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# Article 27: the Right of Workers with Family Responsibilities to Equal Opportunities and Equal Treatment

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# Chapter … Article 27. The Right of Workers with Family Responsibilities to Equal Opportunities and Equal Treatment

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Article 27 recognises the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, committing States Parties to adopt a series of work-life balance measures to ensure the effective exercise of that right itself. Therefore, this provision can be added to the numerous other provisions of the revised Charter characterised by the objectives of protecting the family and guaranteeing gender equality at work and in the labour market. In this perspective, among others, the following may be recalled: Article 4 § 3 on the right of men and women workers to equal pay for work of equal value, Article 8 on the right of employed women to special protection in the case of maternity, Article 16 on the right of the family to social, legal and economic protection, Article 17 on the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, Article 20 on the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex and Article E – taken in conjunction with another relevant provision – on the prohibition of discrimination in recognising the rights provided for by the Charter.

Within this regulatory framework, Article 27 deals specifically with preventing "family responsibilities" from becoming a source of a difference in treatment or opportunity between women and men workers or between those who bear such responsibilities and those who do not. In this sense, the commitment required to the States Parties concerns the aspects that are traditionally the subject of policies aimed at facilitating reconciliation between work and family life: leave from work, personal care services, flexibility of working conditions, vocational guidance and training for entry, stay or re-entry into the labour market and protection against dismissal motivated by reasons related to the worker's care duties. Moreover, it is evident that, by promoting interventions in these matters, the revised Charter aims not only to add a piece to the mosaic of the protection of gender equality, but also to facilitate the fulfilment of care tasks within the family and therefore – as anticipated – to offer instruments of protection for the latter. Indeed, as pointed out in the Preambles of ILO Convention No. 156 and Recommendation No. 165 of 1981 on Workers with Family Responsibilities, sources which – by express admission of the Council of Europe[1] – influenced the formulation of Article 27, "the problems of workers with family responsibilities are aspects of wider issues regarding the family and society which should be taken into account in national policies".

The fact that the provision in question was inspired by the aforementioned ILO documents reveals that it was absent from the 1961 Charter. Its introduction in 1996 in the revised Charter can be considered an expression of the growing attention that has been dedicated in Europe to the issue of work-life balance since the 90s of the last century. It is precisely by virtue of this particular interest in the matter that Article 27 has been widely ratified. Only five States Parties – Albania, Andorra, Bosnia-Herzegovina, Hungary and Serbia – have not yet accepted any of the paragraphs of the provision under consideration. One paragraph has been ratified by three countries – Moldova and Romania (§ 2), and North Macedonia (§ 3) -, while two have been accepted by Bulgaria, Cyprus and Malta (§§ 2-3), and by Austria, Belgium and Norway (§§ 1-2)[2].

## I. PERSONAL SCOPE OF THE PROVISION

The beneficiaries of the measures provided for in Article 27 are "workers with family responsibilities". Before analysing the content of this provision, it is therefore appropriate to understand what is meant by this expression.

To this end, the *Appendix* to the revised Charter[3] helps, clarifying that the provision in question refers to those workers who have responsibilities towards two classes of individuals: dependent children and other

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[1] See Council of Europe, *Explanatory Report to the European Social Charter (Revised)*, Strasbourg, 3 May 1996, § 102.

[2] The current table of provisions accepted by States Parties is available at the European Social Charter web portal: https://www.coe.int/en/web/european-social-charter/provisions-of-the-charter.

[3] Council of Europe, *Appendix to the European Social Charter (Revised)*, Strasbourg, 3 May 1996, Article 27.

members of their immediate family who clearly need their care or support. This second category therefore includes family members who are not completely self-sufficient, such as elderly or disabled people.
However, for both classes of individuals a further condition must be met in order for the guarantees of Article 27 can act: the commitment in the care required from the worker must be such as to restrict his / her possibilities of preparing for, entering, participating in or advancing in economic activity. Indeed, the reading of Article 1 of the above-mentioned ILO Convention No. 156 – whose content[4] has been taken up in substantially identical terms for the explanation present in the *Appendix* – confirms that this condition, unlike what some scholars seem to argue[5], is referred to both dependent children and other members of the worker's immediate family who clearly need his / her care or support. In other words, the provision in question is applicable when the care of dependent children or of a member of the immediate family in need of this can represent an impediment to the full participation of the worker to productive life.
In any case – as the *Appendix* further specifies – the expressions "dependent children" and "other members of their immediate family who clearly need their care or support" acquire the meaning assigned to them by national legislation. It is therefore necessary to look at the latter to concretely define the cases in which a child depends on her or his parent worker, the types of family ties included in the concept of "immediate family" and those needs of care of the worker's family members (other than dependent children) which the recognition of some work-life balance measures aims to protect.
In light of the foregoing, if a State Party limited the enforcement of Article 27 only in relation to workers burdened with caring for their children, it would fall into a violation of the Charter. In this regard, the fact that the provision in question devotes more attention to parenthood, to which explicit reference is often made[6], should not be misleading. This may suggest that, on the whole, "parents of young children are prioritised"[7], but it is sure that, where such a specification is not present, the provision must undoubtedly refer to the more comprehensive category of workers with family responsibilities as defined in the *Appendix*.

## II. MEASURES PROVIDED FOR

The content of Article 27 is divided into three paragraphs. § 1 provides for a commitment by States Parties to adopt appropriate measures in favour of workers with family responsibilities to: enable them to enter, remain and re-enter in employment (including measures in the field of vocational guidance and training); take account of their needs in terms of conditions of employment and social security; develop or promote services, public or private, in particular child day care services and other childcare arrangements (A). § 2 requires States Parties to guarantee to men and women workers the possibility of enjoying a period of parental leave (B). Finally, § 3 states the principle according to which family responsibilities cannot justify the dismissal of the worker (C).

### A. THE "APPROPRIATE MEASURES" TO BE TAKEN PURSUANT TO § 1

According to Article 27 § 1, States Parties must take appropriate measures in some fields to facilitate participation in working life by those who face care responsibilities within the family. This said, the *Explanatory Report* clarifies that, in the context of the provision in question, measures that are "suitable to

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[4] In order to facilitate the reader, the first two paragraphs of Article 1 are reported below:
"1. This Convention applies to men and women workers with responsibilities in relation to their dependent children, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity.
2. The provisions of this Convention shall also be applied to men and women workers with responsibilities in relation to other members of their immediate family who clearly need their care or support, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity".
[5] SHÖMANN Isabelle, "Article 27. The Right of Workers with Family Responsibilities to Equal Opportunities and Equal Treatment", in BRUUN Niklas, LÖRCHER Klaus, SCHÖMANN Isabelle and CLAUWAERT Stefan (eds.), *The European Social Charter and the Employment Relation*, Oxford and Portland, Hart, 2017, p. 458; CARACCIOLO DI TORELLA Eugenia, "Article 27 RESC. The right of workers with family responsibilities to equal opportunities and equal treatment", in ALES Edoardo, BELL Mark, DEINERT Olaf and ROBIN-OLIVIER Sophie (eds.), *International and European Labour Law. Article-by-Article Commentary*, Baden-Baded, München, Oxford and Portland, Nomos, Beck and Hart, 2018, p. 346.
[6] See § 1(c) and § 2.
[7] See CARACCIOLO DI TORELLA Eugenia, "Article 27 RESC", *cit.*, pp. 346-347. In the same way SHÖMANN Isabelle, *cit.*, p. 458.

national conditions and possibilities" must be considered "appropriate"[8]. This means that States Parties will have a certain margin of discretion that will allow them to adapt the content of the implementing rules of the accepted provisions to the characteristics of their own legal system.

