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EU Work-Life Balance Directive — the challenges for Poland

Dyrektywa w sprawie równowagi między życiem zawodowym a prywatnym rodziców i opiekunów — wyzwania dla Polski

"Work is a fundamental dimension
of man's existence on earth"

Pope John Paul II, Laborem Exercens

Abstract
Balancing work and family responsibilities is a prominent issue for modern society. The relation of subordination and dependence of a worker that characterizes the employment relationship, and makes it different from other work relations, puts an employee in a vulnerable position in terms of control over his or her own working life and balancing it with private life. Participation in paid activity often implies the need to sacrifice private life of the employee, which makes an exchange between the parties to an employment relationship no longer a fair one. Family life is most seriously exposed to a work-life conflict. This is becoming a critical challenge for many employees, especially women with family responsibilities. This contribution aims at offering an analysis of the recent European Union legislative intervention in the work-life conflict — the Work-Life Balance Directive and the position of Poland within this picture. The analysis reveals some limitations of the existing legislation as regards the conditions for people with caring responsibilities to reconcile their working and family duties.

Keywords
work-life balance, gender equality, parental leaves, working time flexibility

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Streszczenie
Godzenie obowiązków rodzinnych i zawodowych stanowi poważne wyzwanie dla współczesnego społeczeństwa. Relacja podporządkowania i zależności pracownika, która odróżnia stosunek pracy od innych stosunków zatrudnienia, stawia pracownika w mniej korzystnym położeniu jeśli chodzi o osiągnięcie stanu równowagi między czasem pracy i czasem prywatnym pracownika. Do naruszenia wskazanej równowagi dochodzi wówczas, gdy wykonywanie działalności zawodowej łączy się dla pracownika z koniecznością poświęcenia swojego życia prywatnego. Życie rodzinne jest najbardziej narażone na wystąpienie konfliktu na linii praca-życie prywatne. Osiągnięcie równowagi między pracą i życiem rodzinnym stanowi poważne wyzwanie dla wielu pracowników, zwłaszcza dla kobiet. Celem artykułu jest analiza unijnej dyrektywy w sprawie równowagi miedzy życiem zawodowym a prywatnym rodziców i opiekunów, a także przedstawienie sytuacji Polski w tym zakresie. Podjęte rozważania zmierzają do ukazania prawnych ograniczeń dla realizacji celu w postaci osiągnięcia przez pracownika równowagi między obowiązkami zawodowymi i rodzinnymi.

Słowa kluczowe
równowaga między życiem zawodowym i prywatnym, równość płci, urlopy rodzicielskie, elastyczność czasu pracy

Introduction

Work represents a highly important value for individual people, society and the economy. What stems from the history of labour is that by doing a paid job, an individual has been often exposed to work-related risks and dangers. Most of these result from attempts to commodify human labour. While it was broadly acknowledged, back in 1944, that "labour is not a commodity"[1], the perception of work as merely a market product rather than phenomenon involving human beings, remains just as valid today as it used to be at the

time of the 19th Century industrial revolution. Accordingly, the assumption that "labour is not a commodity" has been most recently reaffirmed in the ILO Centenary Declaration for the Future of Work[2]. The call against the commodification of labour has a very strong foundation in the universal human dignity (Davidov, 2016, p. 61), which constitutes a basis, source and final goal of all human rights. As follows from the Charter of Fundamental Rights of the European Union (ECtHR)[3], human dignity has to be protected in every sphere of human living. This includes the field of labour relations (Kresal, 2019, p. 193) and in particular refers to employment relationship, where the endangerment of human dignity is potentially greater (Weiss, 2011, p. 44).

Work-related risks are shaped by changes in the working environment, which are very sensitive to social and economic developments. Currently, one of the major work-related risks emerges from the intervention of work in the private life of an employee. The clash between professional and private spheres of employees' lives is inherent in the nature of employer-employee exchange occurring within the employment relationship. In the employment relationship, employees subtract from their autonomy in deciding about a part of their private time during the time spend at work, and submit themselves to control of the employer, in return for economic, social and psychological benefits related to work (Davidov, 2016, p. 104). Workers' autonomy as regards decisions about their life is an element of a worker's dignity that has to be respected. Work-life conflict occurs when the work-related role interferes with an individual's other personal life roles and interests to an extent where such an exchange between the parties to an employment relationship ceases to be fair (Kossek, 2016, pp. 258–270). That happens when it implies the need to sacrifice an employee's private life for performing paid activities. The relation of subordination and dependence of worker that characterizes the employment relationship puts an employee in a vulnerable position in terms of the control over his or her own working life and balancing them with private life (Davidov, 2016, p. 39). A work-life conflict is a prominent issue for modern society. Family life is most seriously exposed to such a conflict. Balancing work and family relationships becomes a critical challenge for a many employees, especially for women having family responsibilities (Glavin & Schieman, 2012, pp. 71–98).

