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Dr Jakub Gołaś
Uniwersytet im. Adama Mickiewicza w Poznaniu
ORCID: 0000-0002-0896-677X
e-mail: jakub.golas@amu.edu.pl

The principle of promoting work-life balance for parents and carers as an integral part of gender equality policy – remarks against the background of the Work-life Balance Directive and the Polish system of labour law

Zasada wspierania równowagi między życiem zawodowym a prywatnym rodziców i opiekunów jako element polityki na rzecz równości płci – uwagi na tle Dyrektywy work-life balance oraz polskiego systemu prawa pracy

Abstract
The article presents a multi-threaded analysis of the principle of promoting the work-life balance for parents and carers, which enjoys a relatively strong normative foundation in national, international and European legal instruments. First, the complex nature of the concept of work-life balance is outlined. The hypothesis according to which – from the theoretical and legal point of view – the concept of supporting the balance between work and private life can be perceived as a principle of labour law, is discussed further. Then, the influence of European law on the development of WLB programs in the field of labour law is demonstrated. In this section, particular attention is paid to Directive 2019/1158. In the last part of the analysis, the previous observations and conclusions are linked and compared with the current realities of the Polish labour market and the evolving legal system.

Keywords
work-life balance; Directive 2019/1158; paternity leave; parental leave; carers' leave

JEL: K31; K33; K38; J83

Streszczenie
W artykule przedstawiono wieloaspektową analizę zasady wspierania równowagi pomiędzy życiem zawodowym a prywatnym rodziców i opiekunów, która ma cieszyć się stosunkowo silną normatywną podbudową w aktach prawa krajowego, międzynarodowego oraz europejskiego. W pierwszej kolejności zarysowany został złożony charakter samego pojęcia *work-life balance* (dalej: WLB). W dalszej części rozważaniom poddano hipotezę, zgodnie z którą z teoretyczno-prawnego punktu widzenia koncepcja wspierania równowagi pomiędzy życiem zawodowym a prywatnym może być postrzegana jako zasada prawa pracy. Następnie nakreślono ewolucję i wpływ prawa europejskiego na rozwój programów WLB w obszarze prawa pracy, ze szczególnym uwzględnieniem dyrektywy 2019/1158. Natomiast w ostatniej części analizy wcześniej poczynione spostrzeżenia i wnioski zostały odniesione do obecnych realiów polskiego rynku pracy oraz zmieniającego się systemu prawa.

Słowa kluczowe
równowaga między życiem zawodowym a prywatnym; Dyrektywa 2019/1158; urlop ojcowski; urlop rodzicielski; urlop opiekuńczy

Introduction

Given current labour market realities, reconciling work and private life for working parents and carers is a major challenge at both individual and systemic levels. In particular, women, who are stereotypically and traditionally assigned the role of carer for children and close elderly relatives, face significant barriers to entering and remaining in employment. (Chieregato, 2020; Czajka, 2021, p. 60). It seems that it is stereotypical expectations and social pressures that make women in particular more likely to be perceived as less flexible workers, which is reflected in their disadvantaged position on the labour market, where women face numerous barriers to both entering and remaining in the workforce (Czajka, 2021, pp. 59–62). However, it should be borne in mind that the promotion of work-life balance for parents and carers should not be seen only as a tool for implementing employment equality policies. By adopting a broader perspective, it becomes possible to identify other values and needs related to the promotion of the principle of work-life balance (hereafter: WLB). It is worth noting, for example, that the current socio-economic reality, characterised among other things by the ever-increasing cost of living, can be seen as a significant obstacle to the maintenance of the traditional image of the family, based on the separable roles of a breadwinner and a carer. Nowadays, it is becoming a basic norm that the professional and personal development aspirations of each partner in a family should be recognised as being of equal value. It is therefore a major challenge for the modern family and its members, whatever their individual motivations, to find an effective work-life balance that reconciles the wishes and aspirations of parents and carers themselves with the need to provide adequate care for their children and, as the population ages, other close family members.

At a system-wide level, it is clear that an important part of the process of promoting work-life balance is the pursuit of appropriate social policies that provide parents and carers with effective rights and safeguards, in particular through appropriate labour law reforms. In this context, it is worth noting that the issue of WLB has been the subject of numerous reforms and programmes at both national and European level in recent decades. While recognising that such reforms and programmes have made a significant contribution to strengthening the legal status of parents in the labour market, it should also be noted that their implementation has not in fact led to the removal of all significant barriers to labour market access experienced by workers struggling to reconcile work and family responsibilities. This is clearly evidenced by the fact that in recent decades, particularly at the European level, successive and numerous programmes have been introduced with the primary aim of improving the effectiveness of the process of promoting and enhancing the impact of the WLB principle in employment. In this context, the emergence of a new programme or legislation can be seen as a confirmation that previous measures and mechanisms have proved ineffective and insufficient.

The Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU (hereinafter: Directive 2019/1158), with a transposition deadline of 2 August 2022, also fits perfectly into this outlined trend. Therefore, in the current temporal context, it is worth asking whether the national implementation of the current EU WLB scheme can effectively contribute to improving the legal and factual situation of working parents and carers in Poland.

To this end, it is necessary to carry out a specific analysis which, in the context of this article, is structured as follows. First, the complexity of the concept of work-life balance itself will be outlined, which should be examined from a broader perspective, i.e. not only from a legal, but also from a psychological and sociological point of view. This is followed by an examination of the hypothesis that, from a theoretical and legal point of view, the concept of promoting work-life balance can be seen as a principle of labour law embedded in the broader context of promoting gender equality in the labour market. The influence of European law on the development of WLB programmes in the field of labour law is then outlined in an evolutionary perspective. In this section, the main focus will be on the recent reform implemented under Directive 2019/1158, the assessment of which will focus on its inclusive potential. Meanwhile, the final part of the analysis will relate the earlier observations and conclusions to the current realities of the Polish labour market and the changing labour law system.

The complex meaning of the concept of work-life balance

The concept of work-life balance itself should be placed at the centre of a comprehensive analysis of the issue of supporting work-life balance for parents and carers. It is worth bearing in mind that this concept can be understood and perceived in different ways, depending on the chosen research and life perspective. Indeed, the concept of WLB is referred to in numerous legal documents and is also widely used in political discourse. There are also many sociological and psychological studies that refer to the concept. The practical aspect cannot be ignored either, as the concept of work-life balance, in its various forms, is present in everyday language and is used in various HR management programmes.

