

The Right to Time?

Unequal working hours, and the failure of gender equality policies and legislation

FRANCES CAMILLERI-CASSAR

In this article, **Profs. Frances Camilleri-Cassar** studies the possibility and benefits of a right to time in order to address working hour discrepancies between the genders and achieve a more gender-equal legal and actual reality. The rest of the article can be found in *Id-Dritt XXIX*.

TAGS: Human rights law; Employment law; Gender equality

Profs. Frances Camilleri-Cassar is Full Professor in the Faculty of Laws at the University of Malta with research interests around gender, social policy and equality law. She has published widely, and her most recent is a monograph titled ‘Academic Research Methods for the Law Student: a practical guide’ published in 2018 under the auspices of the Faculty of Laws.

1. Introduction

The paper was stimulated by the question of time. To what extent does Malta's employment legislation support gender equality in the right to time? More pertinently, do Malta's working-time patterns help change the traditional gender arrangement, or rather, strengthen the conservative male breadwinner model? This article seeks to contribute to a well-established literature on working-time legislation, and the gendered forces behind women's lives.

The focus rests largely on Malta's culture of long working hours combined with traditional expectations, which seem to suggest incompatibility with gender equality. Although long work hours, and the traditional gender arrangement, have long had a negative impact on women's labour market participation, the phenomenon is a rarely studied aspect of working-time regimes. The approach adopted in the study, and its methodology, give a voice to Maltese women and their existing realities through eliciting data from in-depth interviews. This approach may well be innovative within the context of literature on working-time regimes and working-time arrangements. This article will also discuss policy implications and recommendations for legislative measures that may well be of relevance to policymakers in Malta.

The conceptual framework in this research is the gender-based working-time regime. I argue that we cannot rely on common assumptions about time and unpaid care work. What matters is whether state policies and legislation are, in practice, effective enough to promote gender equality around the discourse of familial responsibilities and the right to time. The wider literature suggests that divergent working-time patterns often link with the institutional and regulatory environment in which they operate¹. For example, Figart and Mutari opine that countries with shorter working hours tend to have a narrower gender gap in labour market participation and with higher levels of gender equality.² The authors claim that 'gender equity is generally higher in European countries that have concentrated on reductions in the standard work week rather than increasing flexibility'.³

This article's contribution to the literature is about Malta's working-time regime, the legal regulations regarding hours of paid work, and the gendered forces behind women's lives, as a resource in the gender model. This is

¹ J.A Jacobs and K. Gerson *The Time Divide: Work, Family, and Gender Inequality*, (2004) Cambridge, MA: Harvard University Press.

² Deborah M. Figart and Ellen Mutari, 'Degendering work time in comparative perspective: alternative policy frameworks' [1998] RSE 460.

³ *Journal of Economic Issues* 'Working time regimes in Europe: can flexibility and gender equity coexist?'

undertaken through an understanding of the distribution and meaning of time to mothers in the allocation of paid and unpaid work, and the constraints affecting these. I argue that while men's employment is largely undisturbed by their transition into fatherhood, women's labour market decisions are negatively impacted when they become mothers. The first question that concerns this study is the extent to which a shorter working week may promote gender equality in the division of paid and unpaid work. I then go on to discuss women's preferences for paid work, and the time constraints around family obligations.

2. A shorter working week?

A reduction in working hours is high on the political agenda of the European Union (EU) and its member states, and time famine debates are a topical issue. Moreover, with its key priority of job creation and employment growth, the European Commission signals the gradual decline in the standard working week, the standard contract of employment, and the standard career with a lifetime job.

A key influence on women's working-time preferences is motherhood. An analysis of the Employment Options Survey 1998 shows that while fatherhood has little influence on men's preferred work hours, women with young children are more likely to prefer short full-time hours or part time work. Indeed, mothers of young children are more likely to work part-time or shorter full-time hours, compared with childless women⁴. Eurostat analysis of the impact of parenthood on women and men in Malta supports the literature, and is discussed later on in the study.

