

Work-Life Balance Between Conciliatory Suggestions and Family (Dis)balances

Veronica Caporrino

Pegaso International, Italy
veronica.caporrino@gmail.com

Salvatore Puccia

Pegaso International, Italy
salvopux@gmail.com

Abstract

The paper deals with the analysis of the relationship between the principle of equality and prohibitions of discrimination between men and women in the labour market. The study focuses on Italian and European legislation. We will try to demonstrate how the Work-life balance policies contribute to the achievement of gender equality by promoting the participation of women in the labour market, the equal sharing of caring responsibilities between men and women. Work-life balance remains a considerable challenge for many parents and workers with caring responsibilities, in particular because of the increasing prevalence of extended working hours and changing work schedules, which has a negative impact on women's employment. The aim is to verify the degree of protection of women and the balance between professional and private life (ex. care activities)¹.

Keywords: equal treatment, labour market, balance between professional and private life

SECTION 1, 2, 3 VERONICA CAPORRINO

SECTION 4, 5, 6 SALVATORE PUCCIA

¹ CASALINI B. (2012), *L'etica della cura. Dal personale al globale*, in *B@belonline*, 12, 224. See, also,

THE PRINCIPLE OF EQUAL TREATMENT BETWEEN MEN AND WOMEN IN ITALY: GENERAL ASPECTS

The study aims to analyze the women and man situation in order to verify the presence of discrimination in the labour market and the balance between professional and private life. The judgment on the effective implementation of the constitutional principles regarding the protection of women must be conducted through a historical-constitutional analysis that manages to overcome the prejudices on the diversity of women and is able to learn a "rebalancing" protection of their position. The Article. 37 of Italian Constitution establishes that «The working woman has the same rights and [...] the same wages as the male worker. The working conditions must allow the fulfillment of her essential family function and ensure special protection for the mother and the child»².

The first commentators hoped for a need for special protection for women in order to protect their psycho-physical health and their fulfillment of the essential family function³.

What is the main principle in the constitutional precept? A correct interpretation of it allows us to affirm that whoever identifies the principle of equality between men and women in the aforementioned precept, risks underestimating the limit of the two incidents, referring to the need for specific protection to allow the fulfillment of the family function and ensure protection for the mother and baby⁴. A first phase can be identified with the approval, between the '50s and '70s, of a series of laws (l. n. 860/1950; l. n. 7/1963; l. n. 1204/1971; l. n. 903/77) which contributed to eliminate the state of underdevelopment that until the 1970s had characterized the status of the working woman and led a theory of universal vulnerability as the basis for a review of the principle of equality and institutional action, in order to identify the response that the institutions government should prepare to take charge of citizens' vulnerability, understood both as an ontological datum and as a socially constructed datum⁵.

The second stage of regulatory evolution occurs in the 1990s. The Law n. 125 of 1991 "Positive actions to achieve equality between men and women in the workplace"⁶, as stated by the Constitutional Court, puts in place «positive measures aimed at bridging or, in any case, at alleviating an evident imbalance against women, which due to discrimination accumulated over the past history of some dominating behaviors, has led to the promotion of males in the position of entrepreneur or manager of a company». These interventions allowed the elimination of the disparities deriving from school and professional training, the diversification of professional choices with access to self-employment, and finally the balance between family and professional responsibilities⁷.

² See, BALLESTRERO M.V. (2007), *La Costituzione e il lavoro delle donne: eguaglianza, parità di trattamento, pari opportunità*, in M. GIGANTE (a cura di), *I diritti delle donne nella Costituzione*, Napoli, p. 75 ss.

³ PERLINGIERI P. e BALLETTI S. (2001), *Art. 37*, in P. PERLINGIERI, *Commento alla Costituzione italiana*, Napoli, 2001, p. 258.

⁴ PERLINGIERI P. e BALLETTI S., *o.u.c.*

⁵ So FINEMAN M.A. (2018), *Il soggetto vulnerabile e lo Stato responsabile*, in *Vulnerabilità: etica, politica, diritto*, a cura di M.G. Bernardini, B.Casalini, O. Giolo, L. Re, Roma, p. 141 ss.

⁶ See d.lgs. n. 196/2000 e poi con il d.lgs. n. 145/2005 and the d.lgs. 11 aprile 2006, n. 198 *Codice delle pari opportunità tra uomo e donna*.

⁷ Corte cost., n. 109 del 1993, in *consultaonline.it*.