As the very components of the concept analysed suggest, the content of work-life balance involves two fundamental, but also competing, spheres of an economically active individual's life. We are talking about the reconciliation and the clash between the professional and the private (family) life of an worker. In this context, the imbalance between the two spheres of an worker's life, which are essentially in competition with each other,

results in a conflict that has a negative impact on both the private and professional life of an individual (Czerniak-Swędzioł & Kumor-Jezierska, 2021, p. 193; Godlewska-Bujok, p. 6;). On the other hand, it follows from the nature of balance that the expected result of the application of the WLB concept in practice is to find a specific harmony that will make it possible to 'harmonise' the above-mentioned spheres of human activity by 'working out' a compromise that will positively influence both the private and professional life of a given individual (Czerniak-Swędzioł & Kumor-Jezierska, 2021, pp. 192–194). Therefore, it can be assumed that the basic assumption of the WLB concept is the need to provide a worker with a real possibility of combining, harmonising, balancing and reconciling work and private life. On the other hand, a situation in which an individual's life is dominated by one of the aforementioned dimensions of human activity should be considered an undesirable outcome (Borkowska, 2011, p. 18).

However, one should note that, from a sociological and psychological perspective, the correct understanding of the concept of work-life balance for working people is clearly inclusive. It is manifested in the need for a broad perception of worker's private life, which should not be automatically associated only with family life. In this context, it would be a truism to say that also workers who are not parents or carers should be able to enjoy their private life. Therefore, from this much broader perspective, the idea of WLB is about the possibility for an economically active person to reconcile work and a broadly understood private life, which includes not only family life but also such areas of human activity as participation in civil society, education, personal development, hobbies, leisure, entertainment or self-care.

At the same time, it is important to stress that, at the level of legal and jurisprudential language, the concept of WLB is to a large extent perceived in a more particularistic and restrictive way. Indeed, two basic observations can be made when analysing the legal system. Firstly, the core of the legal norms relevant to the concept of WLB has a limited subjective scope, which has been restricted to those workers who take on parental or caring responsibilities in their private lives. For example, it is worth noting that the very title of Directive 2019/1158 refers to the promotion of work-life balance only for parents and carers. Secondly, it should also not be overlooked that, from a normative perspective, the legal protection of WLB policies is primarily focused on women, to whom the social role of primary caregiver is traditionally and stereotypically attributed. As a result of this – still current – social context, women are more likely to experience barriers when entering and remaining on the labour market, which is confirmed by various statistical disparities, including in particular the persistently lower female labour force participation rate (Czajka, 2021, pp. 51–69; Magda, 2020; Zielonka, 2021).

Finally, within the framework of a semantic analysis of the concept of work-life balance, it is also worth mentioning the more pragmatic context of the consequences of an effective implementation of the WLB concept for working people. Indeed, the effective promotion of WLB is beneficial from an economic, psychological and social perspective. Firstly, the promotion and implementation of WLB policies at the workplace level has a positive impact on workers' health and makes it possible to reduce labour costs related to replacement, sick leave, work organisation and recruitment (Borkowska, 2011, pp. 139–140). Secondly, the promotion of WLB in the workplace is also expected to result in higher labour productivity or competitiveness and an improved image of the company itself (Borkowska, 2011, p. 141). Thirdly, the opportunity for workers to benefit from WLB programmes in the workplace is expected to have a positive impact on their sense of satisfaction, loyalty, stability or job security (Borkowska, 2011, pp. 44–46; 193–197). Fourth, in the context under consideration, the concept of WLB can also be contrasted with the phenomenon of work-life blending or integration. Work-life blending has particularly intensified during the lockdown caused by the COVID 19 pandemic and the massive and prolonged need to work remotely from home (Godlewska-Bujok, 2020, pp. 5–6). The phenomenon of work-life blending is associated with a number of negative consequences, such as increased exhaustion, poorer time management, reduced work efficiency, increased stress levels due to overlapping family and work responsibilities, and difficulties in establishing clear boundaries between family and work life (Chenji & Raghavendra, pp. 128–129; Como et. al, p. 48; Wepfer et. al, p. 736). From this perspective, WLB policies should be seen as a necessary tool to counteract and eliminate the negative effects associated with work-life blending.

Promoting work-life balance as a principle of labour law

From the perspective of the Polish legal system, the promotion of WLB may be perceived as the subject of a principle of labour law in the directorial sense, the basis for the distinction of which is a broad catalogue of legal norms contained in numerous legal acts of heterogeneous status. In a certain simplification, the content of the indicated principle of labour law includes the obligation of the state (including, in particular, the legislator) to pursue such a policy that (in accordance with the name of the principle described) shall support WLB of working parents and caregivers. We should already note at this point that the vast majority of the legal norms relevant to the principle under analysis have been primarily focused on the narrower understanding of the concept of WLB, which, as such, is about promoting gender equality in employment by improving the legal status of women who – due to actual parental and caring responsibilities or due to stereotypical thinking – experience numerous factual barriers for entering and remaining on the labour market (Półtorak, 2019, 319–320).

It is important to note that in the case of the Polish legal system the principle of promoting work-life balance for parents and carers (hereinafter: the WLB principle) is based on a relatively rich and complex catalogue of normative sources.

Firstly, the principle in question can be linked to the constitutional and systemic principle of the protection of work (Article 24 of the Constitution of the Republic of Poland), which makes it possible to assume that the WLB principle can be exercised within the framework of the systemic obligation to protect work, within which working parents and carers are covered by the protection of the analysed principle. First of all, we are talking about the dignity and equality aspects of the protection in question, which refers to the reduction of gender barriers in the labour market related to workers' caring responsibilities. It is also worth mentioning the provision of Article 18 of the Constitution of the Republic of Poland, which includes the family as an object of protection and care by the State. In such a context, the WLB principle can be seen, in a certain simplification, as an element implementing special protection of the family in the field of labour relations.

Secondly, the principle of the WLB can be directly linked to the rich catalogue of norms and standards contained in the European legal order. However, the focus in this area should not be exclusively on Directive 2019/1158[1]. Indeed, it should be borne in mind that the legal sources of the principle in question also consist of other numerous and relevant secondary legislation, much of which will be referred to in the following sections of this study. Primary legislation is also relevant, with particular reference to Article 33(2) of the Charter of Fundamental Rights of the European Union (CFR)[2], which explicitly refers to the objective of "reconciling family and professional life" and the means of achieving it in the form of "protection from dismissal for a reason connected with maternity" and the right "to paid maternity leave and to parental leave". Thus, the place in the hierarchy and the relevance of the CFR in the European legal system confirm that the subject matter of the WLB principle is closely linked to the field of fundamental rights. Moreover, one should not forget the crucial importance of the Court of Justice of the European Union (hereinafter: CJEU), which in its rich jurisprudence not infrequently extends, strengthens and clarifies the scope of worker protection implemented in the spirit of the WLB principle (Szczerba-Zawada, 2014).