### 1. Appropriate Measures to Enable Workers with Family Responsibilities to Enter, Remain and re-Enter in Employment (a)

§ 1(a) of Article 27 was inspired by Article 7 of the ILO Convention No. 156 and, in analogy with this, requires States Parties to take appropriate measures aimed at allowing workers with family responsibilities to have access to work, at maintaining employment and at being re-integrated into the workforce after a period of absence due to those responsibilities. In short, the provision aims to prevent the latter from having detrimental consequences on the worker's employment opportunities. To this end, national law makers are called upon to intervene in the field of vocational guidance and training, but – as seems to be inferred from the wording of Article 27[9] – without limiting themselves to this.

The ECSR, on the other hand, has interpreted the provision as referring almost exclusively to measures that are placed in that field. Indeed, starting from the shareable premise that family responsibilities can lead to difficulties in terms of employment, even exposing people who bear them to the risk of being excluded from the labour market, the ECSR has underlined that, "to be able to return to professional life, [such people] need special assistance in terms of vocational guidance and training"[10].

It is true that it has also been stated, in general, that "under Article 27 § 1, States must develop an overall national policy or strategy to enable persons with family responsibilities to carry out occupational activities in a non-discriminatory manner"[11], but it is undeniable that the attention of the ECSR has been focused in an absolutely prevalent way on placement, information, counselling or training services organised by States. However, from this last point of view, it should be noted as to how the orientation of the ECSR has consolidated according to which Article 27 does not require that people with family responsibilities be provided with additional services compared to those recognised to the generality of workers. The relevance of the provision is thus reduced by the interpretation given by the monitoring body: on the one hand, as seen, it has been stated that these persons need special assistance in terms of vocational guidance and training; on the other hand, it has been clarified that "if the standard employment services (those available to everyone) are well developed, the lack of extra services for people with family responsibilities cannot be regarded as a human right violation"[12]. Actually, interpreted in this way, the operative content of Article 27 § 1(a) is absorbed by that of §§ 3 and 4 of Article 10 on the right to vocational training, with the consequence that the specific needs of protection of people with family responsibilities may not be valued in the organisation of training and employment services.

### 2. Appropriate Measures to Take Account of the Needs of Workers with Family Responsibilities in terms of Conditions of Employment and Social Security (b)

§ 1(b) of Article 27 was inspired by Article 4 § b of the ILO Convention No. 156 and, in analogy with this, requires States Parties to adopt appropriate measures through which to give value to the needs of workers with family responsibilities with regard to working conditions and social security.

The ECSR has specified that the enforcement of this provision involves, first of all, the adoption of measures concerning the duration and the organisation of working time, as well as the recognition for workers with family responsibilities of the possibility of working part-time and returning to full-time

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[8] Council of Europe, *Explanatory Report*, *cit.*, § 104. Articles 4, 5 e 7 of the ILO Convention No. 156, which have contents similar to the three subparagraphs of Article 27 § 1, prescribe States Parties to adopt "measures compatible with national conditions and possibilities". According to CARACCIOLO DI TORELLA Eugenia, "ILO Convention 156. Workers with Family Responsibilities Convention, 1981 (No. 156)", in ALES Edoardo, BELL Mark, DEINERT Olaf and ROBIN-OLIVIER Sophie (eds.), *cit.*, p. 1146, the use of these expressions "*de facto* water[s] down […] the potential impact [of the Convention's provisions]. Seen in this light, they might remain little more than a declaration of intent".

[9] The provision refers to "appropriate measures […], *including* measures in the field of vocational guidance and training" (emphasis added).

[10] ECSR, Conclusions 2003, Sweden. More recently, *inter alia*, ECSR, Conclusions 2019, Belgium; ECSR, Conclusions 2019, Greece.

[11] ECSR, Conclusions 2015, Russia; ECSR, Conclusions 2019, Greece.

[12] ECSR, Conclusions 2003, Sweden. Later, for instance, ECSR, Conclusions 2015, Latvia; ECSR, Conclusions 2015, Armenia; ECSR, Conclusions 2019, Belgium.

employment[13]. More generally, the monitoring body has asked States to give an account in their reports of all working conditions which "may facilitate a reconciliation of working and private life, such as working from home, flexible working hours or working for a limited period of time"[14].
However, these conclusions, reiterated over the years[15], did not clarify whether these measures referred to by the ECSR – and, in particular, the possibility of obtaining part-time employment and being subsequently reinstated full-time – should be considered the subject of a worker's individual right or if, instead, they could also be left to agreement between the parties with the consequent necessity for the consent of the employer. The requests for clarification sent by the ECSR to various States Parties regarding the existence or not in the national legislation of a right to part-time employment for workers with family responsibilities[16] suggested that the monitoring body intended to guarantee the worker the right to decide. In favour of this reconstruction there was also the affirmation – recurrent in the ECSR conclusions – according to which the aforementioned measures of implementation of § 1(b) cannot be left to the discretion of the employer, but must be contained in a legally binding instrument (law or collective agreement)[17].
Anyway, the issue seems to have been clarified recently, when the ECSR pointed out that, in compliance with the provision in question, "legislation or practice should provide for arrangements entitling workers to take time off from work on grounds of urgent family reasons where sickness or accident make the immediate presence of the worker indispensable"; and again that "legislation should provide guarantees to grant part-time work to a parent raising a child or nursing a sick family member when requested, and provide for arrangements enabling parents to reduce or cease their professional activity because of the serious illness of a child"[18].
But it must be said that the content of Article 27 § 1(b) remains not well defined. Doubts concern, in particular, the resulting constraints for the States Parties in terms of length and organisation of working time. Under these profiles, the ECSR has been requested three times to assess the situation of some categories of workers (especially managerial staff), for which French law provided for very wide margins of working-time flexibility in favour of the employer (*inter alia*, absence of a maximum weekly limit, applicability of an annual working days system, consideration of on-call time as rest) that clearly might have had a detrimental impact on the possibilities of reconciling professional and family life[19]. However, in all three cases the monitoring body found that there was no violation of Article 27, motivating the decisions on this point in a "disappointing"[20] manner and therefore avoiding clarifying the preceptive scope of § 1(b).
It is important to underline that all workers with family responsibilities, regardless of whether they are women or men, must be able to benefit from the measures referred to – according to ECSR case law – in the provision under consideration. A difference in treatment on grounds of sex would in fact constitute discrimination in the recognition of rights provided for in Article 27 § 1, as such prohibited pursuant to Article E[21].