THE PRINCIPLE OF EQUAL TREATMENT IN EUROPEAN LEGISLATION

The European primary law, starting from the Treaty established by the European Economic Community, which at the article 119 sanctioned the principle of equal treatment between men and women regarding remuneration, in accordance with the functional aim pursued by the Community itself. After, the European law is dedicated to the care of social relations and, more generally, to the protection of the fundamental rights of the human person in an evolutionary approach to protection. The Amsterdam Treaty introduced the principle of *gender mainstreaming*⁸, arguing that equality between the sexes is a transversal objective applicable to all Community policies (art. 3, paragraph 2 of the Treaty of the European Community - TEC) and inserting it among the missions of the European Community (art. 2 - TEC). In addition, it provided the legal basis for the adoption by the Community institutions of protective measures to eliminate discrimination based on sex and incentive measures to support Member States' actions for the implementation of the anti-discrimination objectives (art. 19 - TEC). The equal pay rule was therefore integrated with the supply of positive actions aimed at guaranteeing real equality (art. 141 - TEC).

Going back over the fundamental evolutionary steps, we note the reform contained in the Lisbon Treaty, which in addition to attributing a binding legal value to the Charter of Fundamental Rights, qualified equality between women and men as one of the five values on which the European Union is founded (art. 2 Treaty on European Union), and which it promotes in its actions (art. 3 Treaty on European Union and art. 8 Treaty on the Functioning of the European Union).

The art. 157 upon the Functioning of the European Union establishes that «1. Each Member State shall ensure that the principle of equal pay⁹ for male and female workers for equal work or work of equal value is applied. [...] 3. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, and after consulting the Economic and Social Committee, shall adopt all the necessary measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value. 4. With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the underrepresented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers». In addition to primary law legislation there is secondary legislation against discrimination on the basis of sex, which promotes equality between women and men and concerns access to work, remuneration, maternity protection, reconciliation between professional and private life, social security and professional regimes social security. In relation to this last aspect, it should be noted the Directive (EU) 2019/1158 of the European Parliament and of the

⁸ See, *Stork*, 4 febbraio 1959, Causa C-1/58, in *Raccolta*, 1959, p. 43; *Nold*, 15 luglio 1960, Cause riunite C-36-38/59, in *Raccolta*, 1960, pp. 857-890; *Sgarlata*, 1° aprile 1965, Causa C-40/64, in *Raccolta*, 1964, p. 279. See, also, G. TESAURO, *I diritti fondamentali nella giurisprudenza della Corte di giustizia*, in *Riv. int. dir. uomo*, 1992, p. 426 ss. See, CROMPTON R. (1999), *Restructuring Gender Relations and Employment. The Decline of the Male Breadwinner*, Oxford.

⁸ BECCALI B. (1999), *Donne in quota. La politica delle quote nel lavoro e nella rappresentanza politica*, in *Donne in quota. È giusto riservare posti alle donne nel lavoro e nella politica?*, (a cura di) B. Beccalli, Milano, p. 9 ss.

⁹ ARULAMPALAM W., BOOTH A. L. and BRYAN, M. L. (2007), 'Is there a glass ceiling over Europe? Exploring the gender pay gap across the wage distribution', *Industrial and Labor Relations Review*, 60, p. 163 ss.

Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU¹⁰.

THE WORK-LIFE BALANCE AND THE (EU) DIRECTIVE 2019/1158

The theme of reconciliation between professional and family life gets a fundamental importance in the debate not only on a national level, but also in Europe. The current Union legal framework provides limited incentives for men to assume an equal share of caring responsibilities. The lack of paid paternity and parental leave in many Member States contributes to the low take-up of leave by fathers. The imbalance in the design of work-life balance policies between women and men reinforces gender stereotypes and differences between work and care¹¹. Policies on equal treatment should aim to address the issue of stereotypes in both men's and women's occupations and roles, and the social partners are encouraged to act upon their key role in informing both workers and employers and raising their awareness of tackling discrimination. Furthermore, the use of work-life balance arrangements by fathers, such as leave or flexible working¹² arrangements, has been shown to have a positive impact in reducing the relative amount of unpaid family work undertaken by women and leaving them more time for paid employment (“Considerando” 11). Work-life balance policies should contribute to the achievement of gender equality by promoting the participation of women in the labor market, the equal sharing of caring responsibilities between men and women, and the closing of the gender gaps in earnings and pay¹³. Such policies should take into account demographic changes including the effects of an ageing population (6). In order to encourage a more equal sharing of caring responsibilities between women and men, and to allow for an early creation of a bond between fathers and children, a right to paternity leave for fathers or, where and insofar as recognized by national law, for equivalent second parents, should be introduced. (19). Member States shall take the necessary measures to ensure that each worker has the right to time off from work on grounds of force majeure for urgent family reasons in the case of illness or accident making the immediate attendance of the worker indispensable. Member States may limit the right of each worker to time off from work on grounds of force majeure to a certain amount of time each year or by case, or both (art. 7). Member States shall take the necessary measures to ensure that workers with children up to a specified age, which shall be at least eight years, and carers, have the right to request flexible working arrangements for caring purposes¹⁴. The duration of such flexible working arrangements may be subject to a reasonable limitation (art. 9).