Thirdly, in the case of the Polish legal system, from a substantive point of view, the principle of work-life balance for parents and carers is significantly clarified at the legislative level. At this level, the principle of WLB is implemented through a complex system of rights and safeguards, the core of which is contained in the Labour Code (LC). These include, for example, equal treatment in employment (Section IIa of the LC) or employees' rights in relation to parenthood (Section Eight of the LC).

The influence of the European legal system on the development of the normative sources of the WLB principle

At the European level, programmes and policies supporting the WLB approach have focused primarily on reconciling work and family life. To put it somewhat simplistically, the vast majority of legislation adopted at this level has been aimed at making it easier for parents and carers to combine work and care responsibilities for close relatives, while other dimensions of private life have effectively remained outside the focus of the European legislator[3]. It is also worth noting a trend in European legislative policy in which the promotion of WLB is not the ultimate goal of the legislative efforts observed. Already in the Community Charter of the Fundamental Social Rights of Workers (1989) (para. 16) it was explicitly recognised that the creation of "the possibility for men and women to better harmonise their work and family responsibilities" is in fact a measure and a tool to achieve the higher goal of equal treatment of women and men in the social sphere. A similar understanding of the purpose of WLB policies can be found in the preambles to the relevant European legislation, where it is clearly stated that the promotion of WLB is expected to reduce gender inequalities in the European labour market by consistently facilitating women's access to employment, reducing the risk of social exclusion and increasing their employability[4].

The policies supporting WLB, as understood at the European level, have been focused on four main legislative directions. The first has been focused directly on pregnancy, childbirth and maternity (Barnard, 2012, p. 401). Under this direction, Directive 2006/54/EC[5] and Directive 92/85/EEC[6] are the key pieces of legislation. Equally relevant in this area is the previously mentioned Article 33(3) CFR, as this provision refers to 'protection from dismissal for a reason connected with maternity' and to the right 'to paid maternity leave'. The standards arising from the CFR are further elaborated at the level of secondary legislation. For instance, under Article 8 of Directive 92/85/EEC, Member States have been obliged to provide workers with an uninterrupted maternity leave of at least 14 weeks. In addition, pursuant to Article 2(2)(c) of Directive 2006/54/EC, 'any less favourable treatment of a woman related to pregnancy or maternity leave' has been defined as a form of discrimination.

The second legislative trend – crucial from the perspective of the issue under consideration – relates to direct support for attempts to reconcile work and family life of parents and carers by granting them specific categories of leave and breaks from work (Barnard, 2012, pp. 401–402). It is worth noting that this trend has been consistently developed by the European legislator over the last decades. Firstly, on the basis of the now expired Directive 96/34/EC[7], an individual right to parental leave

for the personal care of a child of at least three months was granted to male and female workers (Clause 2.1. of Directive 96/34/EC). This period was subsequently extended to four months by Directive 2010/18/EU[8], which also introduced the principle of the non-transferability of one month's leave between parents, in order to promote both "equal opportunities and equal treatment between men and women" and "a more equal take-up of leave by both parents" (Clause 2.2. of Directive 2010/18/EU). Such safeguards – stemming from the above-mentioned Directives – as the right to return to the same job at the end of the leave and the obligation for Member States to protect workers against less favourable treatment or dismissal on the grounds of applying for or taking parental leave (Clause 5 of Directive 2010/18/EU) should also be seen as an important element in ensuring the free exercise of the above-mentioned rights. It is also worth noting that the next step in the development of this legislative trend is Directive 2019/1158, which will be analysed in the following sections of this paper.

The third legislative direction, which is also related to the promotion of WLB among working parents and carers, should be linked to the issue of making working time more flexible for working parents (especially women), who – in order to reconcile work and family responsibilities – may more often resort to atypical forms of employment in the form of part-time, fixed-term, temporary or teleworking (Barnard, 2012, pp. 401–402). The protection of atypical forms of work in this sense has been expressed in numerous documents, on the basis of which the legislative approach under consideration has gradually developed. For example, Directive 97/81/EC defined part-time work as a form of reconciliation of work and family life, prohibited discrimination against part-time workers and encouraged employers to accommodate requests for conversion from full-time to part-time work. On the other hand, with the adoption of Directive 2010/18/EU, workers returning from parental leave were granted the right to request a change in their working hours or the organisation of their working time in order to promote a better reconciliation of work and family life. With regard to the legislative direction under consideration, it is also worth mentioning Directive 2003/88/EC[9], as its impact on WLB can be linked to a reduction in working hours and thus more leisure time available for workers to use for family life (Barnard, 2012, p. 402).

On the other hand, the fourth – and last – legislative direction is directly related to the issue of care for children and other dependent family members (Barnard, 2012, p. 402). However, it is worth noting that this direction is currently based mainly on soft law documents, and the recommended effective measures focus mainly on institutional and service aspects. For example, Council Recommendation 92/241/EEC[10] identified childcare services as a means to an end to enable women and men to reconcile work, family and care responsibilities. This statement was further developed in the European Pact for Gender Equality[11], where the improvement of both "the supply of adequate, affordable, high quality childcare services for children under the mandatory school age" and "the provision of care facilities for other dependants' were included as 'measures to promote better work-life balance for women and men". The importance of such access to 'care services' for parents and carers is also recognised in Chapter II, point 9 of the European Pillar of Social Rights (2017) as well as in the Council Recommendation of 22 May 2019 on quality early childhood education and care systems (2019/C 189/02). A similar approach can be found in the Annex to Council Decision (EU) 2020/1512[12], where Guideline 6 explicitly emphasises that "the reconciliation of work, family and private life for both women and men should be promoted, in particular through access to affordable, quality long-term care and early childhood education and care services".

A policy coordinated at European level, focusing on all four of the above-mentioned legislative directions, is intended to create a kind of synergy effect through which both work-life balance for parents and carers and, above all, "gender equality and greater participation of women in the labour market" would be achieved. Significantly, the complexity of legislative policy in the field of promoting WLB, seen in this way, has been confirmed under the European Pillar of Social Rights. Chapter 2 of this document, entitled 'Fair Working Conditions', contains in point 9, entitled 'Work-life Balance', one of the directions of future EU social policy, which is precisely focused on guaranteeing parents and carers the right to adequate leave, flexible working arrangements and access to care services in a gender-equitable way. Therefore, in this context, the promotion of effective WLB for parents and carers obliges the European legislator to continuously monitor the current state of play with regard to each of the above-mentioned legislative directions, in order to improve the available measures, instruments and programmes and to search for new solutions, the final result of which should be a real improvement of women's employability in the labour market. One of the most recent attempts to respond to the current problems related to the implementation of the WLB principle is Directive 2019/1158, to which the following sections of this publication will be devoted.