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[13] ECSR, Conclusions 2005, Estonia.
[14] ECSR, Conclusions 2011, Lithuania.
[15] See, for instance, ECSR, Conclusions 2007, Armenia; ECSR, Conclusions 2011, Georgia; ECSR, Conclusions 2015, Austria; ECSR, Conclusions 2015, Lithuania; ECSR, Conclusions 2019, Belgium; ECSR, Conclusions 2019, Georgia.
[16] See, *inter alia*, ECSR, Conclusions 2007, Armenia; ECSR, Conclusions 2007, Italy, in which the monitoring body asked "whether workers with family responsibilities are allowed to work part-time or to return to full-time employment upon their corresponding request or whether this may depend on the employer's discretion and to what extent".
[17] ECSR, Conclusions 2011, Estonia; ECSR, Conclusions 2011, Georgia; ECSR, Conclusions 2019, Belgium. Moreover, in the legal systems where collective agreements have not *erga omnes* effects, it does not suffice that legislation devolves to social partners the duty to establish the measures needed to implement Article 27 (ECSR, Conclusions 2003, Italy).
[18] ECSR, Conclusions 2015, Latvia; ECSR, Conclusions 2015, Russia; ECSR, Conclusions 2019, Greece; ECSR, Conclusions 2019, Belgium.
[19] ECSR, *Confédération Française de l'Encadrement (CFE-CGC) v. France*, complaint No. 9/2000, decision on the merits of 16 November 2001, §§ 51-55; ECSR, *Confédération Française de l'Encadrement (CFE-CGC) v. France*, complaint No. 16/2003, decision on the merits of 12 October 2004, §§ 67-72; ECSR, *Confédération Française de l'Encadrement (CFE-CGC) v. France*, complaint No. 56/2009, decision on the merits of 23 June 2010, §§ 79-84.
[20] This expression has been used in relation to two of the decisions mentioned (the one of 2001 and the other of 2010) by COSTELLO Cathryn, "Article 33 - Family and Professional Life", in PEERS Steve, HERVEY Tamara, KENNER Jeff and WARD Angela (eds.), *The EU Charter of Fundamental Rights. A Commentary*, Oxford and Portland, Hart, 2014, p. 910 and by KENNER Jeff and PEAKE Katrina, "Article 33 - Family and Professional Life", in PEERS Steve, HERVEY Tamara, KENNER Jeff and WARD Angela (eds.), *The EU Charter of Fundamental Rights. A Commentary*, Oxford, Hart, 2021, 2nd ed., p. 961.
[21] ECSR, Conclusions 2005, Lithuania.

Regarding the obligation for States Parties to take account of the needs of workers with family responsibilities in terms of social security, the ECSR[22] has stated that social security benefits under the different schemes – and in particular health care – should be recognised for workers during periods of parental / childcare leave. Therefore, from this point of view, the other types of absence due to family responsibilities, such as, for instance, leave to provide care to disabled or elderly adults, do not seem to be taken into consideration.
The ECSR has also required that, for the purposes of accruing the right to a pension and calculating the amount thereof, periods of leave due to family responsibilities are considered. In this case, therefore, there is no differentiation between the various family reasons that justify the absence from work. And even when the monitoring body has stated that "crediting periods of childcare leave in pension schemes should be secured equally to both men and women", the specific reference to childcare leave cannot be overestimated. This is for two reasons. Firstly, because, in case of leave due to other family responsibilities, recognising that right only to women workers would mean promoting the fulfilment of care tasks by women themselves, in contrast to the equal logic that inspires Article 27. Secondly, because an unjustified difference in treatment between men and women in the recognition of the right to credit in pension schemes – for instance – of a period of leave for care of a non-self-sufficient elderly family member would constitute discrimination prohibited by the combined provisions of Article 27 § 1(b) and Article E.

**3. Appropriate Measures to Develop or Promote Services, in Particular Childcare Facilities (c)**
§ 1(c) of Article 27 was inspired by Article 5 § b of the ILO Convention No. 156 and, in analogy with this, requires States Parties to adopt appropriate measures to develop or promote care services, public or private. However, it must be said that, while the second provision cited indicates as examples of these services "childcare and family services and facilities", Article 27 concerns "in particular child day care services and other childcare arrangements". Reading this provision of the revised Charter it is therefore clear that the individuals to whom it is addressed are not generically workers with family responsibilities, but those who are parents of small children. In this sense, the document of the Council of Europe affirms a right that is symmetrical to that recognised in Article 18 § 3[23] of the UN Convention of 1989 on the Rights of the Child. Although in the past the ECSR, as part of its assessments on compliance with Article 27 § 1(c), has sometimes requested the States Parties to also provide information on the available family services and arrangements for other members of the immediate family who clearly need care and support[24], it has always been steadfast in focusing attention on the organisation of child day care services and facilities[25], considering it "a core element for the reconciliation of professional and family life"[26].
It should also be added that the provision concerned does not allow for distinctions between employed and unemployed parents: the notion of worker within Article 27 includes both parents who work and unemployed parents seeking work. The monitoring body therefore considered the situation in Finland in breach of the revised Charter on the grounds that, where one of the parents was unemployed, child day care services were not available full-time, but only for a maximum of 20 hours weekly[27]. Furthermore, it is significant that it was underlined that discipline of this type, which introduces a pejorative treatment for unemployed parents without an objective and reasonable justification, "[precisely] penalises those who are in most need of support to be able to enter or re-enter employment"[28].
With a view to facilitating reconciliation of professional and family life for parents, the ECSR has stated that, under the provision in question, affordable, good quality childcare facilities should be made available.

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[22] The orientation can be inferred, *inter alia*, from ECSR, Conclusions 2011, Ireland; ECSR, Conclusions 2015, Latvia; ECSR, Conclusions 2019, Greece; ECSR, Conclusions 2019, Belgium.
[23] "States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible".
[24] ECSR, Conclusions 2005, Sweden; ECSR, Conclusions 2005, Lithuania; ECSR, Conclusions 2005, Norway.
[25] According to Council of Europe, *Digest of the Case Law of the European Committee of Social Rights*, Strasbourg, December 2018, p. 214, "the aim of Article 27 § 1(c) is to develop or promote services, in particular child day care services and other childcare arrangements, available and accessible to workers with family responsibilities".
[26] ECSR, Conclusions 2011, Turkey; ECSR, Conclusions 2011, Armenia.
[27] ECSR, *Central Union for Child Welfare (CUCW) v. Finland*, complaint No. 139/2016, decision on the merits of 11 September 2019, §§ 79-96.
[28] *Ibid.*, § 95.