This contribution aims at offering an analysis of the recent European Union (EU) legislative intervention in the work-life conflict — the Work-Life Balance Directive[4] and the position of Poland within this picture.

Work-life balance — an old concept in modern times

The relationship between work and non-work commitments is examined by the concept of work-life balance (Masselot, 2011, p. 15). Under the work-life balance concept, personal and professional spheres are considered as having equal value. Rather than competing, they should be complementary and mutually consistent (Fagan, Lyonette, Smith & Saldańska-Tejeda, 2012, pp. 3–4). This is based on the assumption that professional activity should not entail the pressure to sacrifice an individual's personal life.

A justification for policies and legal provisions that focus on an appropriate balance between an employee's professional and private sphere follows the idea of respect for workers' dignity. Working conditions that enable adequate balance between work and non-work commitments are deemed decent[5]. Work-life balance is justified by a set of human rights that are components of "decent work". These include, firstly, the right to privacy[6], perceived as the right to have an autonomous sphere free from the interference of anyone else. Secondly and most specifically, this is the right to have family life respected[7], defined as the right to establish and maintain family relationships where the latter ones may develop normally and where members of the family may enjoy each other's company[8]. Thirdly, it is a right to equal treatment and non-discrimination[9], perceived from the dimension of gender equality as the right of men and women with family responsibilities to equal opportunities and treatment as regards access to employment and employment conditions.

Blurring the boundaries between the work and private lives of employees has become increasingly important in recent years as a result of a few interlinked factors related to major labour, social and demographic changes. Because of the severe implications that these trends entail for an individual's personal well-being, the economy, and society, work-life balance has become a pressing issue. Such implications include transformations in the performance of work and in composition of the workforce related with development of ITC technologies and the flexibility they offer. This leads to the emergence of new working arrangements that involve other than traditional place of work and the use of modern information and communication technologies using which work can be performed in various locations, including at home, and at various times of day. In the era of the collaborative economy [known as the "sharing economy", "gig economy" or "platform economy"], work performed by web applications or websites, usually on-demand (ordered by clients), more often invades the personal life of employees. It is becoming more common for employers to expect that the employee will be fully available at work, even at great personal cost (Garben, 2017, p. 4). Secondly, these are age-related demographic trends, linked to the rise in the elderly population that pose challenges for workers on how to organize their work and different caring responsibilities (Winkelmann-Gleed, 2009, p. 14). Thirdly, these are changes in family patterns, including prevalence of single-parent families. Fourthly, these are changes in the composition of the workforce. A growing proportion of women in the labour force is not significantly followed and compensated by a

rise in the number of men involved in care responsibilities and home work, so that the latter ones remain a women-dominated sphere (Freeman & Soete, 1994, p. 109).

EU and work-life balance — on the way to regulatory framework

The distinction between private and family life as regards work-life balance is clearly visible in EU discourse. Work-family balance was put on the EU agenda to address the issue of gender equality in the workplace and on the labour market. This was in line with a gradual shift towards a social-based dimension of European integration, where social issues, particularly equal pay for men and women[10], become independent of economic matters related to the establishment of the European single market (Weiss, 2007, p. 469). Since that time, the principle of equal pay for men and women, initially merely intended to prevent disturbances in the competition between Member States (Verschueren, 2015, p. 132) has started to concern social aspects related with an equal division of family roles between men and women and their participation in the labour market. The correlation between work-family balance and gender equality was reflected for the first time in the Social Action Programme[11], which called for the implementation of measures to achieve equality between men and women in the workplace, in particular in order to ensure that family responsibilities of all concerned can be reconciled with their job aspirations. This relationship was confirmed by the CJEU in *Hill and Stapleton*.[12] The Court held that the ability to combine family life and professional activities is "the natural corollary of the equality between men and women" and is a condition for its substantive equality.[13]

Seen within the context gender equality issues, work-life balance is perceived as a means of EU gender equality and family-friendly policies, rather than a self-standing concept. This is perpetuated in many documents, in particular the European Parliament Resolution on reconciling professional, family and private lives[14], Framework of Actions on Gender Equality[15], European Commission Work-life balance package[16] and, most recently, European Pillar of Social Rights[17], all of which tackle work-life balance in the context of gender equality, female labour market participation, female poverty, and demographic problems related to low fertility rates and an ageing society. This justifies the view that reconciliation of professional and family life is the core of work-life balance at the EU level. The protection of the family also underpins the reconciliation of family and professional life under the ECtHR. Article 33 of the ECtHR entails three distinct rights, in the form of fundamental rights: the right to protection against dismissal on grounds of pregnancy, the right to paid maternity leave, the right to parental leave, as aiming to reconcile family and professional life. Thus, reconciliation under Article 33 ECtHR exclusively addresses a parent's needs related to young children, whereas wider family needs were left beyond its scope. The shift towards a more inclusive approach to the work-family concept may be found in the recent European Pillar of Social Rights [EPSR], which addresses broad family needs related to caring responsibilities. This trend is continued in the proposal for the Work-Life Balance Directive.