The motives behind the adoption of Directive 2019/1158

It is not only the adoption of the European Pillar of Social Rights that demonstrates the revival of European policies aimed at promoting WLB. Indeed, it should be noted that in April 2017, the Commission also announced the Initiative to Support Work-Life Balance for Working Parents and Carers[13]. The implementation of this initiative is based on a set of "legislative and non-legislative actions aimed at modernising the existing legal and policy framework in the European Union so that it

better supports the work-life balance of men and women with caring responsibilities, as well as a more equal use of leave and flexible working arrangements". In fact, Directive 2019/1158, adopted on 20 June 2019, is one of the main instruments to achieve the aforementioned objectives. However, before characterising the provisions of the Directive, it is worth looking at the reasons and motives that led the European legislator to draft and then adopt a new piece of secondary legislation. It should be noted that the EU legislator's decision to draft the Directive was based on a relevant analysis of statistical data on women's participation in the labour market. The European Commission's proposal (2017a; 2017b), which presented the draft Directive 2019/1158 as such, already pointed out that in 2015 the employment rate for women (aged 20–64) was 64.3%, while for men it was 75.9%. According to the European Commission (2017a), the very traditional attribution of the role of carer for children, elderly or dependent relatives to women is said to be the main reason for the observed gap. As a result, according to the European Commission (2017a), women are more likely to work part-time, receive lower wages and pensions on average, and are therefore at higher risk of poverty and social exclusion.

According to the EU legislator (European Commission, 2017b), inadequate WLB policies are supposed to be the main reason for the less favourable position of women in the labour market. The fundamental shortcomings of existing policies are supposed to include:

- ❒ a gender-based differentiated structure of leaves from work;
- ❒ insufficient measures to encourage men to use their leaves for caring for children or dependent relatives; and
- ❒ limited opportunities to utilise flexible working arrangements.

Crucially, from the perspective of the EU legislator, the effective promotion of work-life balance for parents and carers is expected to bring measurable benefits at individual, social and economic levels. It is worth noting, for example, that according to the impact assessment accompanying the draft Directive 2019/1158, at the macroeconomic level, the strengthening of policies supporting WLB is expected to have a positive impact on GDP (+ 840 billion by 2055), employment (+ 1.6 million by 2050) and the labour force (+ 1.4 million by 2050) (European Commission, 2017c). However, it should also not be overlooked that the real burden of implementing the measures and tools resulting from Directive 2019/1158 will fall primarily on employers, who will have to adapt their human resources and financial policies to the new rights of workers.

Against such a statistical and problematic background, Directive 2019/1158 can be seen as an expression of the strengthening and continuation of the European Union's existing social policy in the regulatory field, which focuses on increasing the employability of women in the European labour market by removing barriers related to the insufficient harmonisation of the working and private lives of parents and carers. Moreover, the adoption of yet another document in the rich portfolio of normative and non-legislative acts in the field of WLB can also be seen as an acknowledgement that, at European level, previous policies designed to address the under-representation of women in the labour market have proved insufficiently effective and that the legal and factual barriers previously identified continue to have a negative impact on the overarching social policy objective of providing women and men with truly equal access to the labour market. For example, the European Economic and Social Committee (2018), in its assessment of the last decade, is very clear about the stagnation and ineffectiveness of EU policy in the area of gender equality in employment.

New standards for legal protection and promotion of work-life balance for parents and carers in the light of Directive 2019/1158

The particular relevance of Directive 2019/1158 for the implementation of the EU policy promoting the idea of WLB in employment is confirmed by the wording of Article 1(1) of the document in question, according to which the Directive establishes minimum requirements addressed to the Member States aimed at "achieving equality between men and women with regard to labour market opportunities and treatment at the workplace by facilitating the reconciliation of work and family life for workers who are parents or carers". It is worth noting that the objective of Directive 2019/1158, formulated in this way, is fully in line with the current understanding of EU policy promoting the idea of WLB in employment, the main task of which is to improve the factual and legal situation of women in the labour market. However, it should also be noted that the analysed Directive is not a document that touches on all four of the above-mentioned legislative directions of European policy supporting WLB. Indeed, according to Article 1(2) of Directive 2019/1158, the objective of the normative act in question is to be achieved through (adopted or amended on the basis of the analysed Directive) the individual rights of working parents and carers in relation to paternity leave, parental leave, carers' leave and flexible working arrangements. Thus, it is noteworthy that Directive 2019/1158 is essentially based on two legislative areas that focus on extending both access to leave and breaks from work for working parents and carers and more flexible working arrangements.

The first right provided for by Directive 2019/1158 is paternity leave of ten working days (Article 4(1) of the Directive). This right is to be granted in all cases to fathers of newborn children and, in those jurisdictions where the concept of "equivalent second parent" of the child exists, also to a man or woman who has that status. The specific purpose and role of paternity leave are particularly important features of the EU concept of paternity leave, which must be seen in a specific temporal

context. Indeed, according to recital 19 of the preamble to the analysed Directive, paternity leave is intended "for the early creation of a bond between fathers and children" and "should be taken around the time of the birth of the child and should be clearly linked to the birth for the purposes of care". Consequently, the possibility of taking paternity leave should be limited in time to a period directly linked to a specific event, i.e. the birth of a child. This limited timeframe ensures that the design of paternity leave is directly in line with the EU's WLB policy, which aims to improve the situation of women in the labour market (Golynker & Lorber, 2020) by encouraging fathers to become more involved earlier and more actively in the upbringing of their children. According to the recital above, this should lead to "a more equal sharing of caring responsibilities", from which women in particular should benefit directly.

Turning back to the standards for paternity leave directly set out in Directive 2019/1158, it is also worth noting that the directive in question grants Member States a certain degree of discretion to decide on the rules governing the use of paternity leave at national level. Indeed, according to Article 4(1) in fine of Directive 2019/1158, Member States are free to decide "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". In addition, according to the above-mentioned recital 19 of the Directive, flexible arrangements should be interpreted as the possibility of taking paternity leave on a part-time basis or in alternating periods of work and care. According to the same recital, Member States may also alternatively fix the duration of paternity leave in essentially any units of time, with the proviso that two calendar weeks shall be equivalent to ten working days. Equally importantly, access to paternity leave should not be made conditional at national level on circumstances such as the worker's seniority, length of service, marital or family status (Article 4(2) of Directive 2019/1158). It should also be noted that it is intended to be paid leave on at least the same basis as sick pay, although in this respect Member States may make the right to payment conditional on a relevant period of previous employment, which should not exceed six months immediately prior to the expected date of birth of the child (Article 8(2) of Directive 2019/1158).