Child day care services may be arranged in many ways, but, in any case, they must provide a sufficient number of places and be affordable and of high standard, the latter being assessed on the basis of the number of children under the age of six covered, staff to child ratios, staff qualifications, suitability of the premises and amount of the financial contribution parents are asked to make[29].
Finally, it should be emphasised that it is not clear in ECSR case law the relationship between Article 27 § 1(c) and Article 16 on the right of the family to social, legal and economic protection if a State has ratified both provisions. Indeed, the monitoring body stated, with regard to Article 27, that "where a State has accepted Article 16, childcare arrangements are dealt with under that provision"[30] and, with regard to Article 16, that "where a State Party has accepted Article 27 […] childcare facilities and arrangements are examined under this provision"[31]. However, it must be said that, in Conclusions of 2019, the assessment of the services in question was carried out with reference to Article 16 and, when examining compliance with Article 27, the ECSR restricted itself to observing that, as the State concerned "has accepted Article 16 […], the measures taken to develop and promote child day care facilities are examined under that provision"[32].

B. THE RIGHT TO PARENTAL LEAVE IN § 2

According to Article 27 § 2, States Parties undertake to provide the possibility for either parent of obtaining parental leave to take care of a child, the duration and conditions of which should be determined by national legislations, collective agreements or practice.
Therefore, the provision addresses parents only, to allow them to take care of their children. It does not establish a right to leave from work in order to provide personal care or support to members of the worker's immediate family (including children) in need of these. With respect to this last necessity, it has been seen that, in any case, the ECSR has extracted minimum (but clearly insufficient) guarantees from § 1(b).
Preliminarily, it must also be noted that the leave referred to in Article 27 § 2 must be kept distinctly separate from maternity leave, the national discipline of which is assessed under Article 8 § 1. Parental leave is a period of absence from work – functional to allow both parents to take care of their children – which the States shall make the subject of an individual right and which comes into play after maternity leave[33].
In its case law, the ECSR has constantly reiterated the centrality of parental leave for the purposes of the reconciliation of professional, private and family life, as well as the importance, with the perspective of promoting equal opportunities and equal treatment between men and women, of the recognition of it to either parent as a non-transferable individual right in the event of the birth or adoption of a child. In short, it should be an individual entitlement granted separately to all[34] working fathers and mothers. Moreover, it is precisely on this element – and, more specifically, on the necessity to provide an autonomous right to parental leave for the father – that the monitoring body has found over the years a large part of the violations of the provision in question by the States[35].
These findings show the effort of the ECSR to promote the affirmation of a precise scheme of development of the family-work relationship: the *dual earner / dual carer* scheme, according to which both parents are equally engaged in paid work and share equally family responsibilities. Indeed, the alleged need to provide an individual right to parental leave on a non-transferable basis for the working father and the affirmation according to which, under the provision concerned, "the States Parties are under a positive obligation to

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[29] ECSR, Conclusions 2011, Armenia; ECSR, Conclusions 2015, Armenia; ECSR, Conclusions 2015, Latvia.
[30] See Council of Europe, *Digest*, *cit.*, p. 214 and ECSR, Conclusions 2003, Italy.
[31] See Council of Europe, *Digest*, *cit.*, p. 165 and ECSR, Conclusions 2011, Azerbaijan.
[32] See, *inter alia*, ECSR, Conclusions 2019, Greece; ECSR, Conclusions 2019, Portugal. However, the ambiguities have not disappeared: according to ECSR, *CUCW v. Finland*, *cit.*, § 33, "So far the Committee has considered [the conditions of access to an education and care facility for a child before the compulsory school age] under Article 27 for States that have accepted this provision […] and under Article 16 for States that have not accepted Article 27". Further, as observed by LUKAS Karin, *The Revised European Social Charter. An Article by Article Commentary*, Cheltenham and Northampton, Edward Elgar, 2021, p. 309, in the cited collective complaint, the ECSR "examined the issue under Article 17 (the right of children and young persons to social, legal and economic protection) as the main assessment standard, as well as under Articles 16 and 27".
[33] ECSR, Conclusions 2011, Turkey; ECSR, Conclusions 2015, Georgia; ECSR, Conclusions 2015, Azerbaijan; ECSR, Conclusions 2015, Turkey.
[34] The ECSR concluded that the situation in Turkey was not in conformity with Article 27 § 2 on the grounds that fathers, other than civil servants, did not have the right to parental leave (ESCR, Conclusions 2015, Turkey). This means that the monitoring body demands that all categories of employees are entitled to parental leave.
[35] See, *inter alia*, Conclusions 2011, Turkey; ECSR, Conclusions 2011, Malta; ECSR, Conclusions 2015, Montenegro.

encourage the use of parental leave by either parent"[36], must be read in this perspective. The fact that the father should be entitled in an exclusive manner to a part of this specific work-life balance instrument, which, moreover, he must be encouraged to use, obviously responds precisely to the purpose of promoting the involvement of such parent in the fulfilment of childcare activities[37]. All this in a twofold perspective: that – expressly referred to in Article 27 – of gender equality with regard to opportunities in the labour market and treatment at work and that – equally important in terms of respect for fundamental human rights – of the child's interest in establishing early a strong bond with both parents.
Although – as the examined provision states verbatim – the duration and the conditions of parental leave should be determined by States Parties, the ECSR has pointed out that, as the remuneration during the period of absence "plays a vital role" in the take up of leave[38], it must be ensured that an employed parent is adequately compensated for his / her loss of earnings due to the time off from work. The ways in which these compensations take place are "within the margin of appreciation of the States Parties and may be either paid leave (continued payment of wages by the employer), a social security benefit, any alternative benefit from public funds or a combination of such compensations"; and, in any case, "regardless of the modalities of payment, the level shall be adequate"[39]. Further, it should be highlighted that there are no few cases in which the ECSR has found that national legislations violate Article 27 § 2 due to the absence or inadequacy of the compensations system for parental leave[40].
As some studies have shown[41], non-transferability and adequate compensation of parental leave are very important factors in ensuring that fathers take advantage of the leave itself and, consequently, participate to a greater extent in the fulfilment of care tasks in the family, with immediate positive effects on female employment. The ECSR, being aware of this, insists on demanding from States Parties to adopt those measures in order to promote gender equality through the affirmation of the *dual earner / dual carer* model.