While it is difficult for individual negotiations to convert preferences into actual working time, collective action by the social partners may, indeed, broaden the politics of time⁵. For example, policies to reduce working time are characteristic of the French socio-political environment, and the state in France has intervened to regulate a reduction in full-time hours. Pascall points out that the implementation of the Aubry laws, led to the spread of a thirty-five-hour week throughout French firms and families.⁶ Fagnani and Letablier concur that the thirty-five-hour week law eased the possibility of a work-life balance.⁷

As a result of state policies and collective bargaining in the Netherlands, full-time hours are falling, alongside an expansion in part-time work. The core concept of the Dutch 'combination model' is that 'both paid and unpaid

⁴ C. Fagan and T. Warren Gender, Employment and Working Time Preferences in Europe, European Foundation for the Improvement of Living and Working Conditions, Luxembourg: Office for the Official Publications of the European Communities (2001).

⁵ *ibid.*

⁶ Pascall, G. *Gender Equality in the Welfare State?* (2012) Bristol: Policy Press.

⁷ Fagnani, J. and Letablier, M. T. 'The French 35-hour working law and the work-life balance of parents: friend or foe?', in D. Perrons, C. Fagan, L. McDowell, K. Ray and K. Ward (eds.) (2006)., *Gender Divisions and Working Time in the New Economy*, Cheltenham: Edward Elgar.

work are equally valued'⁸. The model works on the principle of a thirty-two-hour week, which favours the combination of a part-time wage, with part-time homemaking, for both parents. Despite criticism that the combination model has affected women's labour market participation rather than men's, policies around the model were instrumental in pulling away from the system of the traditional male breadwinner regime⁹. In parallel, Sweden makes time for both parents to care through reducing parents' working hours, for mothers and fathers with young children, through supporting the dual-earner model and sustaining continuity in women's working lives and financial independence from men¹⁰.

The standard thirty-seven-hour full-time work-week, and the collectively agreed limits on working time has served to address the earnings differential that is now kept low in Denmark. Moreover, the tighter regulations of the Danish working-time regime has meant that the degree of gender inequality in the labour market dropped considerably. Relatedly, Warren argues that 'the decline of the male breadwinner model is linked inextricably to this issue of general labour market equality, and not just to the more comprehensive policies that aim specifically to reduce inequalities in the work patterns of women and men'¹¹.

A study of innovative social policies for gender equality at work suggests three strategies that lead towards more equal rights to time.¹² These are: Sweden's policies to make women's working lives more like men's, through (nearly) full-time employment; the Netherlands' Combination Scenario, using quality part-time employment to make men's lives more like women's; and France's shorter working week. Fox *et al.*¹³ argue that the strategies proposed in their study would bring about the most gender-equal working time in Western Europe.

Gender is central to an analysis of time, largely because of women's time as carers, and their right to time that falls outside the commodified time systems operating in the workplace¹⁴. For example, in its fifth European Working Conditions survey, the European Foundation for Living and Working Conditions shows significant gender differences in terms of time spent caring for children, elderly and disabled relatives and on household chores¹⁵. It is also argued that some of the gender differences in working

⁸ J. Plantenga, 'Combining work and care in the polder model: an assessment of the Dutch parttime strategy', *Critical Social Policy*, (2002) 22, 1, 55.

⁹ G. Pascall, *Gender Equality in the Welfare State?* (2012) Bristol: Policy Press.

¹⁰ *ibid.*

¹¹ T. Warren 'Diverse breadwinner models: a couple-based analysis of gendered working time in Britain and Denmark', (2000) *Journal of European Social Policy*.

¹² Fox, E., Pascall, G. and Warren, T. *Innovative Social Policies for Gender Equality at Work*, The University of Nottingham and European Social Fund (2006). Gerson, K. 'Men's resistance to equal sharing', in M. S. Kimmel (ed.), *Men's Lives*, 9th edn, (2013) New York: Pearson Education..

¹³ *ibid.*

¹⁴ Jane Pillinger 'Redefining Work and Welfare in Europe: New Perspectives on Work, Welfare and Time' in Gail Lewis, Sharon Gewirtz and John Clarke (eds), *Rethinking Social Policy* (London: Sage) p. 327.

¹⁵ Eurofound, *Trends in Job Quality in Europe*, Luxembourg: Publications Office of the European Union (2012a).

conditions have to do with the broader pattern of gender relations and inequality in society, such as women's 'double shift' of paid and unpaid work, since they do more of the care work in the home.¹⁶

¹⁶ Fagan, C. and Burchell, B. *Gender, Jobs and Working Conditions in the European Union*, European Foundation for the Improvement of Living and Working Conditions, Luxembourg: Office for Official Publications of the European Communities (2002).

ghsl
olj online
law
journal