Secondly, Directive 2019/1158 has significantly changed the standards for parental leave. First of all, it should be noted that Article 5(1) of the Directive requires Member States to guarantee all workers an individual right to parental leave of four months. However, what is particularly important is not the duration of the right in question, but above all the standards introduced for the use of parental leave, which in a peculiar way affect the legal situation of eligible fathers. In fact, one of the tasks of Directive 2019/1158 is to more decisively encourage men to increase their participation in caring responsibilities compared to previous trends, the tangible result of which should be to relieve women in this respect (Świątkowski, 2020, p. 23). Indeed, the EU legislator points out that one of the basic problems related to the functioning of parental leave is the tendency of fathers and carers not to use it and to transfer their share of leave to mothers. In this context, Directive 2019/1158 reinforces the individualisation of the worker's right to parental leave, which, according to the new standards:

- should be taken by the entitled parent or carer before the child reaches a certain age, which may be up to eight years at national level (Article 5(1) of Directive 2019/1158), and
- the two months of leave should not be transferable to the other parent or carer, which would result in the forfeiture of the unused part of the leave.

In assessing the standards currently promoted, it should be borne in mind that the increase in the non-transferable share of parental leave is intended to curb the current practice of many fathers not taking their share of leave and transferring their entitlement to the child's mother (Recital 20), which clearly contributes to delays in the reintegration of women with parental responsibilities into the labour market. Other standards that encourage parents and carers to make full use of parental leave are also worth mentioning. These include the right of workers to take leave on a flexible basis (Article 5(6) of Directive 2019/1158), and a standard for paid leave that facilitates "take-up of parental leave by both parents" (Article 8(3) of Directive 2019/1158). The combination of all the above measures and tools is expected to positively change previous trends and make parents and carers more willing and able to take parental leave in a more 'partnership-based' way, ultimately contributing to the overarching objective of the WLB principle of increasing women's participation and employability.

Directive 2019/1158 has also obliged Member States to implement at national level the right of every worker to five working days per year of carers' leave (Article 6 of the Directive) and time off from work on grounds of force majeure (Article 7 of Directive 2019/1158). These categories of rights are also fully in line with the basic assumptions of the WLB principle, as they allow male and female workers to perform other, primarily urgent, caring duties without the simultaneous need for work-related deactivation (Świątkowski, 2020, p. 26). It is worth noting that the carer's leave introduced on the basis of the analysed directive is an expression of the EU's recognition of the growing problem of the ageing society, in which there will be an increasing demand for care, which, apart from the institutional dimension, is most often provided by the closest family members. It is also worth noting that, in the context under consideration, the policy of promoting the WLB principle goes beyond its main focus on parenthood and motherhood[14]. Indeed, carers' leave should also be seen in relation to the non-maternal and non-parental dimensions of family life, which may include caring for other close relatives such as siblings, grandparents or one's own parents.

The worker's right to time off on grounds of force majeure, the rules for the exercise of which are defined in Directive 2019/1158 in a rather general and vague manner, should also be viewed in an equally broad manner (Świątkowski, 2020, p. 27). Indeed, in the case of the right in question, the possibility of using it was reserved for cases of force majeure, which take the form of "urgent family reasons in the case of illness or accident making the immediate attendance of the worker indispensable".

Directive 2019/1158 has also introduced a new set of rules allowing workers to request flexible working arrangements for caring responsibilities (Article 9 of Directive 2019/1158), the use of which is intended to enable a parent or carer to adapt their working arrangements to their family responsibilities, which may take the form of remote working, flexible working hours or a reduction in existing working hours (Article 3(1)(f) of Directive 2019/1158). There should be little doubt that the possibility of using flexible working arrangements makes it possible to reconcile work and family life as far as possible, without having to give up any dimension of human activity. However, it is a measure of the implementation of the WLB principle that the EU legislator also takes into account the competing interests of employers for whom flexible work organisation may prove impossible or uneconomical due to the nature of their "means and operational capabilities". As a result, the practical potential for the use of flexible forms of work organisation in the case of Directive 2019/1158 has been significantly reduced by the adoption of a standard that ensures that workers should only have the right to request flexible working time arrangements, but not the right to demand and exercise such arrangements. As such, the ability to use flexible working arrangements is ultimately at the discretion of the employer. Indeed, based on the interpretation of the second sentence of Article 9(2) of Directive 2019/1158, it can be concluded that the employer may take one of three possible decisions, i.e. accept the worker's request, reject it or postpone the moment of introducing flexible working arrangements. Equally important, in the cases under consideration, the employer should not act arbitrarily and any negative decision should be duly motivated, taking into account the interests of each party to the employment relationship.

Directive 2019/1158 also obliges Member States to extend protection against discrimination (Article 11) and dismissal (Article 12) to workers who claim or exercise the rights promoted. This protection is not only intended to be active while workers are exercising the rights provided for by the directive under analysis. In fact, the EU legislator has established a more complex standard of protection which should also be applied and respected with regard to those workers who – without yet exercising their rights – make an appropriate request for paternity, parental or care leave[15]. It should also be noted that the strict standard of protection against dismissal should cover all forms of unilateral termination of employment by an employer (Świątkowski, 2020, p. 32). Moreover, in addition to the protection against dismissal during the protection period, a broader prohibition addressed to employers should be introduced at national level, which must also cover any form of preparation for dismissal (Article 12(1) of Directive 2019/1158). Violation of these prohibitions by an employer should be treated as an example of direct discrimination in employment. Furthermore, in light of the standards being introduced, Member States should also change the classic allocation of the burden of proof in court (or equivalent) proceedings concerning the breach of the above-mentioned prohibitions, where the employer should bear the burden of proving the lawfulness of its actions (Article 12(3) of Directive 2019/1158). There should be little doubt that safeguarding workers' access to parental and caring rights with protective measures of an anti-discriminatory nature is an important element for the effectiveness of the proposed measures and instruments promoting the WLB principle. Similarly, the norm guaranteeing workers the right to "return to their post or to an equivalent post on terms and conditions that are no less favourable and to benefit from any improvement in working conditions to which they would have been entitled had they not taken paternity, parental or filial leave" (Article 10(2) of Directive 2019/1158) needs to be assessed. Indeed, it should be borne in mind that one of the main disincentives for workers to make use of rights that allow them to reconcile work and family life is precisely the fear of reluctance on the part of an employer or of destabilising or weakening their position in the workplace, as well as weakening their employability.

