return to the original working pattern. The worker is also entitled to request an early return to the original working pattern if such return is justified by a change of circumstances (Art. 9, 3). Regarding the issue of eligibility of its acquisition, Member States are allowed to make the right subject to a period of previous employment, which cannot be longer than six months (Art. 9, 4).

In addition to the regulation and improvements in all four individual rights, the Directive also contains standard provisions ensuring their protection. In that regard, workers retain their rights for the duration of the leaves (Art. 10, 1), and at the end of such leaves, are entitled to return to their jobs or to equivalent posts and to benefit from any improvement in working conditions (Art. 10, 2). It is prohibited to treat workers less favourably due to applying or exercising the rights provided for in the Directive (Art. 11). The same applies to dismissal and all preparations for dismissal of workers (Art. 12, 1). Although claimants

or beneficiaries of the rights are protected against discrimination, the Directive does not provide for wider protection against discrimination on grounds of caregiving responsibilities.

## 5 CONCLUSION

The issue of reconciling work with family, that is, private life, goes through a long and evolutionary process of shaping within the soft and hard law of the EU and the jurisprudence of the Court of Justice. Inspired by the need to improve the equal treatment and opportunities of women in employment and increase their economic contribution to society, the issue of reconciliation was first adjusted to mothers in order to enable them to take care of their young children while continuing to work. However, the double burden they have to bear (to be productive workers and good mothers) contradicts the ideal of substantial gender equality within the framework of which there is an equal place for exercising parental responsibilities for both women and men workers.

With the adoption of the Work-Life Balance Directive (Directive 2019/1158 2019), the issue of reconciliation, i.e. work-life balance, not only extends to fathers and deepens their involvement in parental care but also begins to encompass other caregivers, such as those who care for other dependent persons. Hence, this Directive changes the paradigm of understanding caregiving as an integral and inseparable part of the life of all workers, not just parents with small children. However, an instrument entitled "work-life balance" was expected to address the position of mothers, which continues to be regulated by the Pregnant Workers Directive, adopted more than 30 years ago. Furthermore,

considering how the way in which the rights to paternity and parental leave are regulated, it can be concluded that mothers still retain the position of primary caregivers for children. A similar conclusion can be drawn in regards to the way of regulating the right to carers' leave because starting from the definitions for carers and conditions of eligibility for providing care, as well as from the overall quality and quantity of elements attached to it, it is questionable whether and what substantial changes this right will cause in the national laws of the

EU member states. Finally, the right to request flexible working arrangements can also be subjected to criticism, as this does not yet have the status of an absolute right and is conditional on approval by the employer. Perhaps the new concept of work-life balance and the rights arising from it have not entirely fulfilled their potential, but the general conclusion in regards to them is solitary: they represent a genuine and crucial step on the long road towards achieving substantial gender equality and facing the challenges of ageing societies.

## REFERENCES

- Barnard, C. (2012). *EU Employment Law* (4th ed.). Oxford University Press.
- Bercusson, B. (1996). *European Labour Law*. London: Butterworths.
- Birk, R. (2007). *European Social Charter*. Wolters Kluwer.
- Blanapin, R. (2013). *European Labour Law*. Wolters Kluwer.
- Bouget, D., Saraceno, C., & Spasova, S. (2017). Towards new work-life balance policies for those caring for dependent relatives? In B. Vanhercke, S. Sabato & D. Bouget (Eds.), *Social policy in the European Union: state of play 2017* (pp. 155–175). Brussels: European Trade Union Institute (ETUI) and European Social Observatory. <https://www.etui.org/sites/default/files/17%20Social%20policy%20in%20EU%202017%20OSE%20Web%20version.pdf>
- Brough, P., Timms, C., Chan, X. W., Hawkes, A., & Rasmussen, L. (2020). Work–Life Balance: Definitions, Causes, and Consequences. In T. Theorell (Ed.), *Handbook of Socioeconomic Determinants of Occupational Health* (pp. 1–15). Cham: Springer. [https://doi.org/10.1007/978-3-030-05031-3\\_20-1](https://doi.org/10.1007/978-3-030-05031-3_20-1)
- Caracciolo di Torella, E., & Masselot, A. (2010). *Reconciling Work and Family Life in EU Law and Policy*. Palgrave MacMillan.
- Caracciolo di Torella, E. (2017). An emerging right to care in the EU: a “New Start to Support Work-Life Balance for Parents and Carers”. *ERA Forum*, 18, 187–198.
- Caracciolo di Torella, E. (2020). One more step along the way: the 2019 Work Life Balance Directive. *Revue de Droit Comparé du Travail et de la Sécurité Sociale*, 4, 70–81. <https://doi.org/10.4000/rdctss.803>
- Case C-184/83. *Hofmann v Barmer Ersatzkasse*. (1984, July 24). ECR 3047. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61983CJ0184>
- Case C-177/88. *Dekker v Stichting Vormingscentrum voor Jong Volwassenen*. (1990, November 8). ECR I-3941. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61988CJ0177>
- Case C-32/93. *Carole Louise Webb v EMO Air Cargo*. (1994, July 14). I-1963. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61993CJ0032>
- Case C-400/95. *Handels-og Kontorfunktionærernes Forbund i Danmark, acting on behalf of Helle Elisabeth Larsson v. Dansk Handel & Service, acting on behalf of Føtex Supermarked A/S*. (1997, May 27). I-2757. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61995CJ0400>
- Case C-394/96. *Mary Brown v. Rentokil Ltd*. (1998, June 30). ECR I-4185. <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:61996CJ0394>
- Case C-411/96. *Margaret Boyle and Others v Equal Opportunities Commission*. (1998, October 27). I-6401. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61996CJ0411>
- Case C-218/98. *Oumar Dabo Abdoulaye and Others v Régie nationale des usines Renault SA*. (1999, September 16). I-05723. <https://eur-lex.europa.eu/legal-content/GA/ALL/?uri=CELEX:61998CJ0218>
- Case C-438/99. *Jiménez Melgar v. Ayuntamiento de Los Barrios*. (2001, October 4). I-6915. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61999CJ0438>
- Case C-109/00. *Tele Danmark A/S v Handels- og Kontorfunktionærernes Forbund i Danmark*. (2001, October 4). I-06993. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62000CJ0109>
- Case 519/03. *Commission of the European Communities v Grand Duchy of Luxembourg*. (2005, April 14). I-03067. <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A62003CJ0519>
- Case C-191/03. *North Western Health Board v. Margaret McKenna*. (2005, September 2005). ECR I-7631. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62003CJ0191>