TEMPORAL AND SPATIAL FLEXIBILITY AND WORK-LIFE BALANCE

Among the measures inspired by the logic of shared conciliation, paternity leave is included, which brings to the attention towards the issue of the relationship between paternity and work and, therefore, of paternal involvement in the care of children. The use of parental leave by working fathers is

¹⁰ In GUUE del 12 luglio 2019, L 188, p. 79.

¹¹ See SANTUCCI R. (2016), *La conciliazione tra cura, vita e lavoro* “(il work life balance)”, in F. SANTONI-M. RICCI-R. SANTUCCI (a cura di), *Il diritto del lavoro all'epoca del Jobs Act*, Napoli, p.185.

¹² See FENOGLIO A. (2016), *Nuove modalità di fruizione del congedo parentale: un modello di “flessibilità buona”*, in D. GOTTARDI (a cura di), *La conciliazione delle esigenze di cura, di vita e di lavoro. Il rinnovato T.U. n. 151/2001 ai sensi del d.lgs.n. 80/2015*, Torino, p. 73.

¹³ RODOTÀ S. (2018), *La vita e le regole. Tra diritto e non diritto*, Milano, p. 120.

¹⁴ See, O. VARGAS-LLAVE, I. MANDL, T. WEBER and M. WILKENS (2020), *Telework and ICT-based mobile work: Flexible working in the digital age*, Eurofound.

extremely limited both in Italy and in Europe (about 10% of fathers)¹⁵. This limited application is linked to the persistence of cultural reasons, the existence of prevailing family models, the reduced remuneration to which the parent is entitled during the leave. In the latter case there is a total equalization between men and women, especially in subordinate work, while for self-employment there are still differences, which entail a careful analysis in terms of their constitutionality¹⁶.

Temporal and spatial flexibility form¹⁷ a complex relationship with work-life balance; flexible does not equal family-friendly. First, it should be asked: flexibility for whom? Some flexible work arrangements are driven primarily by employers' interests in promoting efficient use of human labor¹⁸. Other arrangements may be proposed through employees' interest to enhance better balance between work and other life spheres. In practice, it is difficult to define exactly in which category arrangement counts.

In terms of time flexibility, the legislator with Legislative Decree n. 81/2015¹⁹, inputs a provision that recognizes the right of mom and dad to request, once only, as an alternative to parental leave (or within the limits of the leave still due), the transformation of the full-time employment relationship into part-time one, as long as the time does not exceed 50%. In addition to the hypotheses of temporal flexibility, there is also spatial flexibility such as teleworking stated by art. 23 Legislative Decree n. 80/2015, which goes beyond the needs related to childcare. Instead, the so-called needs of spatial and temporal flexibility combine smart working or agile work, which the legislator intends to promote «the flexible way of the employment relationship» functional to facilitate the reconciliation of life and work times, as well as to increase the productivity of the work itself²⁰.

Following up to these considerations, it seems that flexible working models represent an encouraging and suitable tool to generate positive effects in the relationship between mother and father, to help strengthen the relationship between father and children (paternity leave), and to produce positive effects on family co-responsibility²¹.

THE BALANCE BETWEEN PRIVATE AND PROFESSIONAL LIFE. IS THERE A SOLUTION?

The current social context, marked by rapid changes, seems to take into account the structure, the functions, the meaning itself of the couple's life and its parental relationship. The evolutionary approach to the study of family relationships describes the family life cycle²² as characterized by

¹⁵ So, VIALE V., ZUCARO R. (2015), *I congedi a tutela della genitorialità nell'Unione europea. Un quadro comparato per rileggere il Jobs Act, Working Paper ADAPT*, n. 175, p. 9 ss.

¹⁶ CALAFÀ L., (2016), *Il congedo di paternità*, in *La conciliazione delle esigenze di cura, di vita e di lavoro. Il rinnovato T.U. n. 151/2001 ai sensi del d.lgs.n. 80/2015*, (a cura di) D. Gottardi, Torino, p. 53.