Work-life balance under Directive 2019/1158 and atypical forms of employment

It is also worth referring to the subjective scope of the analysed Directive, the framing of which may raise reasonable doubts as to its clarity and, more generally, as to the inclusiveness of current policies promoting the WLB principle at European level. Indeed, according to the provision of Article 2 of Directive 2019/1158, it "applies to all workers, men and women, who have an employment contract or employment relationship, as defined by the law, collective agreements or practice in force in each Member State, taking into account the case-law of the Court of Justice".

In the light of the wording of the above-mentioned provision of the Directive, a fundamental interpretive doubt may arise as to how Member States should construct their national implementation mechanisms, which are to be based on national law and practice on the one hand, and on the relevant case law of the ECJ on the other. In this context, it should also be recalled that there is no single definition of worker in EU law, which requires a separate approach for each relevant EU act. This doubt is clarified to some extent by recital 17 of the

preamble to Directive 2019/1158, which confirms that atypical forms of employment, such as part-time, fixed-term or temporary work, are also to be included in the scope of protection[16]. Significantly, this declaration is at the same time counterbalanced by the precautionary reservation in the same recital that, in the light of the relevant case law of the CJEU, it is up to the Member States to define employment contracts and employment relationships.

This framing of the subjective scope of Directive 2019/1158 seems to suggest that the document in question does not extend its protection to all those categories of workers whose employment is of a non-employee nature. Such a restrictive interpretation is also confirmed by the European Committee of the Regions (2018), which, in its opinion on the draft of Directive 2019/1158, called for the addition of 'atypical workers, including the self-employed' to the wording of Article 2 of the Directive and regretted that it does not cover the postulated categories of working persons, which would be in line with Directive 2010/41/EU[17] and would allow for the protection of those working on the basis of bogus atypical employment relationships and those engaged in economically dependent jobs (bogus self-employment).

The criticism expressed by the European Committee of the Regions seems justified. Indeed, it should be borne in mind that, given the size of the European labour market and in the era of the growing popularity of the gig economy and the platformisation of the labour market, the decision to exclude atypical non-employee forms of employment from the protection of the WLB principle affects tens of millions of workers in an area directly linked to the issue of fundamental rights[18]. It is noteworthy that, against the background of a strict interpretation of the provision of Article 2 of Directive 2019/1158, more liberal approaches are nevertheless emerging in legal doctrine, according to which the reference to the relevant case law of the ECJ is nevertheless intended to push Member States to extend the protective measures analysed also to those working on the basis of atypical non-employee forms of employment (Chieregato, 2020).

In the context under consideration, it is also worth mentioning the scope of Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union (hereinafter: Directive 2019/1152), which was adopted on the same date. According to Article 1(2) of this act, the minimum rights laid down therein "shall apply to every worker in the Union who has an employment contract or employment relationship as defined by the law, collective agreements or practice in force in each Member State, with consideration to the case-law of the Court of Justice". There should therefore be little doubt that, at a literal level, the personal scope of Directive 2019/1152 as thus drafted is substantially similar to that set out in the provision of Article 2 of Directive 2019/1158. Interestingly, however, this impression is negatively revised in recital 8 of the preamble to Directive 2019/1152, where it is explicitly stated that, in the light of the relevant case law of the CJEU, the personal scope of Directive 2019/1152 should also include those persons who have been employed on the basis of such categories of atypical forms of employment as domestic work, homeworking, on-demand work, intermittent work, voucher-based work, platform work, training, apprenticeship or bogus self-employment.

Finally, we should also take a look at the EU legislator's decision to construct the subjective scope of the above-mentioned Directives by referring, at the normative level, directly to the case law of the CJEU. Such a solution may raise certain controversies from the point of view of the quality and predictability of the law. While acknowledging that the considered approach may be perceived as a kind of safety valve making the rather rigid conceptual framework more flexible, the risks involved should also be noted. Referring to the case law of the CJEU in the case of the above-mentioned Directives is highly discretionary in nature and thus introduces an element of legal uncertainty and instability into both the European and national legal systems. In the case of conflicting views of the CJEU on the concept of worker, it is difficult to determine, even in a permanent and universal way, which of the CJEU's rulings will be relevant to the issue in question. It should also be borne in mind that the case law of the CJEU itself is constantly evolving. The question of whether the implementation standards for Directive 2019/1158 will evolve with the CJEU's changing jurisprudence also remains an important issue. These issues are likely to require a robust position from the CJEU alone in the near future.

Work-life balance from the perspective of the realities of the Polish labour market

Within the framework of the analysis carried out, it is also worth mentioning the importance of WLB programmes for the Polish labour market. In this context, the postulate of a consistent and continuous implementation and improvement of WLB programmes, which would support the process of strengthening women's representation in the domestic labour market through a more equal distribution of parental and car e responsibilities, should be considered justified and still valid. This position is based on the observation that, despite successive reforms and programmes, significant gender disparities are still visible in the Polish labour market. These include:

- ❒ a lower employment rate for women; (in 2018, 46.6% against 62.4% for men);
- ❒ a lower labour force participation rate for women of working age (72% against 80.6% for men);
- ❒ a lower average wage (by 16.6% in 2018);
- ❒ a higher rate of economically inactive women (by more than 60% compared to men in 2018); and
- ❒ a more frequent occurrence of women working part-time and on a fixed-term contract (Czajka, 2021, pp. 51–69; Magda, 2020; Zielonka, 2021).

The above statistics reflect clear problems experienced by women in the Polish labour market, which are generally common or similar to those experienced in virtually all national labour markets in Europe. In fact, the main conditions hindering women's access to the national labour market and their professional development include the stereotypical perception of a woman's role in the family, the reduced efficiency and availability of women burdened with caring responsibilities, the reluctance of employers or ineffective pro-family policies of the state (Czajka, 2021, pp. 59–62). Seen in this light, the range of problems and obstacles experienced by working women with care responsibilities would seem to suggest that only a coordinated and multifaceted pro-family policy will allow for a more effective promotion of the WLB principle in the labour market.

Directive 2019/1158 from the perspective of the current reform of the Polish labour law system

Apart from demonstrating the reasons for the continuous need to create and implement programmes promoting the WLB principle, it is also worth trying to answer the question of whether Directive 2019/1158, in the context of facilitating the process of reconciling work and family life for parents and carers, can be seen as an instrument with significant potential from the perspective of the Polish labour law system and the legislative changes implemented in this field.