- Case C-116/06. *Sari Kiiski v Tampereen kaupunki*. (2007, September 20). I-07643. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62006CJ0116>
- Case C-460/06. *Nadine Paquay v Société d'architectes Hoet + Minne SPRL*. (2007, October 11). I-8511. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62006CJ0460>
- Case C-506/06. *Mayr v. Bäckerei und Konditorei Gerhard Flöckner*. (2008, February 26). I-1017. <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A62006CJ0506>
- Case C-232/09. *Dita Danosa v LKB Lizings SIA*. (2010, November 11). I-11405. [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62009CJ0232\\_SUM&from=en](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62009CJ0232_SUM&from=en)
- Case C-104/09. *Pedro Manuel Roca Álvarez v Sesa Start España ETT SA*. (2010, September 30). I-08661. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62009CJ0104>
- Charter of Fundamental Rights of the European Union*. (2000, December 18). [https://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](https://www.europarl.europa.eu/charter/pdf/text_en.pdf)
- Charter of Fundamental Rights of the European Union*. (2007, December 14). <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2007:303:FULL&from=EN>
- Davies, A. C. L. (2009). *Perspectives on Labour Law* (2nd ed.). Cambridge University Press.
- Davies, A. C. L. (2012). *EU Labour Law*. Edward Elgar Publishing Limited.
- Directive 76/207. *Council Directive 76/207/EEC 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*. (1976, February 9). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31976L0207>
- Directive 92/85. *Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding*. (1992, October 19). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31992L0085>
- Directive 96/34. *Council Directive 96/34/EC on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC*. (1996, June 19). <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31996L0034>
- Directive 2006/54. *Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)*. (2006, July 26). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006L0054>
- Directive 2010/18. *Council Directive 2010/18/EU implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC* (2010, March 8). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010L0018>
- Directive 2019/1158. *Directive (EU) 2019/1158 of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU*. (2019, July 12). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019L1158>
- Ellis, E., & Watson, P. (2012). *EU Anti-Discrimination Law* (2nd ed.). Oxford University Press.
- European Commission (2008). *Work-life balance package 2008*. MEMO. [https://ec.europa.eu/commission/presscorner/detail/en/MEMO\\_08\\_603](https://ec.europa.eu/commission/presscorner/detail/en/MEMO_08_603)
- European Trade Union Confederation (2011). *The Revised Parental Leave Framework Agreement. An ETUC Interpretation Guide*. ETUC/CES. [https://www.etuc.org/sites/default/files/The\\_Revised\\_Parental\\_Leave\\_Framework\\_Agreement\\_EN\\_1.pdf](https://www.etuc.org/sites/default/files/The_Revised_Parental_Leave_Framework_Agreement_EN_1.pdf)
- Fudge, G., & Owens, R. (2006). Precarious Work, Women, and the New Economy: The Challenge to Legal Norms. In J. Fudge & R. Owens (Eds.), *Precarious Work, Women, and the New Economy: The Challenge to Legal Norms* (pp. 3–29). Hart Publishing.