¹⁷ SANTUCCI R. (2007), *Flexicurity e conciliazione tra tempi di vita e tempi di lavoro*, in *Diritto del mercato del lavoro*, 2007, p. 581 ss.

¹⁸ ANTILLA T., OINAS T., TAMMELIN M., NÄTTI J., (2015), *Working-Time Regimes and Work-Life Balance in Europe*, in *European Sociological Review*, 31, p. 713 ss.

¹⁹ Decreto legislativo 15 luglio 2015, n. 81, *Disciplina organica dei contratti di lavoro e revisione della normativa in tema di mansioni, a norma dell'articolo 1, comma 7, della legge 10 dicembre 2014, n. 183*, in G.U. del 24 giugno 2015, n. 144.

²⁰ Vedi per la normativa d.d.l. n. 2223 recante misure per la tutela del lavoro autonomo non imprenditoriale e misure volte a favorire l'articolazione flessibile nei tempi e nei luoghi del lavoro subordinato, del 22 gennaio 2016.

²¹ Di questa visione, SAVINO F. (2009), *La conciliazione condivisa tra diritto comunitario e diritto interno*, in *Persone, lavori, famiglie. Identità e ruoli di fronte alla crisi economica*, M.V. Ballestrero e G. De Simone (a cura di), Torino, p. 88.

²² Sull'argomento, SIMEONE D. (2009); *Educazione familiare e vita di coppia*, in *Rivista italiana di educazione familiare*, 1, p. 59.

development tasks that consist of «roughness to be ironed out, issues to be resolved, situations from which to exit»²³.

In this context, both motherhood and fatherhood have undergone a strong transformation, with all the implications that have resulted. In particular, regarding family life, gender belonging and changes in parental roles represent the number of changes taking place in couple relationships. These changes produce, on the one hand, a greater sharing of activities, decisions, couple choices, educational responsibilities and care tasks²⁴ and, on the other, new forms of reciprocity, but also an increase in conflict in defining roles, the expectations of each, and in defining the emotional function of the two parental figures in the education of children. In duality professional life family life, the mother performs reception and protection functions, takes care of keeping the children inside the house; this applies, or should also apply, to mothers who work and even those who do their work away from home. In this situation of acceptance and detachment, the father is the one who pushes the children to experience moments of life outside the family house, encourages them to face the challenges of social life²⁵.

It is known that, especially as a teenager, the child in the progressive maturation of all psychic functions - cognitive, emotional, relational and behavioral - «needs the presence of the parent, as a guide to solve personal, moral or emotional problems or issues arising in school»²⁶. What happens if, in the awareness of the diversity and complementarity of women and men, each with their own specificities and in a perspective of equal collaboration in all fields of family life, the mother carries out her work in a city other than that where the family is located? Here we have to point out that the current historical moment is characterized by the complexing of family constellations and by the exponential increase in the vulnerability of relationships and marital ties²⁷. Couple and parent life collide with a socio-economic context which presupposes, on the one hand, the double income to meet family expenses, on the other, it is almost impossible for women to combine work and private life. According to Eurostat data, working women who also carry out care activities (private life), are more than men, especially in the age group between 25 and 49 years, difficulties that they increase in correspondence with the increase in the number of children, which corresponds to a decrease in the employment rate²⁸.

The working mother-woman who cannot manage, in a "game of dexterity", the balance between professional and family life, is very often forced to submit voluntarily, with negative consequences not only for the economic aspects of family life but also in the relationship between man and for her role as a woman in society. All this, could influence her behaviour towards children.

²³ GALLI N. (1988), *Educazione dei coniugi alla famiglia*, Milano, p. 55.

²⁴ See, TRONTO J. (1993), *Moral boundaries. A Political Argument for an Ethic of Care*, London-New York, in A. FACCHI (a cura di), *Confini morali. Un argomento politico per l'etica della cura*, presentazione e tr. it. di Nicola Riva, Reggio Emilia, 2006, p. 197. See, also, BALBO L. e NOWOTNY H. (1986), (eds.), *Time to Care in Tomorrow's Welfare System: the Nordic Experience and the Italian Case*, Vienna, 1986.

²⁵ So, ZANNIELLO G. (2016), *L'integrazione dei compiti della madre e del padre nell'educazione dei figli e delle figlie*, in *Rivista Italiana di educazione familiare*, 1, p. 150.

²⁶ BELLINGRERI A. (2014), *La famiglia come esistenziale*, Brescia, p. 267.