C. THE PROTECTION AGAINST DISMISSAL MOTIVATED BY FAMILY RESPONSIBILITIES IN § 3

§ 3 of Article 27 was inspired by Article 8 of the ILO Convention No. 156 and, in analogy with this, requires States Parties to ensure that family responsibilities shall not, as such, constitute a valid reason for termination of employment. The provision is also closely related to Article 24 of the revised Charter on the right to protection in cases of termination of employment. This is confirmed in the explanation of Article 24 contained in the *Appendix*[42], where family responsibilities are expressly indicated among the reasons that cannot justify dismissals.
The ECSR, in examining compliance with Article 27 § 3 of the situations in the States Parties, assesses both the protection against dismissal provided for and the effectiveness of the remedies that the worker can avail himself / herself of in the event that he / she undergoes a dismissal because of his / her family responsibilities.
Under the first aspect, the monitoring body has specified that the family responsibilities to which the provision in question refers are – according to the explanation present in the *Appendix*[43], seen above when analysing the personal scope of Article 27 – "obligations in relation to dependent children and also other members of the immediate family who need care and support"[44]. Thus, violations of the revised Charter

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[36] ECSR, Conclusions 2015, Statement of interpretation of Article 27 § 2.
[37] According to COSTELLO Cathryn, *cit.*, p. 910 and KENNER Jeff and PEAKE Katrina, *cit.*, p. 959, "the ECSR has shown an awareness of the importance of encouraging men to take up parental leave".
[38] ECSR, Conclusions 2011, Malta; ECSR, Conclusions 2011, Armenia; ECSR, Conclusions 2015, Russia; ECSR, Conclusions 2015, Montenegro.
[39] ECSR, Conclusions 2015, Statement of interpretation of Article 27 § 2.
[40] See ECSR, Conclusions 2015, Georgia; ECSR, Conclusions 2015, Azerbaijan; ECSR, Conclusions 2015, Turkey; ECSR, Conclusions 2017, Georgia; ECSR, Conclusions 2019, Ukraine; ECSR, Conclusions 2019, Turkey; ECSR, Conclusions 2019, Malta; ECSR, Conclusions 2019, Ireland; ECSR, Conclusions 2019, Georgia; ECSR, Conclusions 2019, Azerbaijan; ECSR, Conclusions 2019, Armenia.
[41] See, for instance, EUROFOUND, *Parental and paternity leave – Uptake by fathers*, Luxembourg, Publications Office of the European Union, 2019.
[42] Council of Europe, *Appendix*, *cit.*, Article 24.
[43] *Ibid.*, Article 27.
[44] ECSR, Conclusions 2003, Sweden; ECSR, Conclusions 2003, Bulgaria; ECSR, Conclusions 2003, France; ECSR, Conclusions 2005, Lithuania.

have been found in cases where, although the invalidity of the dismissal for reasons related to parenthood was foreseen, the employee was not protected against dismissal because of family responsibilities towards dependent relatives requiring care such as elderly parents[45]. It should also be added that protection must be granted to all workers with family responsibilities – men and women – and regardless of the occupational size of the company. Indeed, from the latter point of view, delimitation of the scope of the guarantee to workers in companies with more than 30 employees was deemed not in conformity with Article 27 § 3[46].
With reference to the second aspect mentioned, namely to the effectiveness of the remedies, it is consolidated that "workers dismissed on such illegal grounds must be afforded the same level of protection afforded in other cases of discriminatory dismissal under Article 1 § 2 of the Charter"[47]. Following this approach, the ECSR has stated that national judicial bodies should be able to order the reinstatement of the employee or, in cases when he / she prefers not to continue or re-enter employment, award him / her compensation[48]. The level of the latter – consistently with what the monitoring body has established with regard to the right to adequate compensation of the employee dismissed without valid reason pursuant to Article 24[49] – must be both proportionate to the damage suffered by the unlawfully dismissed worker and sufficiently dissuasive for the employer. Any pre-defined upper limit that prevents the worker from being awarded compensation consistent with these parameters is to be considered contrary to Article 27 § 3. Thus, a ceiling on compensation for pecuniary damage can only be admitted if the victim has the possibility of obtaining the compensation for non-pecuniary damage through other legal avenues (e.g., anti-discrimination legislation)[50]. Finally, it is interesting to note that most of the violations of Article 27 § 3 ascertained by the ECSR consist precisely in the failure to comply with the aforementioned parameters of adequacy of the sanction system set up for the case of dismissal motivated by family responsibilities[51].

## III. THE OTHER MAIN INTERNATIONAL AND EUROPEAN SOURCES IN THE MATTER

Article 27 of the revised Charter is part of a very broad and varied framework of sources that, at international and European level, deals with work-life balance from the perspective of gender equality and protection of family. In the following subsections, only the (main) instruments which, in terms of content and inspiration, are comparable to the provision under consideration will be taken into account. Therefore, those sources which, albeit relating to the theme of the reconciliation between professional and family life, intervene on different profiles of that matter will not be examined. In addition, it must be specified that, in order not to overly complicate the discussion, the analysis will mostly be limited to the sources in force, without considering those repealed or, in any case, replaced / superseded.

### A. UN SOURCES

Among the UN sources, two in particular, take on prominence in the context of a comment to Article 27 of the revised Charter. These are the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

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[45] ECSR, Conclusions 2019, Italy.
[46] ECSR, Conclusions 2019, Turkey.
[47] Council of Europe, *Digest*, *cit.*, p. 215.
[48] ECSR, Conclusions 2011, Finland; ECSR, Conclusions 2011, Armenia; ECSR, Conclusions 2011, Turkey; ECSR, Conclusions 2019, Greece.
[49] See, *inter alia*, ECSR, *Finnish Society of Social Rights v. Finland*, complaint No. 106/2014, decision on the merits of 8 September 2016, §§ 45-46; ECSR, *Confederazione Generale Italiana del Lavoro (CGIL) v. Italy*, complaint No. 158/2017, decision on the merits of 11 September 2019, §§ 87 and 96.
[50] See ECSR, Conclusions 2015, Statement of interpretation on Articles 8 § 2 and 27 § 3, where the monitoring body adds that "the courts competent for awarding compensation for pecuniary and non-pecuniary damage must decide within a reasonable time".
[51] ECSR, Conclusions 2005, Estonia; ECSR, Conclusions 2005, Cyprus; ECSR, Conclusions 2007, Finland; ECSR, Conclusions 2007, Ireland; ECSR, Conclusions 2011, Finland; ECSR, Conclusions 2011, Cyprus; ECSR, Conclusions 2011, Armenia; ECSR, Conclusions 2015, Cyprus; ECSR, Conclusions 2015, Armenia; ECSR, Conclusions 2015, Turkey; ECSR, Conclusions 2019, Turkey; ECSR, Conclusions 2019, Finland; ECSR, Conclusions 2019, Italy.