- Fudge, G. (2014). Feminist Reflections on the Scope of Labour Law: Domestic Work, Social Reproduction, and Jurisdiction. *Feminist Legal Studies*, 22(1), 1–23.
- Greenhaus, J., & Singh, R. (2004). Work and Family, Relationship between. In C. D. Spielberger (Ed.), *Encyclopedia of Applied Psychology* (pp. 687–697). Elsevier. <http://dx.doi.org/10.1016/B0-12-657410-3/00682-6>
- Grgurev, I. (2014). Diskriminacija trudnih radnica: kako uspješno pomiriti trudnoću sa zahtjevima tržišta? In Ž. Potočnjak, I. Grgurev & A. Grgič (Eds.), *Perspektive Antidiskriminacijskog Prava* (pp. 133–153). Zagreb: Sveučilište u Zagrebu, Pravni fakultet.
- Hayes, LJB. (2017). *Stories of Care: A Labour of Law, Gender and Class at Work*. London: Palgrave MacMillan. <https://doi.org/10.1057/978-1-137-49260-9>
- Hein, C. (2005). *Reconciling work and family responsibilities: Practical ideas from global experience*. Geneva: International Labour Office.
- Houwerzijl, M. (2015). 2010/18/EU: Parental Leave. In M. Schlachter (Ed.), *EU Labour Law: A Comentary* (pp. 491–517). Wolters Kluwer.
- Interinstitutional Proclamation on the European Pillar of Social Rights* (2017, December 13). [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017C1213\(01\)&rid=2](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017C1213(01)&rid=2)
- International Labour Organization. (2023). *Achieving gender equality at work*. Geneva: International Labour Office.
- Kalamatiev, T., & Ristovski, A. (2014). How Do the Working Time Regulations Influence Gender Inequalities. *Radno i Socijalno Pravo*, 18(2), 1–25.
- Kalamatiev, T., & Ristovski, A. (2017). Labour legislation and policies aimed at reconciling employee's professional commitments with their personal and family life. *Aktualni Problemi na Trudovoto i Osiguritelното Pravo*, 9, 100–112.
- Kenner, J. (2003). *EU Employment Law: From Rome to Amsterdam and Beyond*. Hart Publishing.
- Kovacs, E., & Heissl, C. (2015). 92/88/EEC: Maternity Protection. In M. Schlachter (Ed.), *EU Labour Law A Comentary* (pp. 283–321). Wolters Kluwer.
- Kovačević, Lj. (2021). *Zasnivanje radnog odnosa*. Beograd: Univerzitet u Beogradu, Pravni fakultet.
- Oliveira, A., De la Corte-Rodríguez, M., & Lütz, F. (2020). The new Directive on Work-Life Balance: towards a new paradigm of family care and equality? *European Law Review*, 45(3), 295–323.
- Rubery, J. (1998). *Women in the Labour Market: A Gender Equality Perspective*. Paris: OECD Directorate for Education, Employment, Labour and Social Affairs.
- Sargeant, M., & Lewis, D. (2010). *Employment Law*. Pearson Education Limited.
- Vosko, F. L. (2006). Gender, Precarious Work, and the International Labour Code: The Ghost in the ILO. In J. Fudge & R. Owens (Eds.), *Precarious Work, Women, and the New Economy: The Challenge to Legal Norms* (pp. 53–77). Hart Publishing.
- Waddington, L., & Bell, M. (2021). The right to request flexible working arrangements under the Work-life Balance Directive – A comparative perspective. *European Labour Law Journal*, 12(4), 508–528. <https://doi.org/10.1177/203195252111038270>

**How to cite:** Ristovski, A., & Kalamatiev, T. (2023). The approach of EU labour law in redressing the problems of working parents and carers. *Stanovništvo*, 61(2), 109–127. <https://doi.org/10.59954/stnv.555>

# Pristup radnog prava EU rešavanju problema zaposlenih roditelja i negovatelja

## SAŽETAK

Sukob između profesionalnih dužnosti i porodičnih dužnosti, tj. privatnog života, uopšte, već duže vreme se smatra jednim od najozbiljnijih problema radnog prava. U uslovima povećanog učešća žena na tržištima rada, starenja stanovništva i promena u arhetipskim oblicima radnog odnosa i porodice, pitanje pomirenja rada s porodičnim životom, tj. očuvanja ravnoteže između profesionalnog i porodičnog života utiče na mnoge društvene činioce: radnike, poslodavce i vlade. U tom smislu, u članku se prvo analiziraju strateške i pravne mere EU koje se odnose na posebnu zaštitu žena u slučaju trudnoće i materinstva, uključujući pravo na materinsko odsustvo. Nakon toga, članak ukazuje na posebna prava zaposlenih roditelja, uključujući pravo na roditeljsko odsustvo (odsustvo s rada radi nege deteta) za radnike muškog i ženskog pola. Konačno, članak daje osvrt na nedavno usvojenu Direktivu EU o ravnoteži rada i porodičnog života od 2019. godine, uz kritičko preispitivanje novouvedenih prava, poput prava roditelja i negovatelja na odsustvo i na fleksibilne oblike rada.

## KLJUČNE REČI

pomirenje profesionalnog i porodičnog života, prava za slučaj porođaja i materinstva, prava zaposlenih roditelja i negovatelja, ravnoteža rada i porodičnog života