Under the general aim of gender equality, several secondary legal instruments were put together that until now provide minimum standards as regards the reconciliation between professional and family life (Caracciolo di Torella & Masselot, 2010, pp. 29–30). These include: Directive 75/117[18] prohibiting all discrimination on the grounds of sex in relation to pay and Directive 76/207[19] on equal treatment regarding access to employment, vocational training, career advancement, working conditions, both recast by Directive 2006/54/EC[20], Directive 79/7[21] aimed at eliminating inequalities between men and women as regards social security schemes, Directive 2010/41/EU on equal treatment between men and women engaged in an activity in an self-employed capacity[22], Pregnant Workers Directive[23], Parental Leave Directive[24], Working Time Directive[25], Part-Time Work Directive[26], Fixed-Term Work Directive[27], Council Recommendation on childcare[28] and Commission Recommendation that support parents' access to the labour market.[29]

Work-Life Balance Directive — the inclusive approach?

The EU Work-Life Balance Directive is the first attempt to tackle the issue of the work-life balance at the EU level directly. The Directive uses the "work-life balance" concept in the sense of "reconciliation of work and family". This follows from Article 1 which sets out the subject matter of this proposal as follows:

[…] facilitating reconciliation of work and family life for workers who are parents and carers.

When determining its material scope, the Directive underpins the already existing view that family responsibilities may impede equal access to work, which is decent. Therefore, the work-family balance is here considered as a precondition for gender equality in employment, which is a general objective of the Directive. According to Article 1:

The Directive lays down minimum requirements designed to achieve equality between men and women with regard to labour market opportunities and treatment at work […].

The Directive takes an inclusive concept of the work-family balance, as a right that is not only limited to parents with young children, but extends it to carers in general. The measures for work-life balance under the Directive are addressed to "workers with family responsibilities". This concept was already used in ILO Convention 156 on Workers with Family Responsibilities[30] in the context of equal opportunities

and equal treatment of men and women. Under Convention 156, "family responsibilities" cover responsibilities in relation to dependent children of workers and to other members of their immediate family who clearly need their care or support [Article 1[1][2]]. By referencing work-life balance not only to parents with young children, but also to carers, meant as workers providing personal care or support to a relative, or to a person who is in need of significant care or support for a serious medical reason [Article 3[d]], Directive takes a broader approach to the scope of "family responsibilities", that include a relatives of a worker and any dependent person who lives in the same household as the worker. At the same time, the directive undertakes a broder concept of "family", owing to the exclusive term "relative" that include a worker's son, daughter, mother, father, sposuse and partner in civil pertnership, the latter only when such partnership are envisaged by national law [Article 3[e]]. This, however, is not the case for all member States, e.g. Poland.

When referring to "men and women", the Directive adopts a gender perspective. According to this perspective, "equality between men and women with regard to labour market opportunities and treatment at work" must be achieved "through facilitating the reconciliation of work and family life". The Directive does not adopt a clear family perspective. Family is not protected here as a separate value. "Parents" and "people with caring responsibilities" were recognized in the Directive as a target group only in relation to its primary aim — gender equality. Consequently, they are considered as beneficiaries of the work-family balance when their caring responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in professional activity. Such a close relationship is not present in the EPSR, which adopts a separate gender and family perspective in the work-life balance (Ales, 2017, pp. 47–48).