In this context, it should first be noted that the Polish labour law system in its pre-implementation state was largely compatible with the standards resulting from Directive 2019/1158 (Półtorak, 2019, p. 333; Ślęzak-Gąsiorowska, 2019, p. 15). Therefore, doubts about the real impact of the analysed directive on the national legal system can be considered justified. In other words, it can be feared that the conservative – from the national point of view – design of the legal norms that need to be implemented will result in a lack of significant improvement in the level of professional activity of parents and carers, including, in particular, women raising young children. It is also worth noting the symptomatic behaviour of the national legislator, which failed to adopt the relevant implementing legislation by the set deadline (i.e. 2 August 2022). It was not until 26 April 2023 that the law transposing Directive 2019/1158 entered into force. It should also be noted that, in principle, the rights under the Directive were granted only to employees within the meaning of the Labour Code.

Turning to individual standards, it is worth starting with paternity leave, which, in the case of the Polish legal system, has been available to fathers raising children for two weeks since 1 January 2010 (Article 1823 LC). Interestingly, the possibility to take this leave was initially limited to the child's 12th month of life, and this period was extended to 24 months with the Labour Code reform that came into force on 2 January 2016. As a result, the Polish standards for paternity leave were more flexible in the case in question in the sense that it allowed the two-week leave to be used over a longer period of the child's life (Ślęzak-Gąsiorowska, 2019, p. 15). However, the flexibility in the case discussed does not mean that the leave in its pre-implementation form was compatible with the standards stemming from Directive 2019/1158. Indeed, it should be borne in mind that paternity leave, as defined by the Directive, is intended to motivate fathers to become involved earlier and more extensively in the upbringing of their newborn children, and should therefore be taken during the perinatal period and primarily contribute to relieving the mother. As a result, the rules on the use of paternity leave should be made more rigid, which is actually reflected in the current amendment to the LC in the form of a reduction in the possibility of using paternity leave up to the child's 12th month. Contrary to the claims of some researchers (Ślęzak-Gąsiorowska, 2019, p. 15), the interests of a worker-father himself or an employer are also irrelevant in the area under consideration, as paternity leave is primarily intended to serve the child itself and its mother and should be used, as intended, during the specific period of care.

It seems that also in the case of the flexible working arrangements postulated under Directive 2019/1158, most of the solutions are already present in the LC (Czerniak-Swędzioł & Kumor-Jezierska, 2021, pp. 201–202; 204–205; Ludera-Ruszel, 2020b, p.16). These include remote work (Chapter IIc LC), interrupted working time systems (Article 139 LC), shortened working week (Article 143 LC), weekend work (Article 144 LC) and reduced working time (Article 145 LC), as well as flexible working hours (Article 140^1 LC) or additional breaks at work (Article 141 LC). Moreover, it is also worth bearing in mind such elements as the possibility of establishing an individual working time schedule (Article 142 LC) and the obligatory reduction of working time at the request of an employee (Article 186^7 LC).

In this context, even the introduction of a more universal basis for the possibility for an employee to apply for a more flexible work organisation, together with the indication of the circumstances that an employer should take into account when considering the request in question (Article 188^1 LC) remains only a potential improvement in a situation in which the employer is in fact under no legal obligation to consider even fully motivated requests of its employees. It should be assumed that only by shaping the binding character of an employee's request for the introduction of a more flexible work organisation in the form of a simple proviso that an employer is obliged to take into account a justified request of an employee is it possible to measurably influence the effectiveness of the considered guarantees supporting the work-life balance of parents and carers (Ślęzak-Gąsiorowska, 2019, p. 16).

However, there is some potential in the individualisation and partial non-transferability of the

right to parental leave, in which case – according to Article 182[1a] § 4 LC as amended – 9 weeks will remain at the exclusive disposal of each parent. It should be noted that until now, according to the provisions of the LC, parental leave could be used in full by one of the parents. As a result, it was common practice for parental leave to be used almost exclusively by mothers. For example, according to the communication of the Ministry of Family and Social Policy (2018), a total of 406.6 thousand people, including 402.4 thousand women and 4.2 thousand men, used parental leave in 2017. Perhaps in this way, the legislator will encourage fathers to take parental leave more often, which should at least potentially reduce the burden on mothers in the childcare process and accelerate the time when they can return to work (Ślęzak-Gąsiorowska, 2019, pp. 15–16). In the Regulatory Impact Assessment (2022, p. 11), the legislator itself optimistically assumes that, once the proposed changes enter into force, up to 20% of fathers will benefit from the analysed right in each of the next 10 years.

Against the background of the above considerations, the introduction of the right to time off from work due to *force majeure* on the basis of Article 148[1] LC for 2 days or 16 hours, with the retention of the right to half of the remuneration for this period, is a certain novelty for the Polish labour law system. Unfortunately, in this context, the Polish legislator decided to uncritically rewrite the content of Article 7 of Directive 2019/1158, literally granting employees the right to "time off from work due to *force majeure* in urgent family matters caused by illness or accident, if the employee's immediate presence is required". The flaw in such a wording of the provision in question is the reference to the concept of *force majeure*, which already has a well-established meaning in the Polish legal system, the faithful application of which in the case of the right in question would lead to the impossibility of exercising the time off. In such a situation, the best solution seems to be an autonomous interpretation of the above provision of the Labour Code based on the functional context of the Directive 2019/1158 (Sobczyk, 2023). It is also worth noting that the right of an employee to handle sudden and unforeseeable family matters had already functioned earlier in the Polish legal system within the institution of excused absence addressed in the Regulation on the manner of justifying absences from work and granting exemptions from work to employees[19] (Sobczyk, 2023). The only difference in this respect is that in the case of time off under Article 148[1] LC, a prior application is required and that in such a case the employee retains the right to 50% of the salary for this period.

Another new employee entitlement introduced by Article 173[1] LC is the 5 working days carer's leave. The applicability of this leave is based on relatively general conditions. Firstly, the provision of personal care or assistance must be based on serious medical reasons, which are not defined in any way in the LC. Therefore, this issue is left to the discretion of the requesting employee and the employer granting the leave (Zieleniecki, 2023). Secondly, leave may be taken to provide personal care or assistance to a person who is only a family member or who lives in the same household. In this respect, it is noteworthy that the Polish legislator has not opted for further, more precise conditions restricting access to the leave in question. With regard to the potential of carer's leave to promote WLB, it should first be noted that it is an unpaid leave, which undoubtedly has a negative impact on the possible 'pay-off' use of the entitlement in question. It should also be borne in mind that the employee will not always be able to make use of the care allowance in such a situation, since it only covers situations where a child (up to the age of 8/14) or another sick family member is being cared for[20], which undoubtedly does not cover all possible scenarios in which the carer's leave could be used.

Summary

The analysis made in the article leads to the following conclusions:

1) The principle of promoting work-life balance for parents and carers has a relatively strong normative basis in national, international and European legislation.