The first, in Article 7[52], recognises the right to just and favourable conditions of work, which implies, among other things, fair wages and equal pay for work of equal value (§ a), equal opportunity for everyone to be promoted in his / her employment to an appropriate higher level (§ c) and rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays (§ d).
The Committee on Economic, Social and Cultural Rights (CESCR), in its General Comments on this provision, has stated that States Parties should promote adequate policies for childcare and care of dependent family members[53] and introduce other measures such as training[54] in order to eliminate the obstacles that women and men may encounter in reconciling professional and family responsibilities. Furthermore, it has underlined that "rest and leisure, limitation of working hours and paid periodic holidays help workers to maintain an appropriate balance between professional, family and personal responsibilities"[55] and has highlighted, in this same perspective, the importance of forms of leave from work for family reasons (in particular entitlements to maternity, paternity and parental leave)[56] and of flexible working arrangements[57].
The CEDAW does not use the gender-neutral approach linked to the concept of worker with family responsibilities, but rather that of the protection of women against discrimination, also with the aim of promoting a social change that goes in the direction of the sharing of family responsibilities between men and women. Precisely in the awareness of the traditional and stereotyped role of women within the family, Article 11 § 2[58] contemplates, among provisions aimed at ensuring the effective right to work of women without discrimination on the grounds of marriage and maternity, that according to which "States Parties shall take appropriate measures […] to encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities". The other measures verbatim indicated in the aforementioned provision – such as the prohibition of dismissal on the grounds of pregnancy and maternity and the guarantee of maternity leave – can be compared to Article 8 of the revised Charter, rather than to Article 27. However, in the context of an analysis of the latter provision, it is also important to point out that the Committee on the Elimination of Discrimination against Women (CEDAW Committee) has constantly required States Parties – on the basis of Article 11 of the CEDAW – to intensify efforts to promote the use of flexible working arrangements, to introduce shared parental leave and to encourage men to participate equally in childcare responsibilities[59].

B. ILO INSTRUMENTS

It has already been highlighted several times that the content of Article 27 of the revised Charter was inspired by the ILO Convention No. 156[60]. Measures provided for in the first almost entirely overlap to provisions contained in the second. The notion of workers with family responsibilities valid in the context of the revised

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[52] For a broad comment of Article 7 see SAUL Ben, KINLEY David and MOWBRAY Jacqueline, *The International Covenant on Economic, Social and Cultural Rights. Commentary, Cases and Materials*, Oxford, Oxford University Press, 2014, pp. 392 ff.
[53] CESCR, *General Comment No. 16, The equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3 of the International Covenant on Economic, Social and Cultural Rights)*, 2005, § 24.
[54] CESCR, *General Comment No. 23, The right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights)*, 2016, § 32.
[55] *Ibid.*, § 34.
[56] *Ibid.*, § 44. The necessity of guaranteeing adequate maternity, paternity and parental leave is extracted also from Article 9 on the right to social security, taken in conjunction with Article 3 on the right to equal enjoyment of the rights provided for by the ICESCR. In this respect, see CESCR, *General Comment No. 16*, *cit.*, § 26.
[57] CESCR, *General Comment No. 23*, *cit.*, § 46.
[58] For a detailed overview of Article 11 see RADAY Frances, "Article 11", in FREEMAN Marsha A., CHINKIN Christine and RUDOLF Beate (eds.), *The UN Convention on the Elimination of All Forms of Discrimination against Women. A Commentary*, Oxford, Oxford University Press, 2012, pp. 279 ff.
[59] See, for instance, CEDAW Committee, *Concluding Observations*, Japan, 10 March 2016, CEDAW/C/JPN/CO/7-8, § 35; CEDAW Committee, *Concluding Observations*, Ireland, 9 March 2017, CEDAW/C/IRL/CO/6-7, § 41; CEDAW Committee, *Concluding Observations*, Norway, 22 November 2017, CEDAW/C/NOR/CO/9, § 37; CEDAW Committee, *Concluding Observations*, Australia, 25 July 2018, CEDAW/C/AUS/CO/8, § 44; CEDAW Committee, *Concluding Observations*, Austria, 30 July 2019, CEDAW/C/AUT/CO/9, § 33; CEDAW Committee, *Concluding Observations*, Denmark, 9 March 2021, CEDAW/C/DNK/CO/9, § 33.
[60] For analysis, see CARACCIOLO DI TORELLA Eugenia, "ILO Convention 156", *cit.*, pp. 1142 ff.

Charter, in its turn, was taken up in substantially analogous terms by the ILO document. In fact, only the right to parental leave referred to in Article 27 § 2 lacks a confirmation in the cited Convention. However, the possibility for either parent of obtaining leave of absence within a period immediately following maternity leave is provided for by the ILO Recommendation No. 165 (in § 22), which also establishes that it should be possible for a worker with family responsibilities to obtain leave in case of the illness of a dependent child or of another member of his / her immediate family who needs care or support (§ 23). More generally, this non-binding instrument specifies the provisions and integrates the contents of the Convention, also with reference to vocational training and employment services, terms and conditions of employment, social security and child and family care facilities.
All this means that "together, [the Convention and the Recommendation] set the main international standards in this area with policies and measures to support workers with family responsibilities"[61]. Despite this, it must be said that Convention No. 156 is not among the eight ILO "fundamental" conventions, identified by the Governing Body as they refer to principles and rights at work considered to be fundamental. In any case, the centrality of this source in ILO policies cannot be questioned: suffice it to note, in this regard, that it was selected as one of the subjects of the 2023 General Survey on gender equality and non-discrimination, family responsibilities and maternity protection. After all, as the ILO Committee of Experts on the Application of the Conventions and Recommendations (CEACR) has stated, "implementation of Convention No. 156 is inextricably linked to the implementation of the principle of equality contained in the ILO Constitution, as well as the fundamental right to non-discrimination and equality of opportunity and treatment in employment and occupation set out in the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Equal Remuneration Convention, 1951 (No. 100)"[62].
The definition as "essential" of the possibility of access to child and family care facilities available free of charge or at a reasonable charge in accordance with the workers' ability to pay should be indicated among the most interesting profiles of the General Observations of the ILO monitoring body[63]. Furthermore, the latter has welcomed the introduction of measures on working time, working arrangements and leave from work, aimed at facilitating the reconciliation of professional and family responsibilities. It has underlined that the adoption of work arrangements, such as reduction of working time generally, flexible working time, part-time work, working from home, remote work, telework and flexible annual leave, should be voluntary and protected in accordance with other international labour standards. More generally, it has noted that "providing more autonomy and flexibility to workers can create a positive organizational climate that may also lead to improved performance". Having found that the reasons for men not taking up an equal share of available leave (and not only) include first and foremost the national, social and employment culture, then fear of retaliation and concerns over loss of income or career development opportunities, the CEACR has welcomed the introduction of encouraging measures such as parental leave to be taken by both parents in turn and increasing leave allowances. It has also highlighted the need for greater efforts by States in recognising flexibility and paid leave for carers of elderly or disabled family members.
As can be seen from these few findings, these are conclusions that partly coincide with those of the ECSR on Article 27, but which, compared to the latter, are far more articulated and go further.