The Directive exercises the fundamental right provided for in Article 33 of the ECtHR. It added to the already existing legislative measures that are relevant to the policy field in which this legal intervention is framed under the common aim of gender equality. It takes the view that these acts of secondary legislation need to be modernized and adapted to constantly evolving societal changes. This refers particularly to the existing Part-Time Work Directive [which focuses on only one type of working time flexibility] and the Parental Leave Directive [which is insufficient to really enable both parents to make equal use of their entitlements, fails to guarantee an allowance during parental leave, has not succeeded in promoting an equal share of caring responsibilities through a greater involvement of fathers in caring responsibilities]. The Directive on Work-Life Balance does not affect already existing rights relevant to the work-family balance, but only builds on those rights and strengthens them. This refers to paid maternity leave in Directive 92/85/EEC, the right to request part-time work in Directive 97/81/EC, and parental rights and obligations under the Parental Leave Directive [flexible working arrangements for parents returning to work in the form of reduction in working hours and flexible work schedules, the right to time off work in case of *force majeure*, the right to return to the same or equivalent job, the right to benefit from any improvement in working conditions during their absence, the right to maintain their acquired rights and to maintain their employment relationship while being on leave, protection against discrimination, and protection against dismissal on the grounds of applying for, or the taking of, parental leave]. For reasons of transparency, simplification, legal certainty and enforceability of rights, the Parental Leave Directive was entirely repealed, while the aforementioned parental rights were incorporated into the Directive and extended to newly created paternity and carers' leave.[31]

The legislative measures under the Directive are in practice addressed to women with family responsibilities. This measures are designed to facilitate men to take over an equal share of caring responsibilities with women. Actually, women are still underrepresented in labour market, they career progression is more likely to slow down, and they suffer from gender pay gap and consequently from gender pension gap. The objective of balancing these issues is intended to be achieved by: a better balance design of leave between genders, and more incentives for men to take leave to care for children and/or dependent relatives. Accordingly, the Directive provides workers with four individual rights related to: paternity leave, parental leave, carers' leave and flexible working arrangements.[32]

Firstly, the Directive strengthens the right to parental leave, since the Parental Leave Directive was considered insufficient to enable both parents, especially fathers, to use this right. In line with this, three reasons for the low rate of taking-up of this leave were identified: unpaid parental leave so many families cannot afford it; fathers' reluctance to take parental leave so they transfer a considerable proportion of their entitlements to mothers; and inflexibility of parental leave. With the general aim of making it easier for men to share caring responsibilities on an equal basis with women[33], the Directive establishes a minimum period of parental leave as at least two months, which cannot be transferred between parents[34], establishes the right to payment or allowance during the time of parental leave[35] and introduces the right to request more flexible forms of the use of parental leave. This could ne taken in full-time work, on a part-time basis, in blocs aeparated by periods of work, or in other flexible forms", subject to the discretion of Member State.[36] However, the creation of the right to ask for flexible parental leave as a right to *request*, not to *obtain*, can undermine the aim of better balance in the design of leave between genders. The employer is obliged merely to consider and respond to such a request, taking into account the needs of both employers and workers.[37] It is worth to mention that the proposal for Directive provided the right to payment or an adequate income during the time of parental leave at

least equivalent to sick pay level. In the light of the current wording of the Article 8(3) of Directive, such a payment or allowance shall be set in such a way as to facilitate the take-up of parental leave by both parents. In view of the purpose of the Directive — equal share of caring responsibilities between parents — such a modification must be assessed negatively.

Secondly, the Directive introduces an individual right to paid paternity leave which applies exclusively to fathers, in the form of short period of leave taken around the time of the birth of a child, and closely linked to this event.[38] Member States in their national legislation may determine whether to allow paternity leave to be taken partly before or only after the birth of the child and whether to allow such leave to be taken in flexible ways. Until this proposal, fathers did not enjoy any specific rights in this regard at EU level. The commitment included in the Equal Treatment Directive 76/207/EEC and in the Recast Directive 2006/54/EC was very weak, since it only acknowledged fathers in their own right to paternity leave, which should apply on the same conditions as maternity leave, provided that such rules related to paternity leave have already been introduced into the national law of Member States (Caracciolo di Torella, 2017, pp. 187–198). Paternity leave is intended to address the problem of unequal opportunities of men and women to take leave on the occasion of the birth of a child, and, more importantly, to encourage men to become more involved in caring responsibilities, allowing for early creation of a bond between father and child.[39] In this respect, unlike for parental leave, the Directive establishes the right to payment or allowance during the time of paternity leave at least equivalent to sick pay level

Thirdly, the Directive introduces carers' leave intended to be time off from work to take care of a relative or other dependent person. In this event, it grants workers the right to at least five days per year[40]. By introducing a carers' leave, the Directive acknowledged the needs of working carers (Caracciolo di Torella, 2017, p. 193) and recognized the existence of informal care, provided mostly by women. In this way, the Directive would seek to respond to the labour market challenges regarding informal care of an ill or dependent relative in the context of demographic changes related to an ageing society.[41] Under current wording of Article 6 of Directive carers' leave is not compensated by the payment or allowance, which may impair the effectiveness of this leave.