2) The content of the examined principle includes, in particular, an obligation on the national legislator to implement a legislative policy that effectively supports workers engaged in caring and parental duties in their private lives to reconcile their caring role with their professional duties.

3) The real possibility of reconciling family and working life should primarily benefit women, who are far more likely to face barriers to entering, remaining in and returning to the labour market due to factors such as cultural stereotypes and traditions, employer reluctance and the unequal sharing of care responsibilities between partners.

4) The normative sources of the principle of promoting work-life balance for parents and carers have been enriched in recent years with the entry into force of Directive 2019/1158, which promotes new WLB standards for paternity leave, parental leave, other breaks from work related to caring responsibilities and flexible working arrangements. The document analysed should rather be seen as another piece of legislation in the EU's consistent, but also precautionary, social policy. The reasons for this state of affairs lie, among other things, in the considerable social, cultural, economic and legal differences between the individual Member States, which ultimately make the process of formulating more 'ambitious' legal standards for the protection of the work-life balance within the EU considerably more challenging.

5) It seems that the main challenge for the European legislator in the coming years and decades may not be the question of extending the existing guarantees in terms of their material content, but above all the question of how to extend the subjective scope of WLB policy to those

categories of economically active persons who do not fall within the rigid concept of worker or employee as defined by national law.

6) The legislative policy in the area of the principle of supporting work-life balance for parents and carers must be multifaceted and should address both the material sphere (leave, flexible working arrangements, protection against discrimination) and the institutional sphere (universal access to care facilities).

7) The Polish labour law system, in its pre-implementation state, was to a large extent compatible with the standards resulting from Directive 2019/1158.

8) The introduction of a general basis for flexible working arrangements and the obligation for employers to consider reasonable requests under Article 188 LC can be seen as potential improvement of work-life balance, but only the binding nature of employees' requests on employers can have a significant impact on the effectiveness of these guarantees.

9) The individualisation and partial non-transferability of the right to parental leave, as provided for in the new wording of Article 182[1a] § 4 LC, which allocates 9 weeks exclusively to each parent, may encourage fathers to take parental leave more often. This shift could potentially ease mothers' childcare responsibilities and speed up their return to work, with the legislator expecting a 20% increase in the number of fathers using this right over the next decade.

10) The introduction of the right to time off work on grounds of *force majeure*, which allows for an absence of 2 days or 16 hours with half pay, is a new development in Polish labour law. However, the literal adoption of Article 7 of Directive 2019/1158, which refers to *force majeure*, poses a practical challenge due to its already existing legal interpretation in the Polish legal system. In such a case, an independent interpretation of this concept based on the functional context of the Directive seems necessary.

11) Article 173[1] LC introduces a 5-day carers' leave, which is applicable under relatively general conditions. The provision of personal care for serious medical reasons is left to the discretion of the requesting worker, while leave can be taken for the care of family members or persons living in the same household. However, the unpaid nature of the leave and the limitations on the coverage of the care allowance may hamper its potential effectiveness in promoting work-life balance.

Notes/Przypisy

[1] While at the same time it is worth noting that the very title of the document in question explicitly refers to the WLB principle.

[2] Pursuant to the provision of Article 6(1) of the Treaty on European Union, the CFR has the same legal force as the Treaties.

[3] However, it is also worth noting that other aspects of WLB - e.g. in the form of the right to be offline – have also been receiving increasing legislative attention in recent years.

[4] See Recital 10 of the preamble to Directive 2019/1158.

[5] 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), OJ L 204, 26.7.2006, p. 23–36.

[6] Council Directive 92/85/EEC of 19 October 1992 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 (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC), OJ L 348, 28.11.1992, p. 1–7.

[7] Council Directive 96/34/EC of 3 June 1996 on the framwork agreement on parental leave concluded by UNICE, CEEP and the ETUC, OJ L 145, 19.6.1996, p. 4–9.

[8] Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC, OJ L 68, 18.3.2010, p. 13–20.

[9] Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, OJ L 299, 18.11.2003, p. 9–19.

[10] 92/241/EEC: Council recommendation of 31 March 1992 on child care, OJ L 123, 8.5.1992, p. 16–18.

[11] Council conclusions of 7 March 2011 on European Pact for Gender Equality (2011–2020), OJ C 155, 25.5.2011, p. 10–13.

[12] Council Decision (EU) 2020/1512 of 13 October 2020 on guidelines for the employment policies of the Member States, OJ L 344, 19.10.2020, p. 22–28.

[13] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. An Initiative To Support Work-Life Balance For Working Parents And Carers, COM(2017) 252 final.

[14] However, carers' leave within the meaning of Directive 2019/1158 should not be used to provide discretionary care for any close family member. Indeed, according to the provision of Article 3(1)(c) of Directive 2019/1158, 'carers' leave means leave from work for workers in order to provide personal care or support to a relative, 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, as defined by each Member State', while under point (e), a term 'relative' has been defined as 'a worker's son, daughter, mother, father, spouse or, where such partnerships are recognised by national law, partner in civil partnership'.

[15] According to Article 12(1) of Directive 2019/1158, in the case of flexible working arrangements, the protection against dismissal is to be granted only to workers who have exercised the right to request flexible working arrangements.

[16] The protection of those forms of employment were already guaranteed under the repealed Directive 2010/18/EU.

[17] Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC, OJ L 180, 15.7.2010, p. 1–6.

[18] According to EU estimates, the number of people working via online work platforms is expected to be around 43 million in 2025.

[19] Rozporządzenie Ministra Pracy i Polityki Socjalnej z 15 maja 1996 r. w sprawie sposobu usprawiedliwiania nieobecności w pracy oraz udzielania pracownikom zwolnień od pracy Dz.U. 1996 nr 60 poz. 281 (2014)(Polska).https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19960600281.

[20] See Article 32 of Ustawa o świadczeniach pieniężnych z ubezpieczenia społecznego w razie choroby i macierzyństwa Dz.U. 1999 Nr 60, poz. 636 (2022)(Polska). https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19990600636/U/D19990636Lj.pdf.

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Dr Jakub Gołaś, assistant professor at the Department of Labor and Social Law at the Faculty of Law and Administration of the Adam Mickiewicz University, Poznań. Legal practitioner. Long-term supervisor of the Labor Law and Social Security Section of the AMU Student Law Clinic.

Dr Jakub Gołaś, adiunkt zatrudniony w Zakładzie Prawa Pracy i Prawa Socjalnego na Wydziale Prawa i Administracji Uniwersytetu im. Adama Mickiewicza w Poznaniu. Prawnik. Wieloletni opiekun Sekcji Prawa Pracy i Zabezpieczenia Społecznego Studenckiej Uniwersyteckiej Poradni Prawnej UAM.