## C. EUROPEAN CONVENTION ON HUMAN RIGHTS

The European Convention on Human Rights (ECHR), as interpreted by the European Court of Human Rights (ECtHR), also has important implications for workers with family responsibilities. Specifically, case law on Article 8 on the right to respect for private and family life[64] read in conjunction with Article 14 on the prohibition of discrimination in the enjoyment of rights set forth in the ECHR, has great importance for the matter under consideration.

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[61] *Ibid.*, p. 1143.
[62] CEACR, *General Observations*, adopted 2019, published 104th ILC session, Workers with Family Responsibilities Convention, 1981 (No. 156).
[63] *Ibid.*
[64] For an extensive analysis of Article 8 of the ECHR see GRABENWARTER Christoph, *European Convention on Human Rights. A Commentary*, München, Beck, 2014, pp. 183 ff; SCHABAS William A., *The European Convention on Human Rights. A Commentary*, Oxford, Oxford University Press, 2015, pp. 358 ff.

The ECtHR has been firm for years in the belief that, "[although] Article 8 does not include a right to parental leave or impose any positive obligation on States to provide parental leave allowances [,] by enabling one of the parents to stay at home to look after the children, parental leave and related allowances promote family life and necessarily affect the way in which it is organized. Parental leave and parental allowances therefore come within the scope of Article 8". Consequently, if a State decides to grant parental leave to workers with young children, it must do so in such a way as not to violate Article 14 of the ECHR[65].
It is of particular interest for this analysis to note that, in this case law, the ECtHR has referred to Article 27 of the revised Charter[66], has noted the evolution of society "towards a more equal sharing between men and women of responsibilities for the bringing up of their children"[67] and has underlined that the different treatment of men and women as regards entitlement to parental leave "has the effect of perpetuating gender stereotypes and is disadvantageous both to women's careers and to men's family life"[68].
Starting from the cited premises, the ECtHR has found the non-recognition for male soldiers of parental leave that the law afforded to female soldiers and civilians[69], as well as the entitlement to parental leave of policemen only in case of lack of maternal care for children[70], in breach of the conjunction of the two aforementioned provisions.
This orientation – to be read, moreover, in the light of a rather extensive notion of "family" under Article 8[71] – can have significant reflections on the position of workers with family responsibilities. Indeed, it seems to be possible to consider that not only parental leave, but also allowances, work arrangements, services and any other type of leave connected to the worker's family needs, constitute forms of implementation of the right to respect for family life protected by the ECHR. If so, when these instruments are adopted by a State (which is not obligated by Article 8 to do so), compliance with Article 14 must be guaranteed.
Proof of what has just been said, namely of the fact that the aforementioned orientation of the ECtHR does not refer only to parental leave, can be found in the case where it was judged in contrast with Articles 8 and 14 of the ECHR the exclusion of natural fathers from the entitlement to receive parental allowances (aimed at supporting new-born children and the whole family raising them), when mothers, adoptive parents and guardians were entitled to them[72].

## D. EU INSTRUMENTS

The explanation to Article 33 of the EU Charter of Fundamental Rights (EUCFR) maintains that § 2 draws on, *inter alia*, Article 27 of the revised Charter[73]. That provision of the EU source establishes that, in order to reconcile family and professional life, everyone shall have the right to parental leave following the birth or adoption of a child, in addition to the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave[74]. These are rights already existing in EU legislative sources, which, in this way, are constitutionalised. However, it is clear that the provision addresses the subject of reconciliation between professional and family life in a too delimited way, avoiding touching on burning

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65 ECtHR, 22 March 2012, *Markin v. Russia*, No. 30078/06, § 130. In the same sense see ECtHR, 6 July 2021, *Gruba and Others v. Russia*, No. 66180/09 and three others, § 75. See also ECtHR, 31 March 2009, *Weller v. Hungary*, No. 44399/2005, § 29; ECtHR, 2 February 2016, *Di Trizio v. Switzerland*, No. 7186/09, § 61. Previously, ECtHR, 27 March 1998, *Petrovic v. Austria*, No. 2458/92, §§ 25-29, where, however, a distinction on the basis of sex with respect to parental leave allowances was found not to be in violation of the ECHR because at the material time there was no European *consensus* in this field, as the majority of Contracting States did not provide for parental leave or related allowances for fathers. As it will be seen, the fact that later the majority of European countries have provided the possibility of taking parental leave both for fathers and for mothers has led the ECtHR to revise its position on this point.
66 Actually, it happened only in ECtHR, *Markin v. Russia*, *cit.*, § 55.
67 ECtHR, *Petrovic v. Austria*, *cit.*, § 40; ECtHR, *Markin v. Russia*, *cit.*, § 139.
68 ECtHR, *Markin v. Russia*, *cit.*, § 141.
69 *Ibid.*
70 ECtHR, *Gruba and Others v. Russia*, *cit.*
71 See recently KENNER Jeff and PEAKE Katrina, *cit.*, pp. 950-951.
72 ECtHR, *Weller v. Hungary*, *cit.*
73 *Explanations relating to the Charter of Fundamental Rights*, OJ C 303, 14 December 2007, pp. 17–35.
74 For a complete overview of Article 33 see COSTELLO Cathryn, *cit.*, pp. 891 ff; BORELLI Silvia, "Article 33 CFREU. Family and Professional Life", in ALES Edoardo, BELL Mark, DEINERT Olaf and ROBIN-OLIVIER Sophie (eds.), *cit.*, pp. 225 ff; KOLLONAY LEHOCZKY Csilla and KRESAL Barbara, "Article 33 - Family and Professional Life", in DORSSEMONT Filip, LÖRCHER Klaus, CLAUWAERT Stefan and SCHMITT Mélanie (eds.), *The Charter of Fundamental Rights of the European Union and the Employment Relation*, Oxford and Portland, Hart, 2019, pp. 583 ff; KENNER Jeff and PEAKE Katrina, *cit.*, pp. 943 ff;