Finally, the Directive enhances the possibility of working flexibly for working parents with young children, (to at least eight years) and that of carers[42] to adapt their working schedules to their personal needs and preferences relating to their caring purposes. It is suggested that working flexibly is important for the work-life balance, since it encourages parents and carers [especially women] to remain in the labour market.[43] According to Article 3[f], "flexible working arrangements" involve remote working arrangements, flexible working schedules or a reduction in working hours. The possibility to ask for changing and reducing working hours was already provided for in the Parental Leave Directive. The proposal extends these two existing forms to a third that involve a flexible place of work.[44] This is intended to have a positive impact on female employment. The remote working arrangements, added to the flexible working schedules, is expected to be an alternative to part-time work. The evidence shows that women tend to work less hours in paid employment and spend more time fulfilling unpaid care responsibilities.[45] Moreover, more flexible work options may encourage men to equal the share of caring responsibilities with women. This should translate into a reduction in the amount of unpaid family work undertaken by women and in leaving them more time for paid employment.[46] But again, the Directive has failed to create an enforceable right to ask for flexible working arrangements. This has been created as a right to *request*, where the employer only has to consider and respond to the worker's request, "taking into account the needs of both employers and workers" (Caracciolo di Torella, 2017, p. 193).

Polish approach to work-family balance — towards a new direction?

The legal and institutional framework of the work-life balance are based on the general principle reflected in Article 24 of the Polish Constitution[47] that:

(all) Work shall be protected by the Republic of Poland […].

This fundamental principle, which underpins social and economic system of the State (Zięba-Załucka, 2006, p. 2), applies to every case where work is provided and is characterised by attempts to maintain and adequately balance labour and capital. The work-life balance has a strong foundation in dignity-based constitutional rights.[48] Particular importance has been given to the right to equal treatment of men and women as regards access to employment and working conditions [Article 33[2]].[49] Perceived as a means of gender equality, the work-life balance is mainly assumed as reconciliation of work and family life.

Family-related leaves — a struggle to strike the right balance

The existing regulation on family-related leaves is addressed first and foremost to parents with young children. Only to a limited extent does it focus on the needs of carers in general. The concept of a "carer", which extends beyond parents of young children, was created only for social security purposes and is restricted to those providing personal care in the case of illness of a relative, provided that the latter one shares a household with a carer during the time of care, and that in a given household there is no other person who could provide such care.[50] The term "relative" covers exclusively a carer's spouse, parents, step-parents, parents-in-law, grand-parents, grandchild, siblings or a child over 14 years.[51] In

this event, a carer has the right to 14 days off per year, compensated at 80% of his/her salary.[52] The attempts to adopt a comprehensive and more inclusive concept of "worker with a family responsibilities" in the Labour Code that were undertaken in 2015, did not succeeded.[53]

The Polish regulation on family-related leaves is quite generous, providing parents with the following: the right to paid maternity leave, parental leave and paternity leave, all being compensated by a maternity allowance[54], the right to childcare leave, considered an example of a means-tested benefit[55], provided only to certain beneficiaries, and the right to 2 paid days off work per year to take care of a child under 14, compensated by full worker's pay. This also includes a day off work for the care of a child under the Illness and Motherhood Act that is provided to parents for social security purposes in the case of illness of a child under 14 or for urgent family reasons, compensated at 80% of salary.[56]

The current regulation on family-related leaves has already come a long way from female-focused to a more inclusive approach addressed to both parents. The idea to address work-family balance exclusively to women was based on the assumption that family responsibilities have mainly fallen on women. It was then believed that gradually extended paid maternity leave, given only to women, would be an effective means to improve the birth rate among families, while its potential — short and long term — adverse impact on female employment was overlooked. The failure of such thinking has led to gradual improvements as the family-related leave is starting to evolve towards greater equality between women and men in this regard, and more flexibility in adjusting the leave to the needs of both parents. It was intended to reduce the possible negative effects on employment which, particularly for women, could have extended paid care leave to almost a child's first year.[57] The right to transfer part of maternity leave to a male employee raising his child was a milestone in the participation of fathers in childcare (Article 180 para. 4, 5, 6, 7 LC). This established the basis for a more equal share of caring responsibilities between men and women, and outlined the directions for further legislative changes in this regard that has been made in recent years (Ludera-Ruszel, 2016, p. 98).