²⁷ MUSCHITIELLO A. (2019), *L, o spazio neutro per so-stare nel conflitto genitori-figli e tras-formarlo in conflitto formativo. Riflessioni pedagogiche in prospettiva fenomenologica*, in *Mondi educativi. Temi indagini e suggestioni*, 9, p. 363.

²⁸ See BAPTISTA R. (2020), *Donne, lavoro e maternità: alla ricerca di un equilibrio tra famiglia e carriera*, in www.insidemarkentig.it.

If all this is true, and it is true, what are the reasons that justify the sacrifices of working women? It is known that it is possible to separate the wife from the husband but this is not possible for the children.

As known, the mother represents, in particular for a "daughter" a model of femininity, the example of knowing how to combine family responsibilities with social and work responsibilities, the example of the relationship with the future spouse. This does not exclude that in the construction of the female identity, the father also has a fundamental importance as it is the first male model with which girls deal with²⁹. But the daughter who grows up without the constant presence of the mother, who carries out her work in another place, could experience this absence as a lack.

And there is more! The daughter, or children who grow up without the presence of the working mother, live in a situation of lack, which often involves problematic family relationships.

FINAL CONSIDERATIONS

It is necessary to reflect on the need to urge overcoming gender discrimination and to verify the protection of parental rights.

From these considerations, it comes out that, the legislator, both national and European, actually has tools such as "shared conciliation"³⁰, and the way of sharing parenting is still long and difficult³¹.

The promotion of gender equality and the full participation of women in the labor market aims to ensure not only the fundamental principles and rights of all workers³², but also a balance in social and economic terms³³. However, work-life balance remains a considerable challenge for many parents and workers with caring responsibilities, in particular because of the increasing prevalence of extended working hours and changing work schedules, which has a negative impact on women's employment. A major factor contributing to the under representation of women in the labor market is the difficulty of balancing work and family obligations.

A key requirement might be the recognition by employers that women are a crucial segment of their workforce and that care responsibilities and the adaptations required to be able to reconcile them with work are not a 'women's problem' but an area for action from which the workforce as a whole as well as employers can benefit³⁴. Employers' support and openness to flexible arrangements are particularly important in relation to the implementation of flexible working and parental leave³⁵.

²⁹ Sul punto, v. ZANNIELLO G., *L'integrazione dei compiti della madre e del padre nell'educazione dei figli e delle figlie*, cit., p. 154.

³⁰ BORELLI S., (2007), *Il padre lavoratore nella giurisprudenza costituzionale*, in L. Calafà (a cura di), *Paternalità e lavoro*, Bologna, p. 246.

³¹ SANTUCCI R., NATULLO G., ESPOSITO V., SARACINI P. (a cura di), (2009), "Diversità" culturali e di genere nel lavoro tra tutele e valorizzazioni, Milano, p. 9.

³² LANDUZZI M.G., *Lavoro e cura tra conciliazione e condivisione*, in L. Calafà (a cura di), *Paternalità e lavoro*, cit., p. 267.

³³ PASQUARELLA V., *Work-life balance: esiste un modello italiano di «conciliazione condivisa» dopo il Jobs-act?*, in *Rivista italiana diritto lavoro*, 2017, 1, p. 58.

³⁴ M. MASCHERINI, M. BISELLO and I.R. LESTON (2016), *The gender employment gap: Challenges and solutions*, Eurofound, p. 85.

³⁵ CASADIO, P., LO CONTE, M. and NERI, A. (2008), *Balancing work and family in Italy: New mothers' employment decisions after childbirth*, Banca d'Italia, Working Papers n. 684, Bank of Italy, Roma.

A warning comes out. To eliminate the gender gap in the distribution of "time" between care and professional activities, contractual policies³⁶ are required to support the conciliation in order to have innovative solutions, both regulatory and organizational. It is okay to pursue the exchange between economic benefits and individual rights³⁷.

³⁶ BORZ. L. e REBUZZINI L. (2011), *La conciliazione vita/lavoro tra diritto esigibile e strumento strategico per nuove politiche di sviluppo*, in M. FAIOLI e L. REBUZZINI (a cura di), *Conciliare vita e lavoro: verso un welfare plurale*, Roma, p. 11.

³⁷ FENOGLIO A., *Nuove modalità di fruizione del congedo parentale: un modello di "flessibilità buona"*, in *La conciliazione delle esigenze di cura, di vita e di lavoro. Il rinnovato T.U. n. 151/2001 ai sensi del d.lgs.n. 80/2015*, (a cura di) D. Gottardi, cit., p. 73.