issues for European social policy, such as, for instance, that of pro-labour flexibility in working conditions. For this reason, even if it could be unfair to talk about "a derisory set of rights"[75], it must at least be admitted that the formulation of Article 33 § 2 is very disappointing.
From the point of view of the objective of facilitating the work-life balance, the main deficiencies are the absence of any reference to the issue of workers as caregivers of elderly or disabled family members and – as anticipated – the non-recognition of a right to flexible working arrangements for workers with family responsibilities, as well as the fact that "the exigency to redistribute care tasks is quite unclear"[76]. As a confirmation of this last assertion, the failure to mention a right to paternity leave and the absence of indications about the non-transferability of parental leave and about the adequacy of the compensation system for this time off from work can be reported.
Again: there is no protection against dismissal motivated by family responsibilities and no commitments to promoting accessible and affordable family care services. It is true that these measures can be derived from other provisions of the EUCFR (Article 30 and Article 34 § 1, respectively), but it must be said that a specific reference to them in Article 33 would have been appropriate to certify their functionality with respect to work-life balance.
Despite all this, it must in any case be appreciated that the provision in question confers rights that individuals may invoke even in dispute against private persons and that require national courts to disapply any conflicting internal provision[77]. Furthermore, it must be recognised that Article 33 § 2 "has acted as catalyst for development of policies and law at domestic and EU-levels"[78], since it is clear how it played an important role in the formulation of Principle 9[79] of the non-binding European Pillar of Social Rights[80], which, in turn, paved the way for the adoption of Directive 2019/1158/EU on work-life balance for parents and carers.
The latter[81], having replaced Directive 2010/18/EU on the framework agreement on parental leave, is now the main EU source on the matter of reconciliation between professional and family life. By trying to facilitate work-life balance, it wishes to make a contribution to efforts to achieve equality between men and women with regard to labour market opportunities and treatment at work.
The most important news provided by the Directive in this perspective is the introduction of autonomous paternal leave, the doubling of the months of the non-transferable parental leave, the provision for the first time of a carers' leave, the recognition of the guarantee for workers to return to their jobs or to equivalent posts on terms and conditions which are no less favourable to them at the end of paternal, parental and carers' leave, the confirmation of the right to time off from work on grounds of force majeure for urgent family reasons, the introduction of the right to request flexible working arrangements for caring purposes and the prohibition of dismissal and less favourable treatment of workers on the grounds that they have exercised the rights provided for in the Directive.
It is evident, from this concise list, that the contents of the European source are the most advanced in the framework of European and international instruments aimed at promoting work-life balance; just as it is indisputable that, with these, a further step forward in the process of affirming the *dual earner / dual carer* model of work-family relationships is taken. However, it must not be ignored the fact that the measures

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[75] COSTELLO Cathryn, *cit.*, p. 917. Similarly, KOLLONAY LEHOCZKY Csilla and KRESAL Barbara, *cit.*, p. 586 affirm that "Article 33 is rather weak and modest in defining the content and the concrete rights in the area of reconciliation of family and professional life".
[76] BORELLI Silvia, *cit.*, p. 226. However, it must be noted that in CJEU, 16 July 2015, *Maïstrellis v. Ypourgos Dikaiosynis, Diafaneias kai Anthropinon Dikaiomaton*, C-222/14, §§ 39-40, Article 33 § 2 of the EUCFR has been recalled as a contextual element that supports an interpretation of Directive 96/34/EC on the framework agreement on parental leave as aimed towards an equal sharing of family responsibilities.
[77] See BORELLI Silvia, *cit.*, p. 229; KENNER Jeff and PEAKE Katrina, *cit.*, pp. 981-982.
[78] KENNER Jeff and PEAKE Katrina, *cit.*, p. 983.
[79] Under the title "Work-life balance" it is stated that "Parents and people with caring responsibilities have the right to suitable leave, flexible working arrangements and access to care services. Women and men shall have equal access to special leaves of absence in order to fulfil their caring responsibilities and be encouraged to use them in a balanced way".
[80] The Pillar was jointly and solemnly proclaimed by European Parliament, Council and Commission at the Gothenburg Social Summit on 17 November 2017.
[81] For an overview, see CHIEREGATO Elisa, "Work-Life Balance for All? Assessing the Inclusiveness of EU Directive 2019/1158", *International Journal of Comparative Labour Law*, vol. 36, no. 1, 2020, pp. 59 ff; RIESENHUBER Karl, *European Employment Law. A Systematic Exposition*, Cambridge, Intersentia, 2021, 2nd ed., pp. 673 ff.

actually put in place by the EU law maker are still not enough. There is a considerable space between the objectives initially pursued (partly reflected in an ambitious original proposal by the Commission[82]) and the mandatory content of the approved document. Non-compulsory paternal leave, restrained duration of the latter and of the carers' leave, no indication of a minimum level of payment / allowance due for the exercising of the right to parental leave, no payment / allowance required for carers' leave and provision of a mere right to make a request of flexible working arrangements (and of an employer's obligation to respond and provide reasons in case of refusal) are just some of the weaknesses of a discipline that bears the wounds of a troubled approval process and feels the effect of the well-known difficulties of the EU institutions in carrying out legislative initiatives promoting a significant social progress.

**CONCLUDING REMARKS**

Article 27 is undoubtedly one of the most important provisions on which, at European and international level, a protection of the need to reconcile professional and family life is being built as a way to protect the family and promote gender equality.

From a simple reading of the provision in question, it is clear that, on the basis of this, work-life balance must not be considered the final goal of protection, but a means for achieving the equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers. This circumstance and, more specifically, the reference to gender equality are of fundamental importance, because they bring with them the need to orient work-life balance national policies to the promotion of sharing of care tasks within the family and therefore to the overcoming of gender stereotypes that hinder the equal participation of both women and men in productive and reproductive work. It has been seen that, from this point of view, the ECSR has given precise indications on how the national discipline of parental leave should be articulated to encourage men to make use of this instrument and thus to involve them more in family responsibilities. The monitoring body therefore has taken note of the fact that the achievement of gender equality also passes through the push to abandon the traditional division of tasks in the family between men and women.

If from this essential point of view Article 27 is to be appreciated, the lack of attention that this provision dedicates to workers with family members in need of assistance other than children, such as elderly or disabled family members, is instead questionable[83]. The care of these individuals can impact no less than the care of children on the possibility for the caregiver of participating in the labour market on an equal basis with all other workers, as well as on the promotion of gender equality, since traditionally this type of family responsibilities falls on women. The limited weight of this issue in the provision and in ECSR case law is therefore inexplicable. It cannot be overlooked that this is also paradoxical in the light of the progressive ageing of the population in most of the Council of Europe member Countries.

Overall, however, Article 27 must be considered a provision full of interpretative potentialities that the ECSR could enhance better than it has done so far. The lost opportunities to define better the contents of § 1(b) through the decisions on the merits concerning this subparagraph are proofs of that circumstance. Greater clarity on the commitments that Article 27 requires from States Parties would certainly be welcome, also because this could facilitate an increasing use of the provision by international, European and national bodies (jurisdictional or not) as an argument in support of an interpretation of other sources that goes in the direction of a major protection of workers with family responsibilities.

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[82] See CARACCIOLO DI TORELLA Eugenia, "An emerging right to care in the EU: a 'New Start to Support Work-Life Balance for Parents and Carers'", *ERA Forum*, vol. 18, no. 2, 2017, pp. 187 ff.

[83] See also CARACCIOLO DI TORELLA Eugenia, "Article 27 RESC", *cit.*, p. 348.