In line with this purpose, significant legislative changes should be welcomed. They include: the introduction of parental leave, developed as a right to which both parents are entitled and given an opportunity to benefit therefrom at the same time, the extension onto both parents of the right to childcare leave (Article 186 LC), and the right to 2 day off work per year to take care of a child under 14 (Article 188 LC), the introduction of a paternity leave, created as an individual right of the father, for a short period (2 weeks) to be taken around the child's first year (Article 182^3 LC), as well as an extension to 5 years of the maximum age of the child for whom childcare leave can be taken[58], and to 5 the number of blocks in which it can be taken. To support workers in taking family-related leaves, they were provided with protection against dismissal on the grounds on taking maternity leave, parental leave, paternity leave and childcare leave (Article 177 LC, Article 182^{1g} LC, Article 182^3 para. 3 LC, Article 183 para. 2 LC, Article 186^8 LC, 182^{1c} LC) and with the right to return to the same job or, where not possible, to an equivalent job or a similar job corresponding to the employee's qualifications, for the remuneration the same as acquired on the date when the leave had begun (Article 183^2 LC, Article 186^4 LC).

A greater engagement of fathers in caring responsibilities and more flexibility in adjusting work to family needs was also the purpose of the most recent legislative developments on family-related leaves from 2015[59], that were considered as "*another step* [after a number of previous ones] *towards a coherent, consistent and stable policy supporting parenthood*".[60] Firstly, this legislation introduced an additional and more flexible form of parental leave, which is alternative to the existing which provides the possibility to take parental leave in a child's first year, in a maximum four blocks, one after another, directly after the maternity leave (Article 182^{1c} LC). Currently, parents are granted the possibility to use part of this leave up to 16 weeks later, in maximum two blocks, until the child reaches the age of 6 years (Article 182^{1c} para. 3 LC). The increase of the maximum age of the child for whom parents can take parental leave is important for the work-family balance. The use of parental leave until the child reaches the age of 6 could be useful when parents are not interested in concentration of this leave within the first year of a child's life, but instead in its allocation, due to the various needs of family, that could change at different stages of a child's life. As such, paid parental leave emerges as an attractive alternative to childcare leave, which currently is also an entitlement until the child reaches the age of 6 (Article 186 para. 2 LC). Despite this, it is the first form of parental leave that is still most commonly used by parents, and considered an extension of maternity leave up to the child's first year, and thus, in most cases, taken exclusively by women. Secondly, the legislation increased to 2 years the maximum age of the child for whom paternity leave can be taken (Article 182^3 para. 1 LC). Following these changes, a paternity leave is not considered anymore a leave granted on the occasion of a birth of child. Thus, the initial purpose of encouraging fathers to take care responsibilities by creating an early bond between a child and father was abandoned here. Thirdly, it strengthens the right to childcare leave, and for this purpose it established that parents can enjoy this leave together to a full extent. Under previous legislation, the use of childcare leave at the same time by both parents was provided for as an exception, and thus limited only to a period not exceeding 4 months.[61] Fourthly, it gave parents an additional, more flexible opportunity to take 2 days off work on an hourly basis (Article 188 para. 1 LC). This right is not limited to the situation of *force majeure*, and can be enjoyed by parents

flexibly on any occasion, according to their individual needs which justify a time off work. Lastly, it established the right to maternity leave and to parental leave as an individual right of the father, in the case of employment of the mother, at least on a part-time basis (Article 180 para. 17 LC, Article 182[1g] LC). The correlation between the right to family-related leaves of father with the employment of the mother was intended to make a positive contribution to female employment after the birth of a child.[62] This is considered an important step toward another direction compared to the existing approach to maternity leave, considered a female-dominated leave granted to mothers on the occasion of a birth of a child and during the first few months of its life. This is despite the maternity leave being currently designed as a partly transferable right, since the possibility of a mother giving up maternity leave and transferring part of it to the father is made conditional on the latter one's consent (Article 180 para. 4 LC).

Flexible working — (limited) flexibility for parents and carers?

The aim of facilitating workers in adjusting their working time to family responsibilities lies behind the concept of *flexibility* considered as a dimension in the ongoing development of labour relations (Sobczyk, 2005). For the work-family balance, it is particularly important to allow people to work flexibly through either changing and or reducing their working hours or place of work. In this regard, the respect for family life is considered a separate value that needs special protection. Traditionally, working time regulations have been subordinated to protection of life and health of workers. This approach is represented in the Polish Constitution[63] and in the Labour Code[64], and in general is reflected in regulations that provide workers with protection against exploitation by employers under the imbalance of power in the employment relationship.

Part-time work is considered as a preferred flexible working opportunity for parents with young children. This approach is clearly reflected in a regulation that provides a worker entitled to childcare leave the right to obtain part-time work [not less than a half] during this period (Article 186[7] LC). The same is true for a worker who benefits from parental leave, but in this case the legislation does not create a strong legal entitlement, but rather a right to *request*, where the employer is only obliged to consider and respond to such a request taking into account the needs related to the organization and type of work (Article 182[1e] LC). The attempts to provide, in line with legislative changes in 2015, the right to request part-time work due to "family responsibilities", meaning the need to provide personal care for a child under 14, or a possibility of combining work with caring responsibilities allow workers, especially women, to perform such duties without the need to give them time off from work. On the other hand, this implies the risk of remaining in part-time work after the end of parental and childcare leave. This holds true unless a worker with family responsibilities has access to flexible working practices that allow the regular working time pattern to be modified rather than reduced, possibly with changing a place of work. The existing legislation provides such a possibility through the use of an individual working time schedule (Article 142 LC), and, more recently, flexible working hours (Article 140[1a] LC) and telework (Article 67[5] LC). These forms of flexibility of work are, however, not addressed exclusively to workers with family responsibilities. The proposal to introduce an individual right to both parents and carers to request an individual working time schedule and flexible working hours due to "family responsibilities" was not finally accepted in the legislation of 2015. As a result, parents and carers are allowed to work flexibly under general rules that apply to every worker. Thus, they are granted the right to request a change in their working hours and/or place of work, while the employer is merely obliged to consider and respond to such a request.[65]

Conclusions

The European Commissions' new legislative initiative should be welcomed. It is the first attempt to tackle the issue of work-family balance directly at the level of EU secondary legislation. Undoubtedly, this Directive represents an important step in the right direction towards fair and more equal employment opportunities for people with caring responsibilities, especially women, through better conditions to reconcile their working and family duties. The Directive undertakes a more integrated approach to the work-family balance, as it takes into account recent social and economic developments that so far have not been sufficiently considered in measures taken in this area. By doing so, the Directive recognizes the families' needs along the whole lifecycle. By introducing carer's leave, it acknowledged that care duties do not end when children start their school. Moreover, the Directive takes a clear vision of the important role of men in the success of the reconciliation project based on a substantive equality of men and women in employment and on the labour market. For this purpose, it provides more opportunities for an equal share of caring responsibilities between men and women, and allows for more flexibility to adapt caring responsibilities to a carers' personal needs and preferences.

At the same time, Polish legislation is gradually evolving in the same direction. This was underpinned by the legislative developments from 2015. These legislative changes must be commended. They represent an attempt to find a balance between different values that cause a disruption between family-friendly policy and labour market policy. This is not to say that it is flawless. The current legislation has failed to provide integrated and comprehensive measures for the carers of adults. The care leave opportunities for social security purposes are insufficient in this area. Moreover, the legislation must be developed towards further flexibility as regards forms of uptake of family-related leaves which is necessary to achieve

full equality of men and women in this regard. By doing so, part-time work opportunities for parents should be complemented by other flexible forms of work that allow for changing working hours or place of work, which would be addressed to workers with family responsibilities. These additional possibilities of working flexibly, which should be granted in the form of an enforceable right, would have a less detrimental effect on the situation of workers on the labour market, especially women, who are now under-represented in part-time work caused by family responsibilities.

Przypisy/Notes

[1] ILO Declaration of Philadelphia concerning the aims and purposes of the International Labour Organisation.
[2] ILO Centenary Declaration for the Future of Work, 20 June 2019.
[3] OJ C 326, 26.10.2012, pp. 391–407.
[4] Directive 2019/1158 of the European Parliament and the Council of 20 June 2019 on work-life balance for Parents and carers and repealing Council Directive 2010/18/EU, OJ L 188, 12.07.2019, pp. 79–93.
[5] Article 31(1) ECtHR.
[6] Article 7 ECtHR; Article 8 ECHR.
[7] Article 7 ECtHR; Article 8 ECHR.
[8] See ECHR: *Marckx v. Belgium*, Application no. 6833/74, § 31 and Olsson v. Sweden (no. 1), Application no. 10465/83, para. 59.
[9] Article 20 ECtHR.
[10] Article 119 Treaty of Rome.
[11] Council Resolution of 21 January 1974 concerning a social action programme, OJ C 13, 12.02.1974, p. 1–4.
[12] Case 243/95 *Hill and Stapleton v. The Revenue Commission and the Department of Finance*, para. 42, EU:C:1998:298.
[13] See: Resolution of the Council on "The Balanced Participation of Women and Men in Family and Working Life", OJ [2000] C 218/2.
[14] European Parliament resolution on reconciling professional, family and private lives [2003/2129[INI]].
[15] UNICE/UEAPME, CEEP and ETUC, Framework of Actions on Gender Equality, 2005. Full text can be found https://www.etuc.org/en/framework-actions-gender-equality-final-evaluation-report-2009 (2.09.2019).
[16] Communication from the European Commission, "A Better Work-Life Balance: Stronger Support for Reconciling Professional, Private and Family Life", COM(2008), 635. Full text can be found https://europa.eu/rapid/press-release_MEMO-08-603_en.htm (2.09.2019).
[17] European Parliament resolution of 19 January 2017 on a European Pillar of Social Rights (2016/205(INI)), text adopted P8_TA(2017)0010.
[18] OJ L 45.
[19] OJ L 39.
[20] OJ L 204 of 26.07.2006, p. 23.
[21] OJ L 6.
[22] OJ L 180 of 15.07.2010, p. 1.
[23] COM(2008) 600/4.
[24] OJ [1996] L 145/04.
[25] OJ [2003] L 299/9.
[26] OJ [1998] L 14/9.
[27] OJ [1999] L 175/43.
[28] OJ L 123 of 8.05.1992, p. 16.
[29] OJ L 59 of 2.03.2013, pp. 5-16.
[30] Workers with Family Responsibilities Convention, 1981 (No. 156).
[31] Preamble, Recital 15.
[32] Article 1.
[33] Preamble, Recital 6, 20.
[34] Article 5[2].
[35] Article 8.
[36] Article 5[6].
[37] Article 5[6].
[38] Article 4[1].
[39] Preamble, Recital 6, 19.
[40] Article 6.
[41] Preamble, Recital 10, 27.
[42] Article 9.
[43] Preamble, Recital 34.
[44] Article 3(1)[f].
[45] Preamble, Recital 10.
[46] Preamble, Recital 11.
[47] The Constitution of the Republic of Poland of 2.04.1997, Journal of Laws from 1997, No. 78, Item. 483.

[48] According to Article 30, the inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens […].
[49] Apart from that, these include: the right of every individual to legal protection of his/her private and family life [Article 47], where family enjoys a special protection and care [Article 18], the right and more specifically right to rest [Article 67[2]], and the right to safe and hygienic conditions of work [Article 66[1]].
[50] Article 32[2] Act of 25 June 1999 on Financial Benefits from Social Welfare in Case of Illness and Motherhood, Journal of Laws from 2019, Item. 645 — hereinafter called as Illness and Motherhood Act.
[51] Article 32[2] Illness and Motherhood Act.
[52] Article 33[1][2], Article 35[1] on Illness and Motherhood Act.
[53] This was in line with an amendment to Labour Code from 2015 [footnote 85].
[54] Article 29a Illness and Motherhood Act.
[55] Article 10 Act of 28 November 2003 Law on Family Allowances for Child, Journal of Laws from 2003, No. 228, item. 2255.
[56] Article 32[1][1][2a][2b].
[57] This covers a 20 week maternity leave (in case of one child) and 32 week parental leave (in case of one child).
[58] Initially there were no maximum age limit. This age limit was introduced in 2004 (under 4 years) and extended to a child under 5.
[59] Act of 24 July 2015 on the amendment of the Act on Labour Code and some other Acts, Journal of Laws from 2015, Item. 1268 — hereinafter called as amendment from 2015.
[60] Explanatory memorandum www.orka.sejm.gov.pl/Druki7ka.nsf/0/BD8D1DA496E82AFEC1257E210033718F3%24File/3288.pdf (28.09.2019).
[61] Initially this perios was 3 months.
[62] Explanatory memorandum www.orka.sejm.gov.pl/Druki7ka.nsf/0/BD8D1DA496E82AFEC1257E210033718F3%24File/3288.pdf (29.09.2019).
[63] Article 66[2].
[64] Article 14 LC.
[65] Article 142 LC, Article 150 para. 5 LC, Article 67^7 para. 3 LC.

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Nowość



Celem monografii, którą oddajemy do rąk Czytelników, jest próba opracowania modelu objaśniającego wpływ czynników technologicznych powiązanych z czwartą rewolucją przemysłową na zarządzanie projektami rozwoju nowych produktów (NPD) w przedsiębiorstwie. W książce:

- scharakteryzowano obecne trendy w działalności projektowej w organizacjach;
- omówiono podejście procesowe w zarządzaniu projektami;
- przedstawiono koncepcję ładu projektowego oraz jego operacjonalizacji;
- opisano czwartą rewolucję przemysłową (genezę i istotę pojęcia, jego niejednoznaczność, wzajemne relacje koncepcji z działalnością projektową przedsiębiorstwa, implikacje dla zarządzania projektami NPD, aktywatory czwartej rewolucji przemysłowej);
- określono wpływ aktywatorów czwartej rewolucji przemysłowej na zarządzanie projektem w przedsiębiorstwie;
- przedstawiono autorski model zarządzania projektami NPD w czwartej rewolucji przemysłowej.

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